

**NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT**

For internal agency use only.

Department of Human Services, Aging and People with Disabilities

411

Agency and Division Name			Administrative Rules Chapter Number
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FILING CAPTION

Changes to Adult Protective Service rules to implement Centralized Abuse Management System

Last Date and Time for Public Comment: [December 21, 2018, 5:00 p.m.]

Hearing Date	Time	Address	Staff Hearings Officer
December 17, 2018, 8:30 am		Human Services Building, 500 Summer St NE, Salem, OR 97301	Staff

RULEMAKING ACTION

List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.

ADOPT:

411-020-0121

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; 411-020-0070; 411-020-0080; 411-020-0085; 411-020-0090; 411-020-0100; 411-020-0110; 411-020-0120; 411-020-0123; 411-020-0126; 411-020-0130

REPEAL:

411-020-0000(T); 411-020-0002(T); 411-020-0010(T); 411-020-0015(T); 411-020-0020(T); 411-020-0025(T); 411-020-0030(T); 411-020-0040(T); 411-020-0060(T); 411-020-0070(T); 411-020-0080(T); 411-020-0085(T); 411-020-0090(T); 411-020-0100(T); 411-020-0110(T); 411-020-0120(T); 411-020-0121(T); 411-020-0123(T); 411-020-0126(T); 411-020-0130(T)

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Department of Human Services (Department) is amending OAR Chapter 411, division 20 to make the changes noted to the rules below. The Department is also updating the rules to make general housekeeping and wording changes for clarity and consistency, and to align the rules with current Department terminology and practice. The Department is also removing references to investigations of nursing facilities as this duty is now the responsibility of the

Nursing Facility Survey Unit (NFSU).

411-020-0000, Purpose and Scope of Program

Updated terminology consistent with current Department practice; added provision for statewide data collection; and updated statutory references.

411-020-0002, Definitions

Updated language consistent with current Department practice; revised, added and deleted definitions; and updated statutory references.

411-020-0010, Authority and Responsibility

Updated language consistent with current Department practice and updated statutory references.

411-020-0015, Eligibility Criteria

Updated language consistent with current Department practice.

411-020-0020, Reporting of Abuse and Self-Neglect

Updated language consistent with current Department practice; clarified statutory mandatory abuse reporting provisions vs. abuse reporting required by policy or contract; and updated statutory references.

411-020-0025, Multi- Disciplinary Team (MDT)

Updated language consistent with current Department practice and updated statutory references.

411-020-0030, Confidentiality

Updated language consistent with current Department practice; added exceptions to confidentiality; and updated statutory references.

411-020-0040, Services Provided

Updated language consistent with current Department practice; added current retention requirements; and updated statutory references.

411-020-0060, Screening

Updated language consistent with current Department practice and updated statutory references.

411-020-0070, APS Consultation

Updated language consistent with current Department practice and updated statutory references.

411-020-0080, Triage

Updated language and revised triage times consistent with current Department practice and updated statutory references.

411-020-0085, Law Enforcement Notification

Updated language consistent with current Department practice and updated statutory references.

411-020-0090, Assessment

Updated language consistent with current Department practice and updated statutory references.

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

Updated language and revised community investigation and documentation requirements consistent with current Department practice and updated statutory references.

411-020-0110, Intervention

Updated language consistent with current Department practice and updated statutory references.

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

Updated language and revised facility investigation and documentation requirements consistent with current Department practice and updated statutory references.

411-020-0121, Administrative Closure

Adopting new rule to add provisions for administrative closure of APS investigations, without making a determination of abuse, under certain conditions.

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

Updated language consistent with current Department practice and updated statutory references.

411-020-0126, Accessing Financial Records

Updated language consistent with current Department practice and updated statutory references.

411-020-0130, APS Risk Management

Updated language and revised APS Risk Management requirements consistent with current Department practice and updated statutory references.

STATEMENT OF NEED AND FISCAL IMPACT.

Need for Rule(s):

These rules need to be amended to align with the new Centralized Abuse Management (CAM) system the Department is beginning to implement starting in July 2018. The rules also need to be amended to align with new Department policies and procedures, including direction from the Center for Medicare & Medicaid Services that the NFSU shall conduct all investigations of abuse by nursing facilities.

These changes address this need in the following ways:

- Changing terminology for parties involved in Adult Protective Services;
- Providing a new type of case closure (Administrative Closure) that allows certain open investigations to be closed administratively with no abuse determination;
- Revising the definition of APS Risk Management to allow for intakes to be assigned for APS Risk Management without having to be assigned for investigation.
- Eliminating the definition of “Wrongdoing,” clarifying that APS investigations in licensed facilities will occur only when the reported concerns meets a definition of abuse in these rules.
- Making other housekeeping and wording changes to the rules for clarity and consistency, and to align the rules with current Department terminology and practice.

Fiscal and Economic Impact:

The Department estimates that amending OAR chapter 411, division 020 will have a fiscal and economic impact as stated below in the statement of costs of compliance.

Statement of Cost of Compliance:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

State Agencies: The Department estimates no fiscal or economic impact on State Agencies. Communication and distribution of the amended rules will occur through normal channels and require no additional expense beyond normal operational costs.

Units of Local Government: The Department estimates no fiscal or economic impact on units of local government

Consumers: The Department estimates no fiscal or economic impact on Consumers

Providers: The Department estimates no fiscal or economic impact on providers

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

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

There are approximately 1,672 adult foster homes subject to this rule, most of which are considered a small business as defined by ORS 183.310.

There are approximately 531 assisted living or residential care settings. Of these, approximately 30 may be considered a small business as defined by ORS 183.310.

The Department anticipates no significant change or effect on small businesses due to the amendments to these rules.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

The proposed changes impact providers as described above in the Department's statement of cost of compliance.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The proposed changes impact providers as described above in the Department's statement of cost of compliance.

Describe how small businesses were involved in the development of these rule(s)?

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.

Documents Relied Upon, and where they are available:

Information about the CAM system and its implementation is available at the DHS website at <https://www.oregon.gov/DHS/SENIORS-DISABILITIES/ADULT-ABUSE/Pages/CAM.aspx>.

Was an Administrative Rule Advisory Committee consulted? Yes or No?

Yes.

**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), Aging and People with Disabilities program ~~area~~ (APD) has the responsibility to provide Adult Protective Services (APS) to older adults and to adults with physical disabilities whose situation is within 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~~ abuse and self-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~~ alleged victims;

(c) Conducting and documenting investigations of ~~reported wrongdoing~~ alleged abuse and self-neglect;

(d) Providing appropriate resources for victim safety; and

(e) Collection of statewide data of Adult Protective Services.

(4) AVAILABILITY. Adult Protective Services are available from the Department to any adult resident of a 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 Department embraces a social model of intervention with a primary focus on offering safety and protection to the ~~reported~~alleged 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 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 self-neglect, and encourages active participation and sharing of appropriate information by APS staff on multidisciplinary teams.

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

Stat. Auth.: ORS ~~410~~124.055, 124.065, 124.070, 179.040, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, ~~441.637,~~ 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, ~~441.630 - 441.695,~~ 443.435, 443.450, 443.500, &443.765, 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~~these rules, 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) For the purposes of these rules, neglect means the active or passive failure to provide the basic care, or services necessary to maintain the health and safety of an adult, when that failure:

(i) ~~Failure may be active or passive. (ii) Failure creating a risk of serious harm or r~~Results in physical harm, significant emotional harm ~~or,~~ unreasonable discomfort, or serious loss of personal dignity ~~to the adult; or~~

(ii) Creates the risk of serious harm to the adult.

~~(iii)~~B The expectation for care may exist ~~as a result~~because 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)~~C An adult, who in good faith, is voluntarily under treatment solely by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination shall, for this reason alone, not be considered subjected to abuse by reason of neglect as defined in these rules.

(c) ABANDONMENT. Abandonment includes ~~using~~ 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~~ using:

(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~~ these rules:

(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 reasonably believes ~~that~~ the threat conveyed 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; or

(E) The taking, borrowing, or accepting loans of assets, funds, property, or medications from an adult residing in a facility by an employee of the facility, unless the adult and employee are related.

(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;

(C) Sexual exploitation of an adult;

(D) Any sexual contact between an employee of a facility and an adult residing in the facility unless the two are spouses;

(E) Any sexual contact that is achieved through force, trickery, threat, or coercion; or

(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~~their 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 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 the eat specified areas s 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 before implementing a licensed physician's prescription for restraint;

(ii) Less restrictive alternatives have not been evaluated 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) "Administrative Closure" means an abuse or self-neglect investigation was initiated and closed with no determination as to whether abuse or self-neglect occurred or not.~~

(23) "Adult" means an individual who is 18 years of age or older.

~~(34) "Aging and People with Disabilities (APD)" means the program area of Aging and People with Disabilities,~~ program within the Department of Human Services.

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

~~(5) "Alleged Perpetrator (AP)" means the licensee, employees, volunteers, or contracted personnel of the facility, or any adult protective reported to have committed abuse.~~

~~(6) "Alleged Victim (AV)" means the individual against whom abuse or self-neglect is reported to have been committed.~~

~~(57) "Adult Protective Services (APS)" means adult protective APD program services to respond to abuse and self-neglect of older adults and adults with physical disabilities as described in these rules, including screening, triage or consultation, on-site assessment, investigation, intervention, documentation, and APS risk management.~~

~~(68) "APS Risk Management" means the process by which Adult Protective Services continues to maintain ongoing staff provide short-term, active contact assessment and intervention with a reported an alleged victim who is at serious risk of harm, or continues to be at serious risk of harm, after an investigation is complete.~~

(79) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of service to individuals in a planning and service area.

~~(8) "At-risk" means there is reason to believe injury, hazard, damage, or loss may occur.~~

(10) "Authority" means the Oregon Health Authority.

(911) "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.

~~(1012) "Community-Based Care Facility" means an assisted living facility, residential care facility, or adult foster home, or registered room and board facility.~~

~~(1113) "Conclusion" means a determination of whether abuse or self-neglect occurred:(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.~~

(1214) "Conservatorship" means 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.~~

(1415) "Department" means the Department of Human Services (DHS).

(1516) "Evidence" means material gathered, examined, or produced during an ~~adult protective services~~ APS investigation. Evidence includes, but is not

limited to, witness statements, documentation, photographs, audio or video recordings, and relevant physical evidence.

~~(1617)~~ "Financial Institution" has the meaning given ~~that term~~ in ORS 192.583.

~~(1718)~~ "Financial Records" has the meaning given ~~that term~~ in ORS 192.583.

~~(1819)~~ "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.

~~(1920)~~ "Health Care Provider" has the meaning given that term in ORS 192.556.

~~(2021)~~ "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.

~~(2122)~~ "Inconclusive" means that after a careful analysis of the evidence gathered in an investigation, a determination of whether wrongdoing abuse or self-neglect occurred cannot be reached by a preponderance of the evidence.

~~(2223)~~ "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, be able to reasonably choose from among those options, and communicate that choice.

(24) "Investigation" means the process of determining whether abuse or self-neglect occurred. The investigation results in a conclusion as to whether the alleged abuse or self-neglect is substantiated, unsubstantiated, inconclusive, or administratively closed.

~~(2325)~~ "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.

(~~24~~26) "Licensed Care Facility" means a facility licensed by ~~the Department, including nursing facilities, APD including~~ assisted living facilities, residential care facilities, and adult foster homes. For these rules "licensed care facility" does not include nursing facilities.

(~~25~~27) "Local Office" means the local service staff of the Department or Area Agency on Aging.

(~~26~~28) "Mandatory Abuse Reporter" for the purpose of these rules, means any public or private official who is required by state abuse statutes to report alleged suspected abuse or neglect. ~~(a) If an individual is a mandatory reporter and 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 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:~~

(aA) Physicianss, psychiatristss, naturopathic physicianss, osteopathic physicianss, chiropractorss, podiatric physicianss, physician assistantss, or surgeonss, including any internss or residentss;

(bB) Licensed practical nursess, registered nursess, nurse practitionerss, nurse's aidess, home health aidess, or employeess of an in-home health service;

(~~cC~~) Employeess of ~~the DH~~Department of Human Services, community developmental disabilities programss, or Area Agenciesiesy on Aging;

(~~dD~~) Employeess of the Oregon Health Authority, county health departmentss, or community mental health programss;

(~~eE~~) Employeess of a nursing facility or an individual who contracts to provide services to a nursing facility;

(~~fF~~) Peace officerss;

(~~gG~~) Memberss of the Clergy;

(~~hH~~) Regulated social workerss, licensed professional counselorss, or licensed marriage and family therapistss;

(~~iI~~) Physical, speech, or occupational therapistss, audiologistss, or speech language pathologistss;

(~~jJ~~) Senior center employeess;

(~~kK~~) Information and referral or outreach workerss;

(~~lL~~) Firefighter or emergency medical services providerss;

(~~mM~~) Psychologistss;

(~~nN~~) Licenseess of an adult foster home or an employee of the licensee;

(~~oO~~) Attorneyss;

(~~pP~~) Dentistss;

(~~qQ~~) Optometristss;

(~~rR~~) Memberss of the Legislative Assembly;

(~~sS~~) Personal support workerss;

~~(t)~~ Home care workers~~s~~;

~~(u)~~ Referral Agents as defined in OAR 411-058-0000(12); and

~~(v)~~ For nursing facilities, all of the above, plus legal counsel, guardians~~s~~, or family members~~s~~ of the resident.

~~(2729)~~ "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~~AAA offices, community mental health and developmental disability programs, plus advocates for older adults and individuals with disabilities, and individuals specially trained in abuse.

~~(2830)~~ "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.

~~(2931)~~ "Older Adult" means any individual 65 years of age or older.

~~(3032)~~ "Physical Disability" means any physical condition or cognitive condition such as brain injury or dementia that significantly interferes with an adult's ability to protect ~~themselves~~ from ~~harm~~abuse or ~~self-~~neglect. ~~(See OAR 411-020-0015, Eligibility).~~

~~(33)~~ "Preponderance of the Evidence" means the majority of the evidence collected during an investigation supports a particular conclusion.

~~(3434)~~ "Protected Health Information" has the meaning given ~~that term~~ in ORS 192.556.

~~(35)~~ "Protective Services" means a service provided by the Department, directly or through type B AAAs, in response to the need to protect elderly persons and persons with physical disabilities from harm or neglect.

~~(32)~~ "Relevant" means tending to prove or disprove the allegation at hand.

(36) "Regulated Providers" means service providers regulated through licensing, certification, registration, contracts, provider enrollment agreements, and other means over which the Department and Authority have administrative authority and responsibility.

~~(33) "Reported Perpetrator (RP)" means the facility, an agent or employee of the facility, or any individual reported to have committed wrongdoing.~~

~~(34) "Reported Victim (RV)" means the individual whom wrongdoing or self-neglect is reported to have been committed against.~~

(37) "Reporter" means the individual or entity who reports alleged abuse or self-neglect to the Department or a law enforcement agency.

(38) "Required Reporter" means the individual or entity who is required by the Department's or the Authority's administrative rules, contracts, or policy to report alleged abuse or self-neglect to the Department. "Required reporter" is also used when other agencies or entities internally require their own abuse reporting to the Department.

(39) "Restraint" means:

(a) Physical restraints are any manual method or physical or mechanical device, material, or equipment attached to or adjacent to the individual's body that the individual cannot remove easily, which restricts freedom of movement or normal access of the individual to the individual's body. Any manual method includes physically restraining someone by manually holding someone in place.

(b) Chemical restraints are any substance or drug used for the purpose of discipline or convenience that has the effect of restricting the individual's freedom of movement or behavior and is not used to treat the individual's medical or psychiatric condition.

~~(3540)~~ "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~~their interests and personal safety. The individual's living situation, support system, and other relevant factors are ~~also~~ evaluated to determine the impact on the individual's ability to become or remain safe.

(~~3641~~) "Risk of Serious Harm" means that without intervention, the individual is likely to incur substantial injury or loss.

(~~3742~~) "Self-Determination" means an adult's ability to decide ~~his or her~~their own fate or course of action without undue influence.

(~~3843~~) "Self-Neglect" means the inability of an adult to understand the consequences of ~~his or her~~their actions or inaction when that inability leads to or may lead to harm or endangerment to self ~~or others~~.

(~~3944~~) "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.

(~~4045~~) "Substantiated" means ~~that~~ the preponderance (~~majority~~) of the evidence gathered and analyzed in an investigation indicates ~~that~~ the allegation is true.

(~~4146~~) "These Rules" mean the rules in OAR chapter 411, division 020.

(~~4247~~) "Undue Influence" means the process by which an individual uses ~~his or her~~their 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.

(~~4348~~) "Unsubstantiated" means ~~that~~ the preponderance (~~majority~~) of the evidence gathered and analyzed in an investigation indicates ~~that~~ the allegation is not true.

~~(44) "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~~124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, ~~441.637,~~ 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 125.005, 192.583, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, ~~441.630 – 441.695,~~ ~~443.435,~~ ~~443.450,~~ 443.500, 443.765, 443.767, ~~2012 Or. Oregon~~ Laws 2013 Chapter 70352

~~411-020-0005 (Renumbered to OAR 411-020-0040 11/15/1994)~~

411-020-0010 Authority and Responsibility

The Department is granted with the statutory authority and responsibility ~~to protect for the delivery and administration of programs and services relating to~~ older adults and adults with physical disabilities, ~~from harm or neglect including adult protective services.~~ These rules detail the components of the Adult Protective Services process. Specific authorizing statutes include:

(1) GENERAL ADULT PROTECTIVE SERVICES:

(a) ORS 409.010, authorizing Adult Protective Services for older adults and adults with disabilities.

(b) ORS 410.020 authorizes, authorizing the protection of older adults and adults with disabilities from physical and mental abuse and from fraudulent practices.

(c) ORS 410.040, defining Adult Protective Services as a service to be provided by the Department directly or through type B area agencies, in response to the need for protection from harm or neglect to older adults and adults with disabilities.

(d) ORS 410.070, authorizing the Department to serve as an advocate for older adults and adults with disabilities by conducting investigations concerning matters affecting the health, safety, and welfare of older adults and adults with disabilities, and to adopt rules, consistent with federal and state laws and regulations, for providing social services, including protection, to individuals needing or requesting servicesAdult Protective Services.

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

(2) ADULT FOSTER HOMES.

(a) ORS 443.767 requires 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 may result in injury, abuse, or neglect of a resident and may place the resident's health or safety in imminent danger.

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

(3) RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES.

(a) ORS 443.435 allows the 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 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 Department has reasonable cause to believe any facility is operating without registration in violation of ORS 443.480 to 443.500, 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.~~

(64) 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~~alleged abuse ~~to~~or self-neglect of older adults.

(5) ADULTS WHO RECEIVE MEDICAID SERVICES.

(a) Section 1915(c) of the Social Security Act, Home and Community-Based Services (HCBS) Waiver (see Waiver Survey, Appendix Item G-1-a) mandates the Department to take reports of and investigate critical incidents (e.g., abuse, neglect, and exploitation) that reportedly occur to Medicaid recipients, and develop strategies to reduce or prevent future incidents.

(b) ORS 124.070, 409.010, 410.020, 410.040, 410.070, and 443.767 provide the Department with authority to designate Adult Protective Services as under these rules.

(c) OAR 411-065-0000 to 411-065-0050 details APD contracted services for recipients of Medicaid services.

Stat. Auth.: ORS 410.070, 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS ~~410.070 & 124.050~~ - 124.095, 179.040, 409.010, 410.020, 410.040, 410.070, 411.060, 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 adult living in an APD licensed care facility ~~when they are reported to be victims of "abuse" as defined in these rules.~~

~~(2) Reported abuse to individuals who are enrolled in or previously determined eligible for services from the Department under ORS 430.735 to 430.765 and OAR 407-045-0250 to 407-045-0360 are referred for screening to the county developmental disabilities program. 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.~~

(d) Older adults and adults with physical disabilities who receive services from regulated providers and are not eligible for abuse investigation by another Department or Authority program.

~~(32)~~ 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 Self-Neglect

(1) For the purpose of these rules, mandatory abuse reporters are those "public and private officials" listed in ORS 124.50. Mandatory reporters must immediately report instances of suspected alleged elder abuse (as defined in ORS 124.050) or abuse of residents in nursing facilities (as defined in ORS 441.630) to the Department, local office, or a local law enforcement agency.

(a) A mandatory reporter must report if they come into contact with, and have reasonable cause to believe, that an older adult in any setting has suffered abuse or neglect.

(b) Definitions of abuse or neglect for mandatory reporting are defined in ORS 124.050 to 124.095.

(c) Anyone making a mandatory report of abuse with reasonable grounds and good faith shall have immunity from any civil or criminal liability. The same immunity applies to participating in any judicial proceeding resulting from the report.

(d) Exceptions to mandatory reporting. A psychiatrist, 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) Some individuals are also required under, law, Department's administrative rules, contracts, or policy to report abuse. These required reporters must report instances of alleged abuse of older adults and persons with physical disabilities to the Department or local office. Required abuse reporting includes, but is not limited to:

(a) An individual who works, volunteers or is contracted personnel in an Assisted Living or Residential Care Facility under OAR 411-054-0028(2)(a)(b) and have reasonable cause to suspect abuse has occurred to a resident in those community-based settings.

(b) Many DHS and OHA contractors have requirements in their contracts to report abuse.

(c) Oregon law mandates that stock brokers, financial advisors, and other professionals regulated by the Department of Consumer Business Services (DCBS) shall report financial abuse to DCBS. DCBS then shall notify the Department or local office. Once notified by DCBS, the local APS office shall inform DCBS of the screening outcome.

(23) Reporting of instances involving abuse or self-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.~~

(34) The identity of the individual reporting the suspectedalleged 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 Department or exceptions in law, e.g., a law enforcement agency.

Stat. Auth.: ORS 410.124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, ~~441.637,~~ 443.450, 443.765, & 443.767

Stats. Implemented: ORS ~~124.055 – 124.075, 124.090~~050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.116, 441.635 – 441.655, 441.671 – 441.675, &443.435, 443.450, 443.500, 443.765

411-020-0025 Multidisciplinary Team (MDT)

(1) Where a county district attorney or delegated designee has developed a multidisciplinary team (MDT), the local 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~~these rules.

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

(3) Upon request, ~~T~~the local office must annually provide the MDT with the number of substantiated allegations of abuse of adults investigated by APS and the number of APS cases referred to law enforcement ~~in the county~~according to reporting procedures developed by the MDT.

Stat. Auth.: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, & section 8, chapter 837, Oregon Laws 2009 chapter 837, section 8, Oregon Laws 2013 Chapter 352, Section 10

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~~critical to protect the privacy of individuals, to encourage the reporting of abuse and self-neglect, and to facilitate ~~the~~ obtaining ~~of~~ information.

(2) All information involving ~~non-facility based~~ investigations that do not involve allegations against regulated providers is confidential, except for disclosure of the conclusion under OAR 411-020-0100(~~76~~), 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~~an investigation involves a ~~licensed care facility~~regulated provider, information and records regarding the ~~complaint~~report of alleged abuse and subsequent findings ~~shall~~may be made available internally to the ~~general~~

~~public appropriate regulating authority upon request or by operational procedures. Redacted copies of investigations involving regulated providers or their staff may also be made available to the provider and affected staff when the investigation is the basis for regulatory action or when providing the information to the provider is necessary for safety or protective purposes. Any further disclosures of APS information and reports involving regulated providers must comply with applicable State and Federal confidentiality and privacy laws. 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~~APS report and underlying investigatory materials available to the protection and advocacy system designated by ORS 192.517, e.g. Disability Rights Oregon, when the ~~reported~~alleged victim is an individual with a disability or mental illness as identified by ORS 192.517.

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

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

(b) An agency that licenses or certifies a facility where the ~~reported~~alleged 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~~alleged 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 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;~~;~~~~of.~~.

(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.

(i) The Oregon Public Guardian as required by ORS chapter 125.

(j) A court or petitioning attorney pursuant to ORS 125.012 (guardians and conservators).

(6) The Department shall limit the use and disclosure of APS reports and information to that which is reasonably necessary to accomplish the intended purpose of the disclosure.

(67) 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 ~~410.124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 441.637,~~ 443.450, 443.765, & 443.767, 45 CFR 164.512(j)

Stats. Implemented: ORS ~~124.020, 124.050 --~~ 124.095, 125.012, 125.683, 192.355, 192.517, 409.010, 410.020, 410.040, 410.070, 410.150, 411.060, 411.116, 441.630 -- 441.695, 443.769, & 2012 Or. Oregon Laws 2013 Chapter 70352, 45 CFR 164.512(j)

411-020-0040 Services Provided

(1) Local offices must follow procedural guidelines consistent with 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 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) Deviations from these rules may be warranted to protect the safety of any party or as otherwise allowed by policy. The reasons for these deviations must be reviewed with a supervisor or designee and properly documented in the investigative record.

(45) 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. This does not include the right to prevent an investigation from occurring.

(6) The local office must retain records that document the APS functions for a period of 15 years after last activity.

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 410.070 & 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116

411-020-0060 Screening

(1) All calls or contacts involving the possibility of abuse or self-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 complaintreported concern meets the definition of abuse ~~as contained in administrative rules~~ or self-neglect.

(3) All complaints regarding a person receiving services in a Nursing Facility must be referred immediately to the APD Nursing Facility Survey Unit (NFSU) for screening, triage, and Facility investigation. NFSU will refer any concerns regarding external parties (e.g. family members) back to APS for screening and potential investigation under Community APS rules.

(4) If the complaintreported concern meets the definition of abuse or self-neglect, screening activities may include, but are not limited to:

(a) Gathering information about the reportedalleged 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 reported concern.

(d) Gathering information from collateral sources.

(45) If the complaintreported concern does not meet the definition of abuse or self-neglect, but requires intervention, response shall include referral to other resources, including case management, licensing, APS risk management, or other services as appropriate.

(56) If the ~~complaint~~reported concern does not meet the definition of abuse or self-neglect or require intervention, but may be addressed by specialized information or assistance, a referral to APS consultation may be appropriate.

(76) If the ~~complaint~~reported abuse involves ~~a consumer~~an individual who is currently ~~receiving~~;

(a) Receiving APD case management or eligibility services, the ~~worker assigned to the consumer~~APD worker must be notified. ~~If the complaint involves a commercial~~

(b) An adult foster home resident, the local ~~licenser~~licensor must be notified.

(c) Receiving services from a regulated provider, the appropriate regulating authority must be notified.

(d) Receiving services from an APD contracted provider, then the appropriate Central APD unit must be notified.

(e) A minor with Child Welfare involvement or an individual up to age 21 receiving services from a Child Caring Agency, then Child Welfare must be notified.

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

(98) Each local office must establish an ~~after hours~~afterhours reporting system.

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.116, & 443.767

411-020-0070 APS Consultation

(1) APS Consultation is the process by which APS provides specialized information or assistance, enhanced referral, or technical assistance via electronic means, including telephone, fax, or e-mail, to assist in harm reduction.

(2) APS Consultation, as an alternative to assessment or investigation, is only appropriate when the ~~report~~reported concern does not meet eligibility criteria for abuse or self-neglect~~-or for investigation of licensing violation~~.

(3) The local office must maintain a record of reports resolved by APS consultation.

Stat. Auth.: ORS 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, ~~441.637~~, 443.450, 443.765, & ~~443.767~~

Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 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 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~~reported abuse and the rules and laws related to the category of ~~complaint~~reported abuse.

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

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

(A) IMMEDIATELY FOR EMERGENCY SITUATIONS:
Immediately Contact 911 when the evidence presented suggests an emergency situation exists, such as the following.
~~An emergency is a situation in which evidence suggests that:~~

(i) A human life is in jeopardy.

(ii) The individual is in the process of being harmed due to criminal activity;

(iii) A medical emergency;

(iv) A fire; ~~or.~~

(v) There is a clear and present danger of harm to self or others;

~~(B) WITHIN TWO HOURS OF RECEIPT OF COMPLAINT BY THE END OF THE SAME WORKING DAY:~~ Initiate an investigation within two hours by the end of the same working day when the reported/alleged victim is/has been identified as being in imminent danger;

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

(D) WITHIN FIVE WORKING DAYS: Initiate an investigation within five working days when screening determines the situation is problematic, one that is chronic or ongoing, or is a general complaint that situation where an immediate response is unlikely to change the reported/alleged victim's risk level, ~~an investigation must be initiated within five working days.~~

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

(A) IMMEDIATELY FOR EMERGENCY SITUATIONS:
Immediately contact 911 when the evidence presented suggests an emergency situation exists, such as the following:

(i) A human life is in jeopardy.

(ii) The individual is in the process of being harmed due to criminal activity.

(iii) A medical emergency.

(iv) A fire.

(v) There is a clear and present danger of harm to self or others.

(B) BY THE END OF THE SAME WORKING DAY: Initiate an investigation by the end of the same working day when the alleged victim has been identified as being in imminent danger.

(C) BY THE END OF THE NEXT WORKING DAY: Initiate an investigation by the end of the next working day when the individual is identified as being in a hazardous situation that may lead to increased harm or risk.~~(A) 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) BEFORE THE END OF THE NEXT WORKING DAY: If circumstances exist that may result in abuse.~~

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.065—124.070~~050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 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) Reasonable cause to believe a crime has been committed;
- (b) Access to the ~~reported~~allegedly 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) Those required under OAR 411-020-0123 or 411-020-0126.

(2) The Department or local office shall proceed collaboratively with law enforcement in a way that does not further endanger the alleged victim. Any law enforcement officer accompanying the investigator must be identified as such to any party being interviewed.

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

~~(34) When the local office notifies a law enforcement agency of suspected crime committed against a reported an alleged victim, the local office must track the progress as reported from the shall retain any record of the law enforcement agency on the investigation and the district attorney's office on the prosecution of the crime agency's confirmation of receipt of notification.~~

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.060, 410.070, 411.116, ~~441.637,~~ 443.450, 443.765, & 443.767
Stats. Implemented: ORS ~~124.065 – 124.070~~050 - 124.095, 409.010, 410.020, 410.040, 410.060, 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~~alleged victim's degree of risk, level of functioning, adequacy of information, and ability to protect ~~his or her~~their own interests. Assessment additionally determines the ~~reported~~alleged victim's ability to reduce the risk of harm in ~~his or her~~their 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 self-neglect.

(2) Assessment in APS cases shall be conducted in person with the ~~reported~~alleged victim, usually in the ~~reported~~alleged victim's home or the facility where the ~~reported~~alleged 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, and other relevant 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~~alleged victim's safety and functional abilities.

(4) If there is evidence the ~~reported~~alleged 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~~alleged 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~~APS involvement shall be continued for investigation where there is a ~~reported~~an alleged 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~~ alleged victim shall be recorded in the ~~Department-approved~~ Centralized Abuse Management (CAM) 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) Community investigations shall be objective, professional, and thorough ~~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.~~ A community abuse investigation shall be conducted and documented when the alleged perpetrator is reported to have abused:

(a) An older adult or adult with a physical disability residing in a non-facility setting.

(b) An adult residing in an APD licensed facility setting when the alleged perpetrator is not employed by, volunteers for, or is contracted personnel with the facility.

(c) An adult with Medicaid services who receives services from a regulated provider.

(3) A community self-neglect investigation shall be conducted and documented when an adult eligible for Adult Protective Services is reported

to be unable to understand the consequences of their actions or inaction, and that inability leads to, or may lead to, harm or endangerment to themselves. Assessment is a key element of self-neglect investigations. Investigations are to be objective, professional, and complete.

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

(a) Identify the reportedalleged victim, the reported perpetrator any alleged perpetrators, and any other parties reported to have information relevant to proving or disproving the allegations_;

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

(c) The reported Interview the alleged victim and any alleged reported perpetrators must be interviewed unannounced and in-person_, unless a deviation under OAR 411-020-0040(34) 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, kKey witnesses shallshould be interviewed in person.

(d) Obtain and review anyall available and relevant documentary or physical evidence relevant to reaching a finding, including any information establishing the severity of the incident under investigation._;

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

(f) Gather and include evidence relevant to determining the conduct of any alleged perpetrators and the severity of the risk or outcome to the alleged victim.

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

(fh) Maintain a record of interviews and evidentiary review, in notes, ~~tape~~ recordings, ~~copies~~records, photographs, scanned documents, or other appropriate means.;

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

(hj) Conclude whether the preponderance (~~majority~~) of the evidence indicates whether ~~the incident occurred and whether~~ abuse or self-neglect is substantiated or unsubstantiated, ~~or determine~~ that the evidence is inconclusive, or that the investigation will be closed administratively without a determination.

(5) Investigations must be documented and closed in the Centralized Abuse Management (CAM) system.

(6) The local office must complete community investigations on or before 120 days from date of screening decision (unless delayed by a concurrent criminal investigation or otherwise by policy) and prepare a final report that includes, but is not limited to, the following information:

(a) The dates, locations, and description of the initial reported abuse.

(b) The date that the investigation was commenced and completed, and by whom.

(c) Characteristics of the alleged victim including identified language, race, and ethnicity.

(d) Relationship of the alleged victim to the reporter, witnesses, and any alleged perpetrators.

(e) A statement of the specific allegations investigated.

(f) The statements of all parties interviewed regarding the allegations.

(g) A description of the documents and records reviewed during the investigation, summarizing their content to the extent necessary to explain their relevance to the investigation and support the findings of fact.

(h) A summary of any direct observations by the investigator that are relevant to the investigation and its findings.

(i) A statement of the factual basis for any findings and a summary of the findings made as a result of the investigation, including attributions to witness statements, documents, or observations that support each finding of fact.

(j) A conclusion.

(k) A summary of protective services offered to the alleged victim, with outcomes, if known.

(l) A summary of referrals to other agencies or authorities resulting from the investigation, with outcomes, if known.

(m) Reasons for any deviations from required timelines or standard practices.

~~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. 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 limited to:~~

~~(a) A description of documents and records reviewed;~~

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

~~(C) A summary of the findings;~~

~~(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;~~

~~(B) Date investigation commenced and by whom;~~

~~(c) Characteristics of the reported victim including identified language, race and ethnicity;~~

~~(d) Relationship of the reported victim to the complainant, witnesses, and reported perpetrator;~~

~~(e) Type of reported mistreatment or abuse;~~

~~(F) Conclusion; and~~

~~(G) Outcome.~~

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

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

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

(b) Appropriate action is being taken_;

(c) The outcome of the investigation as one of the following:

(A) No abuse or self-neglect was found (unsubstantiated);

(dB) Abuse or self-neglect was found (substantiated); or

(eC) The investigation was 'inconclusive'.

(D) The investigation was closed without a determination of whether abuse or self-neglect occurred (Administrative Closure).

~~(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.~~

(8) When the community investigation is closed, the local office must retain case records for a period of 15 years after last activity. Final community APS records are maintained and distributed by the local office, as appropriate.

(9) The Department must collect statewide data on all aspects of Adult Protective Services as specified by Department policy and procedure. As reasonably requested, the local offices shall provide data not otherwise available through centralized Department data systems.

Stat. Auth.: ORS 124.055, 124.065, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.065~~050~~ - 124.095, 409.010, 410.020, 410.040, 410.070, 124.080, 410.070411.060, 411.116, ~~441.645 - 441.650, 441.660, 443.500, & 443.767~~

411-020-0110 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 limited to:

(a) Arranging for emergency services, such as law enforcement and emergency medical care 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~~alleged 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 a short-term crisis response. Longer term ~~intervention~~interventions 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 provide the individual with appropriate resource information and a way to re-contact APS if a threat of harm recurs or reaches a level unacceptable to the individual.

(5) If the individual lacks appropriate information to make an informed choice, the worker must provide or arrange for the provision of 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.

~~(56)~~ If the individual at risk is unable to make an informed choice due to a lack of capacity, appropriate intervention, if available ~~must,~~ may include medical assessment to determine whether capacity may be improved or restored.

~~(67)~~ If the individual at risk is unable to consent to assessment or treatment, consideration ~~must~~may 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) The least restrictive available;

(b) Respectful of the values of the individual at risk; and

(c) 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 410.124.055, 124.065, 124.070, 125.012, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.050 - 124.095, 125.012, 409.010, 410.020, 410.040, 410.070, 411.116, & 443.767

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

(1) Facility investigations shall be objective, professional, and complete.

(2) A facility investigation shall be conducted and documented when a resident of a facility licensed by APD is reported to have been abused by a licensee, staff member, contractor or volunteer of the facility.

(3) Facility investigations may also occur when a facility resident is reported to have been abused by an alleged perpetrator not employed, contracted or supervised by the facility, to determine whether the licensee or facility staff failed to protect the resident.

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

(a) Identify the ~~reported~~alleged victim, the ~~alleged~~reported perpetrators, 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 in person and unannounced whenever possible. All interviews must be private unless the individual being interviewed requests the presence of someone else. Any individuals listening to the interview must be advised of the confidential nature of the investigation;.

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

(d) Gather and include evidence relevant to determining the conduct of the alleged perpetrators and severity of the risk or outcome to the alleged victim.

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

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

~~(eg)~~ Maintain a record of interviews and evidentiary review, in notes, ~~tape~~ recordings, ~~copies,~~ photographs, scanned documents, or other appropriate means;.

~~(fh)~~ 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 that abuse~~ was substantiated or unsubstantiated, ~~or determine~~ that the evidence is inconclusive. ~~The , or that the investigation should be closed administratively without a determination as to whether substantiated wrongdoing meets the definitions of abuse shall be determined by the Office of Licensing and Regulatory Oversight.~~

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

(a) Notifying the Department's Office of Safety, Oversight and Quality (SOQ) if a situation exists in a licensed care facility that may cause SOQ to conduct a survey or provide an immediate regulatory response ~~Licensing and Regulatory Oversight (OLRO) if:~~ (A) ~~A situation exists in a nursing facility that meets criteria for NFSU to complete the investigation. Where 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 NFSU to conduct a survey.~~ This includes reports of facility-wide issues.

(b) Providing an opportunity for the ~~complainant reporter~~, a designee of the ~~complainant reporter~~, 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~~ Confirming that immediate protection ~~for facility residents is in place.~~ The worker must ~~direct obtain and document a safety plan from~~ the provider to correct any ~~substantiated~~ problem immediately, ~~and communicate with SOQ as needed.~~

(6) Investigations must be documented and closed in the Centralized Abuse Management (CAM) system.

(47) The local office must complete the facility investigation within the timelines determined by the Department (unless delayed by a concurrent criminal investigation or otherwise by policy) and prepare a preliminary report that includes, but is not limited to, the following information:

(a) The dates, locations, and a description of the initial reported abuse.

(b) The date that the investigation was commenced and completed, and by whom.

(c) Characteristics of the alleged victim including identified language, race, and ethnicity.

(d) Relationship of the alleged victim to the reporter, witnesses, and alleged perpetrators.

(e) A statement of the specific allegations investigated.

(f) The statements of all parties interviewed regarding the allegation.

(g) A description of documents and records reviewed during the investigation, summarizing their content to the extent necessary to explain their relevance to the investigation, and support the findings of fact.

(h) A summary of any direct observations by the investigator that are relevant to the investigation and its findings.

(i) A statement of the factual basis for any findings and a summary of the findings made as a result of the investigation, including attributions to witness statements, documents, or observations that support each finding of fact.

(j) A conclusion.

(k) A summary of actions taken by the licensee or provider to ensure the safety of the victim and other residents of the facility.

(l) A summary of protective services offered to the alleged victim, with outcomes, if known.

(m) A summary of referrals to other agencies or authorities resulting from the investigation, with outcomes, if known.

(n) Reasons for any deviations from required timelines or standard practices. ~~The local office must submit completed investigation reports written on the Department's Facility Report Writing System to the Office of Licensing and Regulatory Oversight within 60 days of the receipt of the complaint. 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 Department's Facility Report Writing System. Documentation of facility investigations for each allegation must include:~~

~~(A) A statement of the allegation;~~

~~(B) A summary of witness statements;~~

~~(C) Investigator observations, including documentary review;~~

~~(D) Findings of fact; and~~

~~(E) A conclusion.~~

~~(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 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 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 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.~~

(8) When the preliminary facility investigation is closed, the local office shall distribute a copy of substantiated reports to the facility for their information and safety planning. The local office must retain facility investigation records for a period of 15 years after last activity.

(9) Upon receipt of the preliminary report from the local office, SOQ will review and finalize the report. Final facility reports are maintained and distributed by APD central office. When abuse is substantiated, findings may be used to support civil or criminal sanctions against the perpetrators or the care facility.

(10) The Department must collect statewide data on all aspects of Adult Protective Services as specified by Department policy and procedure. As reasonably requested, the local offices shall provide data not otherwise available through centralized Department data systems.

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.065050 - 124.070, 124.080090, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 441.645 — 441.650, 441.660, 443.500, & 443.767

411-020-0121 Administrative Closure

(1) Administrative closure is a mechanism by which a DHS supervisor or designee may close an assigned investigation without the investigation reaching a conclusion as to if abuse or self-neglect occurred.

(2) Administrative closure is applicable only for specific administrative purposes when it is not feasible to reach an evidentiary conclusion. It is not intended to replace "inconclusive" or "unsubstantiated" findings, which are evidence-based conclusions. As appropriate, protective services of assessment and intervention must be provided.

(3) To qualify for administrative closure, an investigation must be completed to the extent necessary to determine that one or more of the following situations exist:

(a) The basis for assigning and conducting the investigation is discovered to be invalid, because:

(A) The alleged victim does not meet eligibility criteria under these rules.

(B) Additional information is discovered that clearly indicates the report of abuse or self-neglect does not meet criteria for an abuse investigation.

(C) The alleged perpetrator is deceased or a minor.

(D) The reported abuse or self-neglect would clearly lead to a repeat investigation. To qualify, the situation must be the same abuse type, substantially the same allegations and involve the same alleged victim and perpetrators as a currently open or a previous investigation. A new assessment of the alleged victim must also indicate that there has been no significant change in the alleged victim's capacity or risk level since the previous investigation.

(b) Unable to determine because:

(A) Necessary material evidence exceeds the Department's scope of services and its expertise and authority to reasonably investigate the allegation, including, but not limited to:

(i) Complex legal matters customarily requiring an attorney.

(ii) Court findings.

(iii) Commercial business deals.

(iv) Professional standards and performance.

(v) Medical malpractice.

(vi) The Federal Government or the Oregon Legislature has authorized other entities to respond to the reported concerns, including, but not limited to:

(I) Investigative agencies (e.g. Oregon Department of Justice, Federal Bureau of Investigations, and Inspector General's Offices);

(II) Licensing bodies (e.g. Medical Board, State Bar, and the Construction Contractors Board); and

(III) The legal system (e.g. attorneys and courts).

(B) Substantial or essential material witnesses and evidence are verified to be unavailable to such an extent that an evidence-based conclusion may not be reached.

(C) Verifiable safety concerns relating to deviations under OAR 411-020-0040(4) extensively prevent adequate gathering of necessary material evidence to determine an evidence-based conclusion.

(D) The investigation has been open more than one year and is not being acted upon or there is no pending action by the Department. The local and central offices must both determine that the investigation may not reasonably proceed to an evidenced-based conclusion.

(4) Before closing an investigation administratively, the following conditions must be met:

(a) A recent assessment of the alleged victim was completed and, as appropriate, protective services provided.

(b) Reasonable diligence was applied to complete the investigation to the extent circumstances allowed or were warranted.

(c) As appropriate, subject matter experts were consulted, including, but not limited to law enforcement, domestic violence service providers, health providers, or attorneys representing the alleged victim.

(d) If there is a reasonable cause to believe a crime has been committed, law enforcement was notified.

(e) As appropriate, referrals were made to other investigation and regulatory entities and advocacy resources.

(5) Administrative closure shall be documented in the Centralized Abuse Management (CAM) system including, but not limited to the following information:

(a) Documentation of interview statements and evidence gathered.

(b) Explanation of any deviations from these rules and the reasonable diligence taken to comply with rules.

(c) Justification for the administrative closure with supporting evidence and consultation.

(d) Identification of protective services provided to the alleged victim and referrals made to others in response to the situation.

(e) Identification of the supervisors who approved the administrative closure, and date of approval.

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767

Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 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~~during 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 the disclosure is necessary to prevent or lessen the threat. APS may request protected health information ~~in the course of~~during 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~~During an APS investigation into abuse in a community-based setting where the process under section (1) of this rule does not apply or is declined by the health care provider:

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

(b) DECLINED CONSENT. If a ~~reported~~an alleged victim can make an informed choice and declines to consent to APS obtaining

protected health information, APS may not obtain the ~~reported~~alleged victim's protected health information beyond the information a mandatory reporter is required to disclose.

(c) ~~REPORTED~~ALLEGED VICTIM INCAPABLE OF CONSENT. If a ~~reported~~an alleged victim is an older adult and does not have the ability to make an informed choice to consent to APS obtaining the ~~reported~~alleged victim's protected health information, and the ~~reported~~alleged victim does not have a fiduciary or legal representative that consents to APS accessing the ~~reported~~alleged victim's protected health information, or when the fiduciary or legal representative is a ~~reported~~an alleged perpetrator and refuses to consent to APS accessing the ~~reported~~alleged 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 is planning to inform a personal representative of the individual and the health care provider reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and informing such person 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~~During 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 APSDHS 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~~an alleged 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 reports 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~~alleged victim is an older adult.

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 441.637, 443.450, 443.765, & 443.767, 45 CFR 164.512(j)

Stats. Implemented: ORS 124.050 ~~--~~ 124.095, 409.010, 410.020, 410.040, 410.070, 411.116, 441.630 -- 441.695, 443.450, 443.500, 443.767, & 2012 Or.Oregon Laws 2012 Chapter 70, 45 CFR 164.512(j)

411-020-0126 Accessing Financial Records

(1) Financial records may be obtained from a financial institution ~~in the course of~~during an APS investigation into alleged abuse.

(2) DEFAULT STANDARD. APS may not request financial records from a financial institution unless one of the following exceptions applies and the corresponding procedures are followed:

(a) CUSTOMER AUTHORIZATION. APS may request and receive financial records from a financial institution when the customer authorizes such disclosure in accordance with ORS 192.593. The authorization must:

(A) Be in writing, signed, and dated by the customer;~~;~~;

(B) Identify with detail the records authorized to be disclosed;~~;~~;

(C) Name the Department or Area Agency on Aging to whom disclosure is authorized;~~;~~;

(D) Contain notice to the customer that the customer may revoke such authorization at any time in writing;~~and~~.

(E) Inform the customer as to the reason for such request and disclosure.

(b) FINANCIAL INSTITUTION INITIATES CONTACT. Where a financial institution initiates contact with APS or a law enforcement agency regarding suspected financial exploitation, the financial institution may share financial records with APS or the law enforcement agency and is not otherwise precluded from communicating with and disclosing financial records to APS or the law enforcement agency.

(c) CUSTOMER INCAPABLE OF AUTHORIZING. If a financial institution has not initiated contact with APS or a law enforcement agency and the ~~reported~~alleged victim does not have the ability to make an informed choice to consent to APS obtaining the ~~reported~~alleged victim's financial records;~~or,~~; a fiduciary or legal representative who is ~~a reported~~an alleged perpetrator refuses to

authorize disclosure; or the account is jointly held by a ~~reported~~an alleged perpetrator as well as the ~~reported~~alleged victim and the ~~reported~~alleged perpetrator refuses to authorize disclosure of the ~~reported~~alleged victim's financial records, these procedures must be followed:

(A) APS shall work with the appropriate law enforcement agency to obtain a subpoena issued by a court or on behalf of a grand jury to request financial records of the ~~reported~~alleged victim.

(B) APS shall:

(i) Confirm to the law enforcement agency that an investigation under ORS 124.070 (elder abuse, including older adult residents in a community-based care facility) or under ORS 441.650 (abuse of a nursing facility resident) is open and ~~that~~ the individual about whom financial records are sought is the alleged victim in the abuse investigation.

(ii) Provide or work with the law enforcement agency to obtain the name and social security number of the individual about whom financial records are sought.

(C) A financial institution, before making disclosures pursuant to a subpoena described in this section, may require reimbursement ~~for the production of~~to produce records, in accordance with ORS 192.602.

Stat. Auth.: ORS ~~410~~59.480 - 59.505, 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.050 - 124.095, 192.~~583,~~ 192.586, 192.~~593,~~ 192.597, 192.600, 192.602, 409.010, 410.020, 410.040, 410.070, 411.~~060,~~ 411.116, 441.630 - 441.695, 443.450, 443.500, 443.767, & ~~2012~~

~~Or.~~Oregon Laws 2012 Chapter 70

411-020-0130 APS Risk Management

(1) APS risk management is the process by which APS ~~continues to~~ provides short-term active ~~re~~assessment and intervention to ~~a reported~~ an alleged victim ~~once the initial self-neglect assessment or abuse investigation has been completed.~~

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

(a) After the abuse and self-neglect investigation is completed.

(b) When the alleged victim would benefit from protective services, but the situation does not meet criteria for an investigation and all of the following apply:

(Aa) Assessment indicates ~~that the reported~~ alleged victim ~~continues to be vulnerable and is~~ at risk of serious harm; ~~and.~~

(bB) The alleged victim is eligible for Adult Protective Services under OAR 411-020-0015.

(C) Continued ~~reassessment and intervention~~ protective services may reduce the risk of harm; ~~and.~~

(dD) There is no other source of case management or protective services available to the ~~reported~~ alleged victim.

(c) When otherwise directed by APD or AAA executive management to respond to reported serious harm of a vulnerable adult.

(3) APS risk management includes:

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

(b) Regular active contact with the ~~reported~~ alleged 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:

(a) The level of harm has been reduced to an acceptable level.; or

(b) APS involvement no longer benefits the alleged victim.

(5) Approval by a supervisor or designee must be required to continue an APS risk management case beyond one year.

Stat. Auth.: ORS ~~410~~124.065, 124.070, 409.010, 410.020, 410.040,
410.070, 411.060, 411.116, ~~441.637,~~ 443.450, 443.765, & ~~443.767~~

Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040,
410.070, 411.060, 411.116, & 443.767