

**CHAPTER 407**  
**DEPARTMENT OF HUMAN SERVICES, ADMINISTRATIVE SERVICES DIVISION**  
**AND DIRECTOR'S OFFICE**

**DIVISION 45**  
**OFFICE OF INVESTIGATIONS AND TRAINING**

**Abuse Reporting and Protective Services in Community**  
**Programs and Community Facilities**

**407-045-0250**

**Statement of Purpose**

Purpose. These rules prescribe standards and procedures for the investigation, assessment for, and provision of protective services in community programs and community facilities, and the nature and content of the abuse investigation and protective services report.

Stat. Authority: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

**407-045-0260**

**Definitions**

As used in these rules the following definitions apply:

- (1) "Abuse" means one or more of the following:
  - (a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;
  - (b) Any physical injury by other than accidental means, or that appears to be at variance with the explanation given of the injury;
  - (c) Willful infliction of physical pain or injury;
  - (d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program, or provider, or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;
  - (e) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well-being;

- (f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the adult.
- (2) "Abuse investigation and protective services report" means the completed report.
- (3) "Adult" means a person who:
  - (a) Is mentally ill or developmentally disabled;
  - (b) Is 18 years of age or older;
  - (c) Receives services from a community program or facility or care provider which is licensed or certified by or contracts with the Department; and
  - (d) Is the alleged abuse victim.
- (4) "Adult Protective Services" means the necessary actions taken to prevent abuse or exploitation of the adult, to prevent self-destructive acts and to safeguard an allegedly abused adult's person, property and funds.
- (5) "Brokerage" or "Support Service Brokerage" means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 411-340-0120(1)(a) through (g) associated with planning and implementation of Support Services for adults with developmental disabilities.
- (6) "Care Provider" means an individual or facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.
- (7) "Community facility" means a community residential treatment home or facility, community residential facility, adult foster home, community residential training home or facility, regional acute crisis facility or crisis respite facility.
- (8) "Community program" means the community mental health and developmental disabilities program as established in ORS 430.610 through 430.700.
- (9) "Designee" means the community program.
- (10) "Department" means Seniors and People with Disabilities (SPD) and Health Services organizational units within the Department of Human Services.
- (11) "Inconclusive" means that the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur.
- (12) "Law enforcement agency" means:

- (a) Any city or municipal police department;
  - (b) Any county sheriff's office;
  - (c) The Oregon State Police; or
  - (d) Any district attorney.
- (13) "Mandatory reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that the adult has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the adult. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 20.295
- (14) "Not substantiated" means that the evidence does not support a conclusion that there is reasonable cause to believe that abuse occurred.
- (15) "Public or private official" means:
- (a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor or podiatrist, including any intern or resident;
  - (b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health services;
  - (c) Employee of the Department of Human Services, county health department, community mental health and developmental disabilities program or private agency contracting with a public body to provide any community mental health services;
  - (d) Peace officer;
  - (e) Member of the clergy;
  - (f) Licensed clinical social worker;
  - (g) Physical, speech or occupational therapist;
  - (h) Information and referral, outreach or crisis worker;
  - (i) Attorney; or

- (j) Any public official who comes in contact with adults in the performance of the official's duties.
- (16) "Substantiated" means that the evidence supports a conclusion that there is reasonable cause to believe that abuse occurred.
- (17) "Unbiased investigation" means an investigation that is conducted by a community program that does not have an actual or potential conflict of interest with the outcome of the investigation.

Stat. Authority: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

#### **407-045-0270**

##### **General Duties of the Community Program**

- (1) For the purpose of carrying out these rules, community programs are the designee of the Department.
- (2) If the Department or community program has reasonable cause to believe abuse occurred, it must immediately notify the appropriate public licensing or certifying agency and provide a copy of the abuse investigation and protective services report when completed.
- (3) If the Department or community program has reasonable cause to believe that a person licensed by any state agency to provide care has committed abuse, it must immediately notify the appropriate state agency provide that agency with a copy of the abuse investigation and protective services report when completed.
- (4) Nothing in this rule prohibits sharing of information by the Department or community program prior to the completion of the abuse investigation and protective services report if this information is necessary for:
  - (a) The provision of protective services; or
  - (b) The function of licensing and certifying agencies or law enforcement agencies.

Stat. Authority: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

#### **407-045-0280**

##### **Training for Persons Investigating Reports of Alleged Abuse**

- (1) Sufficient training and consultation will be provided to community programs by the Department such that the community program is able to conduct a thorough and unbiased investigation and reach a conclusion about the abuse.

- (2) The training will address the cultural and social diversity of the State.

Stat. Authority: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

#### **407-045-0290**

##### **Initial Action on Report of Alleged Abuse**

- (1) The community program receiving a report alleging abuse will document the information required by ORS 430.743(1) and any additional information reported. The community program will attempt to elicit the following information from the person making a report:
  - (a) The name, age and present location of the adult;
  - (b) The names and addresses of persons, programs or facilities responsible for the adult's care;
  - (c) The nature and extent of the alleged abuse, including any evidence of previous abuse of the adult or by the alleged perpetrator;
  - (d) Any information that led the person making the report to suspect abuse had occurred;
  - (e) Any information that the person believes might be helpful in establishing the cause of the abuse and the identity of the alleged perpetrator; and
  - (f) The date of the incident.
- (2) If there is reason to believe a crime has been committed, the designee must notify the law enforcement agency with jurisdiction in the county where the report is made.
- (3) If there is reasonable cause to believe that abuse has occurred, the community program must promptly determine if the adult is in danger or in need of immediate protective services and respond accordingly.
- (4) The community program will immediately notify the Department upon receipt of a report of abuse in the format provided by the Department.
- (5) Each community program must establish an after hours reporting system. Upon receipt of any report of alleged abuse, the community program must begin:
  - (a) Investigation into the nature and cause of the alleged abuse within one working day of receipt of the report;
  - (b) Assessment of the need for protective services; and

- (c) Provision of protective services, if protective services are needed.
- (6) The appropriate medical examiner shall be notified in cases in which the community program or law enforcement agency finds reasonable cause to believe that an adult has died as a result of abuse or where the death occurred under suspicious or unknown circumstances.
- (7) Mandatory reporters must report instances, when the reporter has reasonable cause to believe abuse has occurred, to the community program or a local law enforcement agency.

Stat. Authority: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

#### **407-045-0300**

##### **Investigation of Alleged Abuse**

- (1) Investigation of abuse will be thorough and unbiased. Accordingly, community programs will not investigate allegations of abuse made against employees of the community program. Investigations of community program staff will be conducted by the Department or other community program not subject to the actual or potential conflict of interest.
- (2) In conducting abuse investigation, the investigator:
  - (a) Must make in person contact with the adult;
  - (b) Must interview the adult, witnesses, the alleged perpetrator and other individuals who may have knowledge of the facts of the abuse allegation or related circumstances;
  - (c) Must review all evidence relevant and material to the complaint; and
  - (d) Should take a photograph of the adult, or arrange for the adult to be photographed, to preserve evidence of the alleged abuse and of the adult's physical condition at the time of investigation, unless the adult knowingly refuses.
- (3) All records necessary for the investigation will be available to the community program for inspection and copying. A community facility will provide community programs access to employees, the adult, and the premises for investigation purposes.
- (4) When a law enforcement agency is conducting a criminal investigation of the alleged abuse, the community program will also perform its own investigation, as long as it does not interfere with the law enforcement agency investigation, when:
  - (a) There is potential for action by a licensing or certifying agency;

- (b) Timely investigation by law enforcement is not probable; or
  - (c) The law enforcement agency does not complete a criminal investigation.
- (5) When a law enforcement agency is conducting an investigation of the alleged abuse, the community program must communicate and cooperate with the law enforcement agency.

Stat. Authority: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

#### **407-045-0310**

##### **Assessment for and Provision of Protective Services to the Adult**

Appropriate protective services will be provided to the adult as necessary to prevent further abuse and must be undertaken in a manner that is least intrusive to the adult and provide for the greatest degree of independence available within existing resources. Assessment for the provision of protective services may include:

- (1) Arranging for the immediate protection of the adult;
- (2) Contacting the adult to assess his or her ability to protect his or her own interest and give informed consent;
- (3) Determining the ability of the adult to understand the nature of the protective service and his or her willingness to accept services;
- (4) Coordinating evaluations to determine or verify the adult's physical and mental status, if necessary;
- (5) Assisting in an arranging for appropriate services and alternative living arrangements;
- (6) Assisting in or arranging the medical, legal, financial or other necessary services to prevent further abuse;
- (7) Providing advocacy to assure the adult's rights and entitlements are protected; and
- (8) Consulting with the community facility, program, brokerage or others as appropriate in developing recommendations or requirements to prevent further abuse.

Stat. Authority: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

#### **407-045-0320**

##### **Abuse Investigation and Protective Services Report**

- (1) Upon completion of the investigation, and within 45 calendar days of the date of a report alleging abuse, the community programs will prepare an abuse investigation and protective services report which includes:
  - (a) A statement of the alleged incident being investigated, including the date(s), location(s) and time(s);
  - (b) An outline of steps taken in the investigation, a list of all witnesses interviewed and a summary of the information provided by each witness;
  - (c) A summary of findings and conclusion concerning the allegation of abuse;
  - (d) A specific finding of substantiated, inconclusive or not substantiated;
  - (e) A list of protective services provided to the adult to the date of the abuse investigation and protective services report;
  - (f) A plan of action necessary to prevent further abuse of the adult;
  - (g) Any additional corrective action required by the community program and deadlines for the completion of these action;
  - (h) A list of any notices made to licensing or certifying agencies;
  - (i) The name and title of the person completing the report; and
  - (j) The date it is written.
- (2) Abuse investigation and protective services report formats will be provided by the Department.
- (3) A copy of the abuse investigation and protective services report will be provided to the Department within five working days of the report's completion.
- (4) A centralized record of all abuse investigation and protective services reports will be maintained by the community programs for all abuse investigations conducted in their county, and by the Department for all abuse investigations in the state.

Stat. Authority: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

#### **407-045-0330**

#### **Disclosure of the Abuse Investigation and Protective Services Report and Related Documents**

- (1) Portions of the abuse investigation and protective services report and underlying investigatory documents are confidential and not available for public inspection. Pursuant to ORS 430.763, names of persons who make reports of abuse, witnesses, and the alleged abuse victim are confidential and shall not be available for public inspection. Investigatory documents, including portions of the abuse investigation and protective services report that contains "Individually identifiable health information", as that term is defined under ORS 192.519 and 45 CFR160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 509.
- (2) Notwithstanding subsection (1) of this rule, the Department will make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities or licenses or certifies the persons practicing therein, and to any public agency providing protective services for the adult. The Department will also make the protective services report and underlying investigatory materials available to any private agency providing protective services for the adult and to the protection and advocacy system designated pursuant to ORS Section 192.517(1).
- (3) Persons or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and may not redisclose the confidential information to unauthorized persons or entities, as required by state or federal law.
- (4) When the report is completed, a redacted version of the abuse investigation report not containing any confidential information, the disclosure of which would be prohibited by state or federal law, will be available for public inspection.
- (5) When the abuse investigation and protective services report is conducted by a community program, as the Department's designee, the protective services investigation may be disclosed pursuant to this rule either by the community program or the Department.

Stat. Authority: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

#### **407-045-0340**

##### **Prohibition Against Retaliation**

- (1) A community facility, community program or person will not retaliate against any person who reports suspected abuse in good faith, including the adult.
- (2) Any community facility, community program or person that retaliates against any person because of a report of suspected abuse or neglect will be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, a penalty up to \$1,000, notwithstanding any other remedy provided by law.
- (3) Any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, "adverse action" means any action taken by a

community facility, community program or person involved in a report against the person making the report or against the adult because of the report and includes but is not limited to:

- (a) Discharge or transfer from the community facility, except for clinical reasons;
  - (b) Discharge from or termination of employment;
  - (c) Demotion or reduction in remuneration for services; or
  - (d) Restriction or prohibition of access to the community facility or its residents.
- (4) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Authority: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

#### **407-045-0350**

##### **Immunity of Persons Making Reports in Good Faith**

- (1) Anyone who makes a good faith report and who had reasonable grounds for making the report, will have immunity from civil liability with respect to having made the report.
- (2) The reporter will have the same immunity in any judicial proceeding resulting from the report.

Stat. Authority: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

#### **407-045-0360**

##### **Department Investigation of Alleged Abuse**

- (1) If determined necessary or appropriate, the Department may conduct an investigation itself rather than allow the community program to investigate the alleged abuse or in addition to the investigation by the community program. Under such circumstances, the community program must receive authorization from the Department before conducting any separate investigation.
- (2) All records necessary for the investigation will be available to the Department for inspection and copying. The community facilities and community programs must provide the Department access to employees, the adult, and the premises for investigation purposes.

Stat. Authority: ORS 179.040

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825