

**CHAPTER 407**  
**DEPARTMENT OF HUMAN SERVICES,**  
**ADMINISTRATION 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**

**Purpose**

These rules, OAR 407-045-0250 to 407-045-0360, 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. Auth.: ORS 179.040, 409.050

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

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0200, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0050, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09

**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 for 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, 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 the adult voluntarily consents.
- (2) “Abuse Investigation and Protective Services Report” means a completed report.
- (3) “Adult” means an individual who is 18 years of age or older who:
- (a) Has a developmental disability and is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; or
  - (b) Has a mental illness and is receiving services from a community program or facility.
  - (c) Receives services from a community program or facility or care provider which is licensed or certified by or contracts with the Department of Human Services (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 for 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, or a facility approved by the Department’s Addictions and Mental Health Division (AMH) for acute care services or crisis respite facility.
- (8) “Community Program” means the community mental health or developmental disabilities program as established in ORS 430.610-430.700.

- (9) “Designee” means the community program.
- (10) “Department” means the Oregon Department of Human Services.
- (11) “Inconclusive” means there is insufficient evidence to conclude the alleged abuse occurred or did not occur by a preponderance of the evidence. The inconclusive determination may be used only in the following circumstances:
- (a) After diligent efforts have been made, the protective services investigator is unable to locate the individual alleged to have committed the abuse, or cannot locate the alleged victim or another individual who might have information critical to the investigation; or
  - (b) Relevant records or documents are unavailable, or there is conflicting or inconsistent information from witnesses, documents, or records, with the result that after the investigation is complete, there is insufficient evidence to support a substantiated or not substantiated conclusion.
- (12) “Law Enforcement Agency” means any city or municipal police department, county sheriff’s office, the Oregon State Police, or 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 individual 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 40.225-20.295
- (14) “Not Substantiated” means the preponderance of evidence establishes the alleged abuse did not occur.
- (15) “OIT” means the Department’s Office of Investigations and Training.
- (16) “Provider Agency” means an entity licensed or certified to provide services, or which is responsible for the management of services to clients.
- (17) “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 organization;

- (c) Employee of the Department, county health department, community mental health or 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.
- (18) "Substantiated" means that the preponderance of the evidence establishes the abuse occurred.
- (19) "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. Auth.: ORS 179.040, 409.050

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

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0210, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0060, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09

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

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

- (1) The Department shall provide sufficient and timely training and consultation to community programs to ensure that the community program is able to conduct a thorough and unbiased investigation and reach a conclusion about the abuse. Training shall include initial and continuing education of any individual designated to conduct protective services investigations.
- (2) The training shall address the cultural and social diversity of the State of Oregon.

Stat. Auth.: ORS 179.040, 409.050

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

Hist.: OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0080, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09

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

#### **General Duties of the Community Program and Initial Action on Report of Alleged Abuse**

- (1) For the purpose of carrying out these rules, community programs are the designee of the Department.
- (2) Mandatory reporters must report abuse, when the reporter has reasonable cause to believe abuse has occurred, to the community program and to a local law enforcement agency when the reporter believes a crime may have been committed.
- (3) Each community program shall designate at least one employee to conduct protective services investigations. Community programs shall require their designated protective services investigators to participate in training, and to demonstrate an understanding of investigative core competencies.
- (4) 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 completed protective services report.
- (5) If the Department or community program has reasonable cause to believe that an individual licensed or certified by any state agency to provide care has committed abuse, it must immediately notify the appropriate state licensing or certifying agency and provide that agency with a copy of the abuse investigation and completed protective services report.
- (6) The Department or community program may share information prior to the completion of the abuse investigation and protective services report if the information is necessary for:
  - (a) The provision of protective services; or
  - (b) The function of licensing and certifying agencies or law enforcement agencies.
- (7) Each community program must establish an after hours reporting system.
- (8) 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.

- (9) The community program receiving a report alleging abuse must document the information required by ORS 430.743(1) and any additional reported information. The community program must attempt to elicit the following information from the individual making a report:
- (a) The name, age, and present location of the adult;
  - (b) The names and addresses of individuals , 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 individual alleged to have committed the abuse;
  - (d) Any information that led the individual making the report to suspect abuse had occurred;
  - (e) Any information that the individual believes might be helpful in establishing the cause of the abuse and the identity of the individual alleged to have committed the abuse;
  - (f) The date of the incident;
- (10) The community program shall maintain all reports of abuse in a confidential location.
- (11) If there is reason to believe a crime has been committed, the community program must contact the law enforcement agency with jurisdiction in the county where the report is made.
- (12) If there is reasonable cause to believe that abuse has occurred, the community program must determine if the adult is in danger or in need of immediate protective services and shall provide those services immediately. Under these circumstances the community program must also advise the provider agency, brokerage, or guardian about the allegation, and must include any information appropriate or necessary for the health, safety, and best interests of the adult in need of protection.
- (13) The community program shall immediately, but no later than one working day, notify the Department it has received a report of abuse, in the format provided by the Department.
- (14) If the community program determines from the report that there is no reasonable cause to believe abuse occurred, the community program shall notify the provider agency or brokerage within two working days that a protective services investigation shall not commence and explain the reasons for that decision. The community program shall document the notice and maintain a record of all notices.
- (15) If the community program determines that a report will be assigned for investigation, the community program must notify the provider agency, brokerage, guardian, and any other

individual with responsibility for providing services and protection, unless doing so would compromise the safety, health, or best interests of the adult in need of protection, or would compromise the integrity of the abuse investigation or a criminal investigation. The notice shall include information that the case will be assigned for investigation, identify the investigator, and provide information regarding how the assigned investigator may be contacted. The notice must be provided within five working days from the date the report was received.

- (16) The community program or law enforcement agency shall notify the appropriate medical examiner in cases where 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.

Stat. Auth.: ORS 179.040, 409.050

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

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

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

- (1) Investigation of abuse shall be thorough and unbiased. Community programs shall not investigate allegations of abuse made against employees of the community program. Investigations of community program staff shall be conducted by the Department or other community program not subject to an actual or potential conflict of interest.
- (2) In conducting an abuse investigation, the investigator must:
  - (a) Make in-person contact with the adult;
  - (b) Interview the adult, witnesses, the individual alleged to have committed the abuse, and other individuals who may have knowledge of the facts of the abuse allegation or related circumstances. Interviews must be conducted in-person where practicable. The investigator must attempt to elicit the date of birth for each individual interviewed and shall obtain the date of birth of any individual alleged to have committed the alleged abuse.
  - (c) Review all evidence relevant and material to the complaint; and
  - (d) Photograph the adult consistent with forensic guidelines, 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 shall be available to the community program for inspection and copying. A community facility shall 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 shall also perform its own investigation as long as it does not interfere with the law enforcement agency investigation under the following circumstances:
  - (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. Auth.: ORS 179.040, 409.050

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

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

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

The community program shall ensure that appropriate and necessary protective services are provided to the adult 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 or 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.

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

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0250, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0110, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09

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

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

- (1) The Department shall provide abuse investigation and protective services report formats.
- (2) Upon completion of the investigation, and within 45 calendar days of the date the community program determines a report alleging abuse shall be assigned for investigation, the community programs shall prepare an abuse investigation and protective services report. This 45-day time period does not include an additional five-day period allowing OIT to review and approve the report. The protective services report shall include:
  - (a) A statement of the allegations being investigated, including the date, location, and time;
  - (b) A list of protective services provided to the adult.
  - (c) An outline of steps taken in the investigation, a list of all witnesses interviewed, and a summary of the information provided by each witness;
  - (d) A summary of findings and conclusion concerning the allegation of abuse;
  - (e) A specific finding of "substantiated," "inconclusive," or "not substantiated;"
  - (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 completing these actions;
  - (h) A list of any notices made to licensing or certifying agencies;
  - (i) The name and title of the individual completing the report; and

- (j) The date the report is written.
- (3) In cases in which, for good cause shown, the protective services investigator cannot complete the report within 45 days, the investigator shall submit a request for extension of time to OIT.
- (a) An extension may be granted for good cause shown which includes but is not limited to:
    - (i) When law enforcement is conducting an investigation;
    - (ii) A material party or witness is temporarily unavailable;
    - (iii) New evidence is discovered;
    - (iv) The investigation is complex (e.g. large numbers of witnesses need to be interviewed taking into account scheduling difficulties and limitations, consultation with experts, or a detailed review of records over an extended period of time is required); or,
    - (v) For some other mitigating reason.
  - (b) When granting an extension, OIT shall consult with the program about the need for an extension and determine the length of the extension as necessary.
  - (c) The community program shall notify the provider agency, brokerage, and guardian when an extension is granted and advise them of the new report due date.
- (4) A copy of the final abuse investigation and protective services report shall be provided to the Department within five working days of the report's completion and approval by OIT.
- (5) The community program must provide notice of the outcome of the investigation, or assure that notice is provided, to the guardian, accused individual, and to any law enforcement agency which previously received notice of the initial report. Notice of outcome shall be provided to a reporter upon the reporter's request. Notice of outcome must be made within five days after the date the case is completed and approved by OIT. The community program must document how the notice required by this section was provided.
- (6) A centralized record of all abuse investigation and protective services reports shall be maintained by community programs for all abuse investigations conducted in their county, and by the Department for all abuse investigations in the state.

Stat. Auth.: ORS 179.040, 409.050

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825  
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0260, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0120, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09

#### **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 abuse reporters, 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 CFR 160.103, are confidential under federal Health Insurance Portability and Accountability Act (HIPAA) privacy rules, 45 CFR parts 160 and 164, and ORS 192.520 and 179.505-179.509.
- (2) Notwithstanding section (1) of this rule, the Department shall make available the confidential information, including any photographs, if appropriate, to any law enforcement agency, public agency that licenses or certifies facilities or licenses or certifies the individuals practicing therein, and any public agency providing protective services for the adult. The Department shall 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 192.517(1).
- (3) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and shall not redisclose the confidential information to unauthorized individuals or entities, as required by state or federal law.
- (4) The community program shall prepare a redacted version of the final completed abuse investigation report within 10 days after the date of the final report. The redacted report shall not contain any confidential information which is prohibited from disclosure pursuant to state or federal law. The redacted report shall be submitted to the provider agency and brokerage.
- (5) The community program shall provide a redacted version of the written report to the public for inspection upon written request.
- (6) 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. Auth.: ORS 179.040, 409.050

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825  
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0270, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0130, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09

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

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

- (1) A community facility, community program, or individual shall not retaliate against any individual who reports suspected abuse in good faith, including the adult.
- (2) Any community facility, community program, or individual that retaliates against any individual because of a report of suspected abuse shall be liable, according to ORS 430.755, in a private action to that individual for actual damages and, in addition, a civil 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 individual involved in a report against the individual 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) 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. Auth.: ORS 179.040, 409.050

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

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0280, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0140, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09

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

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

- (1) Any individual who makes a good faith report and who had reasonable grounds for making the report shall have immunity from civil liability with respect to having made the report.

- (2) The reporter shall have the same immunity in any judicial proceeding resulting from the report as may be available in that proceeding.

Stat. Auth.: ORS 179.040, 409.050

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

Hist.: OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0150, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09

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

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

- (1) If determined necessary or appropriate, the Department may conduct an investigation 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) The community program shall make available all records necessary for the investigation 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. Auth.: ORS 179.040, 409.050

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

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0290, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0160, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09