

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

DIVISION 45
OFFICE OF INVESTIGATIONS AND TRAINING

Abuse of Individuals Living in State Hospitals and Residential Training Centers

407-045-0400

Purpose

Purpose. To establish a policy prohibiting abuse and to define procedures for reporting, investigating, and resolving alleged incidents of abuse of individuals in state hospitals and residential training centers.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

407-045-0410

Definitions

- (1) "Abuse" means any act or absence of action by a staff or visitor inconsistent with prescribed treatment and care, that violates the well-being or dignity of the individual.
- (2) "Administrator" means the Assistant Department of Human Services Director for Seniors and People with Disabilities and the Office of Mental Health and Addiction Services or their designee.
- (3) "Department" means Seniors & People with Disabilities or Office of Mental Health & Addiction Services, organizational units within the Department of Human Services.
- (4) "Derogatory" means an expression of a low opinion or a disparaging remark.
- (5) "Disrespectful" means lacking regard or concern; or to treat as unworthy or lacking value as a human being.
- (6) "Employee" means an individual employed by the state and subject to rules for employee conduct.
- (7) "Inconclusive" means the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur.

- (8) "Individual" means a person who is receiving services in a residential training center for people with developmental disabilities or at a state hospital for people with mental illness.
- (9) "Not Substantiated" means the evidence does not support a conclusion that there is reasonable cause to believe that abuse occurred.
- (10) "Office of Investigations and Training (OIT)" means the Department of Human Services office responsible for the investigation of allegations of abuse made at state hospitals and residential training centers.
- (11) "Staff" means employees, contractors and their employees, and volunteers.
- (12) "Substantiated" means the evidence supports a conclusion that there is reasonable cause to believe that abuse occurred.
- (13) "Superintendent" refers to the chief executive officer of a state hospital or residential training center who serves as the designee of the Administrator to receive allegations of abuse concerning individuals and his or her designee.
- (14) "Visitor" means all others persons not included as staff who visit the facility for business purposes or to visit individuals or staff.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

407-045-0420

General Policy

- (1) The Department believes every individual is deserving of safe, respectful and dignified treatment provided in a caring environment. To that end, all employees, volunteers, contractors and their employees, as well as visitors will conduct themselves in such a manner that individuals are free from abuse.
- (2) In these rules, the term "abuse" is given a broad definition because of the unique vulnerability of individuals served by the Department. While some examples are listed later in these rules (including specific conduct listed in ORS 430.735(1)), it must be clearly understood that all possible situations cannot be anticipated and each case must be evaluated based on the particular facts available.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

407-045-0430

Policy Regarding Abuse

- (1) All forms of abuse are prohibited. Staff, visitors, volunteers, contractors and their employees must continually be aware of the potential for abuse in interactions with individuals.
- (2) Listed below are examples of the type of conduct which constitutes abuse. This list of examples is by no means exhaustive and represents general categories of prohibited conduct. Conduct of a like or similar nature is also obviously prohibited. Examples include, but are not limited to:
 - (a) Physical Abuse: Examples include hitting, kicking, scratching, pinching, choking, spanking, pushing, slapping, twisting of head, arms, or legs, tripping, the use of physical force which is unnecessary or excessive or other physical contact with an individual inconsistent with prescribed treatment or care;
 - (b) Verbal Abuse: Verbal conduct may be abusive because of either the manner of communicating with or the content of the communication with individuals. Examples include yelling, ridicule, harassment, coercion, threats, intimidation, cursing, foul language or other forms of communication which are derogatory or disrespectful of the individual, or remarks intended to provoke a negative response by the individual;
 - (c) Abuse by Failure to Act: This includes neglecting the care of the individual resulting in death (including suicide), physical or psychological harm, or a significant risk of harm to the individual either by failing to provide authorized and prescribed treatment or by failing to intervene when an individual needs assistance such as denying food or drink or leaving the individual unattended when staff presence is mandated;
 - (d) Sexual Abuse: Examples include:
 - (A) Contact of a sexual nature between staff and individuals;
 - (B) Failure to discourage sexual advances toward staff by individuals; and
 - (C) Permitting the sexual exploitation of individuals or use of individual sexual activity for staff entertainment or other improper purpose.
 - (e) Condoning Abuse: Permitting abusive conduct toward an individual by any other staff, individual, or person; and
 - (f) Statutory Terms of Abuse: As defined in ORS 430.735: any death caused by other than accidental or natural means; any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury; willful infliction of physical pain or injury, sexual harassment or exploitation, including but not limited to any sexual contact between an employee of a facility or community program and an adult, and neglect that leads to

physical harm or significant mental injury through withholding of services necessary to maintain health and well being.

- (3) At times, persons may be required to utilize self-defense. This includes control procedures that are designed to minimize physical injury to the individual or other persons. Employees are expected to use the least restrictive procedures necessary under the circumstances for dealing with an individual's behaviors or defending against an individual's attack. Abuse does not include acts of self-defense or defense of an individual or other person in response to the use or imminent use of physical force provided that only the degree of force reasonably necessary for protection is used. When excessively severe methods of control are used or when any conduct designed as self-defense is carried beyond what is necessary under the circumstances to protect the individual or other persons from further violence or assault, that conduct then becomes abuse.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

407-045-0440

Reporting Requirements

- (1) Oregon Statute requires mandatory reports and investigations of allegations of abuse of individuals with disabilities. Therefore, any person who has reasonable cause to believe that an incident of abuse has occurred to an individual residing at a state hospital or residential training center will immediately report the incident according to the procedures set forth in the applicable state hospital or residential training center policy on abuse reporting.
- (2) Any person participating in good faith in reporting alleged abuse and who has reasonable grounds for reporting has immunity from any civil liability that otherwise might be imposed or incurred based on the reporting or the content of the report under ORS 430.753(1).
- (3) The identity of the person reporting alleged abuse is confidential. The Department or OIT will reveal the names of abuse reporters to law enforcement agencies, public agencies who certify or license facilities or persons practicing therein, public agencies providing services to the individuals, private agencies providing protective services for the individual, and the protection and advocacy system for individuals designated by federal law. The identity of the person reporting alleged abuse may also be disclosed in certain legal proceedings including, but not limited to, Human Resources or other administrative proceedings and criminal prosecution.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

407-045-0450

Preliminary Procedures

- (1) Once a report of alleged abuse is made, the following steps will be taken to ensure both a proper investigation and appropriate action are taken to ensure that individuals are free from any threat of abuse:
 - (a) No later than two hours after receipt of the allegation except for circumstances with good cause the Superintendent will notify the Office of Investigations and Training (OIT) of the report of alleged abuse. OIT will determine whether the allegation, if true, would fit within the definition of abuse. This determination will be made in consultation with the Superintendent. The determination must be made within 24 hours of receipt of the report of abuse;
 - (b) If the allegation is determined to not fit the definition of abuse, the Superintendent may take other appropriate action, such as a referral to Human Resources for review as a performance issue, worksite training, or take other systemic measures to resolve problems identified;
 - (c) The Superintendent with OIT will further ensure that if the allegation meets the definition of child abuse under ORS 419B.005, or elder abuse under ORS 124.050 it has been reported to the appropriate agency.
- (2) Immediately and no later than 24 hours after determining that the allegation comes within the definition of abuse under this policy or other applicable laws, the Superintendent will:
 - (a) Provide appropriate protective services to the individual that may include arranging for immediate protection of the individual and the provision of appropriate services including medical, legal or other services necessary to prevent further abuse;
 - (b) Determine with OIT if there is reason to believe that an investigation by an appropriate law enforcement agency is necessary, and if so, request that such agency determine whether there is reason to believe a crime has been committed;
 - (c) Make a report to any other appropriate agencies, e.g., State Office for Children, Adults and Families (CAF) (formerly State Office for Services to Children and Families) or Seniors and People with Disabilities (SPD) or Office of Mental Health and Addiction Services (OMHAS).
 - (d) Promptly notify the legal guardian (of an adjudicated incapacitated individual) of the alleged incident and give an explanation of the procedures that will be used to investigate and resolve the matter; as well as the facility's responsibility to provide appropriate protective services;
 - (e) Contact the Administrator of the Department if the individual has sustained serious injury.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

407-045-0460

Investigation by the Office of Investigations and Training

- (1) Investigation of allegations of abuse will be thorough and unbiased. An investigation of the allegation will be conducted by the Office of Investigations and Training (OIT).
- (2) OIT will conduct interviews with any party alleging an incident of abuse, the individual allegedly abused, and the person accused. OIT will also include interviews with persons appearing to be involved in or having knowledge of the alleged abuse or surrounding circumstances.
- (3) All records necessary for the investigation will be available to OIT for inspection and copying. OIT will collect information which has relevance to the alleged event. This may include, but is not limited to, individual or facility records, statements, diagrams, photographs and videos.
- (4) If the facts in the case are disputed and a law enforcement agency does not produce an investigation report, OIT will determine the manner and methods of conducting the investigation.
- (5) When a law enforcement agency is conducting a criminal investigation of the alleged abuse, OIT may also perform its own investigation unless OIT is advised by the law enforcement agency that a concurrent OIT investigation would interfere with the criminal investigation.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

407-045-0470

Abuse Investigation Report

- (1) OIT will complete its investigation and submit a draft report to the Superintendent within 30 calendar days after initiating an investigation unless other laws or regulations require a shorter time frame. The investigation must be complete within 30 calendar days unless the Administrator grants an extension. The Administrator may grant an extension when a key party is unavailable, new evidence is discovered, 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 for some other mitigating reason. The Administrator will specify the length of the extension.

- (2) The Superintendent along with OIT is responsible for reviewing the OIT and/or law enforcement investigation report. The Superintendent and OIT will also review and discuss any other relevant reports or information.
- (3) OIT will determine whether the evidence does or does not substantiate the allegation of abuse. In some instances, OIT may determine that the evidence is inconclusive. The determination must be made within 15 calendar days from completion of the draft investigation report, unless a key party is unavailable, additional evidence is discovered, or the Administrator grants an extension for some other mitigating reason. Any determination not made within the 15-day period must be made as soon as reasonably possible thereafter.
- (4) Once this review is complete, a final report will be prepared by OIT, which includes:
 - (a) A statement of the alleged incident being investigated, including the dates(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 plan of action necessary to prevent further abuse of the individual;
 - (f) Any additional corrective action required by the hospital or residential training center and deadlines for the completion of these actions;
 - (g) A list of any notices made to licensing agencies;
 - (h) The name and title of the person completing the report; and
 - (i) The date it is written.
- (5) If the allegation of abuse is substantiated, the Superintendent will direct that appropriate action be taken against the responsible person commensurate with the seriousness of the conduct and any aggravating or mitigating circumstances, including consideration of previous conduct of record. If Human Resources is involved, as necessary to comply with laws related to employee rights, additional investigation may be conducted.
- (6) If the allegations are found to be inconclusive; the Superintendent may request a review by the Human Resources Department to determine the need for any training or disciplinary action, as warranted by the facts and any follow-up investigative work.

- (7) The Superintendent will ensure that appropriate documentation exists as to the action taken as a result of an abuse investigation.
- (8) The Superintendent will ensure that a copy of the law enforcement investigation report is forwarded to OIT.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

407-045-0480

Disclosure of Investigation Report and Related Documents

- (1) Investigation Reports prepared by OIT are subject to the following:
 - (a) Portions of the abuse investigation 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 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.
 - (b) Notwithstanding subsection (a) of this rule, the Department and OIT 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 and OIT 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 192.517(1).
 - (c) Persons or entities receiving confidential information pursuant to this rule must 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.
 - (d) 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.
- (2) The OIT report will be disclosed by OIT or the Superintendent to:
 - (a) The Administrator of the Department; and

- (b) Any person designated by the Superintendent for purposes related to the proper administration of the institution or center such as assessing patterns of abuse or to respond to personnel actions and may be disclosed in the Superintendent's discretion;
 - (c) The individual involved;
 - (d) The guardian of an adjudicated incapacitated person; and
 - (e) The person or persons who allegedly abused the individual.
- (3) Copies of all reports will be maintained by the Superintendent in a place separate from personnel files of employees. The chart of the individual allegedly abused must contain a reference to the report sufficient to enable authorized persons to retrieve and review the report.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

407-045-0490

Consequences of Abuse

- (1) All persons will be subject to appropriate action if found responsible for:
 - (a) Abusing an individual;
 - (b) Failing to report an alleged incident of abuse; or
 - (c) Refusing to give information or giving untruthful information during an investigation of alleged abuse.
- (2) Any discipline of an employee as a result of the above-described conduct must be in conformance with any applicable standards contained in state law or in a Collective Bargaining Agreement.
- (3) Any employee dismissed for violating the abuse policy will not be rehired in any capacity, nor will the person be permitted to visit or otherwise have contact with individuals in any manner.
- (4) Any volunteer found violating the abuse policy may be denied visitation or any other contact with individuals.
- (5) Any contractor found violating the abuse policy will be at risk of immediate termination of the contract. Any employee of the contractor found in violation of the abuse policy may be excluded from the grounds and may be subject to appropriate disciplinary action by his or her employer.

- (6) Any visitor found in violation of the abuse policy may be excluded from the grounds and will be subject to other appropriate actions as determined by the Superintendent.
- (7) Any employee, volunteer, contractor, contractor's employee, or visitor may be subject to criminal prosecution depending on the outcome of any allegation referred to law enforcement for investigation.
- (8) Any staff found to have violated the abuse policy will be reported to any appropriate professional licensing or certification boards or associations; and is at risk of sanctions imposed by such a body.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

407-045-0500

Notice of Abuse Policy

- (1) Each individual must be informed upon admission and his or her guardian, if any, or his or her family will also be informed orally and in writing of the rights, policies, abuse definitions and procedures concerning prohibition of abuse of individuals.
- (2) A clear and simple statement of the title and number of this policy and how to seek advice about its content will be prominently displayed in areas frequented by individuals at each state hospital and residential training center.
- (3) All staff will be provided a copy of this rule, either at the commencement of their employment, and/or duties, or, for current staff, within 90 days of the effective date of this rule and once a year thereafter. All staff must sign a form acknowledging receipt of this information on the date of receipt.
- (4) A summary of this policy will be posted in all state hospitals and residential training centers in areas regularly frequented by visitors and in a manner designed to notify visitors of the policy. Copies of the complete policy will be provided to visitors upon request.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

407-045-0510

Retaliation

- (1) No state hospital or residential training center staff or other person will retaliate against any person who reports in good faith suspected abuse or against the individual with respect to any report.

- (2) Any state hospital or residential training center staff or other person who 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, will be subject to a penalty of up to \$1,000, notwithstanding any other remedy provided by law.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

407-045-0520

Quality Assurance Review

- (1) Each of the State Hospitals and Residential Training Centers will report on critical indicators, identified by the Department; and on quality improvement activities undertaken to improve any identified issues.
- (2) These reports must be provided to the Department monthly.
- (3) Representatives from each State Hospital or Training Center and OIT will meet quarterly with the Administrators of the Department, or designee. They will regularly review quality indicators and any other Department generated information regarding the abuse and neglect system in State Hospitals and Training Centers.
- (4) The Department must make such information part of any quality improvement activities of the Department.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765