

Lilia Teninty  


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**Authorized Signature**

**Number:** APD-PT-17-008  
**Issue date:** 3/24/2017

**Topic:** Developmental Disabilities

**Transmitting (check the box that best applies):**

- New policy   
  Policy change   
  Policy clarification   
  Executive letter  
 Administrative Rule   
  Manual update   
  Other: \_\_\_\_\_

**Applies to (check all that apply):**

- |  |   |
|--|---|
| <input type="checkbox"/> All DHS employees                     | <input type="checkbox"/> County Mental Health Directors                                 |
| <input type="checkbox"/> Area Agencies on Aging                | <input type="checkbox"/> Health Services  |
| <input type="checkbox"/> Aging and People with Disabilities    | <input checked="" type="checkbox"/> Office of Developmental Disabilities Services(ODDS) |
| <input type="checkbox"/> Self Sufficiency Programs             | <input type="checkbox"/> ODDS Children’s Intensive In Home Services                     |
| <input checked="" type="checkbox"/> County DD Program Managers | <input type="checkbox"/> Stabilization and Crisis Unit (SACU)                           |
| <input type="checkbox"/> ODDS Children’s Residential Services  | <input type="checkbox"/> Other ( <i>please specify</i> ):                               |
| <input type="checkbox"/> Child Welfare Programs                |   |

Policy/rule title:	Screening of Abuse for Adults with DD (Trust Relationship)		
Policy/rule number(s):		Release no:	1
Effective date:	April 1, 2017	Expiration:	n/a

References:	OAR 407-045-0250 to 407-045-0360 and ORS 430.731 to ORS 430.768
Web address:	

**Discussion/interpretation:**

The Department’s Office of Developmental Disabilities Services (ODDS) and the Office of Adult Abuse Prevention and Investigations (OAAPI) received advice from the Oregon Attorney General’s Office to more closely follow statute and rule when screening allegations of abuse. As a result, trust relationships are no longer a factor in deciding if an allegation of abuse is to be opened for an investigation.

This policy clarifies what is existing law for screening of abuse allegations that involve adults determined eligible for DD services. A report of alleged abuse that occurred in Oregon must be investigated if the report meets the following requirements:

1. The accused person's (individual or entity) alleged actions or lack of actions is within the definitions of abuse of an adult with developmental disabilities under OAR 407-045-0260, and
2. The person who is alleged to be the victim of abuse meets the definition of "adult" under OAR 407-045-0260.

These rule sections are located here: [OAR 407-045-0260](#).

With respect to trust relationships, the statutes and rules do not normally take into consideration the relationship between the accused and the victim. Thus information about the accused's relationship to the victim shall not be used to determine whether an abuse investigation will be opened, unless specified in the abuse definition. For example, strangers can now be named as an accused in an investigation.

When an allegation of abuse meets criteria for being screened-in but presents challenges for completing an investigation, the investigator must conduct the investigation as trained and it should be as complete and thorough as possible. Use reasonable efforts to overcome any problems about gathering evidence and document the efforts. The conclusion must be based on the available evidence.

Note: while no longer used in screening, trust relationships may still be relevant to the investigation.

**Implementation/transition instructions:** ODDS leadership, OAAPI managers and DD Abuse Investigation Coordinators (AIC) will be available to communicate with the public, stakeholders, service providers and community developmental disability program managers.

**Training/communication plan:** An email will be sent to all CDDP abuse investigators (AI) and program managers regarding dates for technical assistance conference calls.

**Local/branch action required:** The Department's designee (local CDDP offices) and OAAPI must start screening April 1, 2017 according to administrative rule 407-045-0260

**Central office action required:** The OAAPI Abuse Investigation Coordinators are available for technical assistance to the local community programs.

**Field/stakeholder review:**       Yes       No

**If yes, reviewed by:**      CDDP Program Managers

**Filing instructions:**

*If you have any questions about this policy, contact:*

<b>Contact(s):</b>	Jessica Denison		
<b>Phone:</b>	503-947-4221	<b>Fax:</b>	503-945-9893
<b>email:</b>	JESSICA.DENISON@state.or.us		

**TIPS for screening**

An approach for screening without trust relationship requires relying upon the details in the abuse definition and then comparing them with the screening facts.

- The abuse definitions offer distinctions that restrict what is considered abuse.
- The details in the screening facts often determine why similar referrals of abuse may or may not be assigned for investigation.

An approach for investigations where the accused person (AP) or critical evidence is not available requires investigators to use reasonable efforts to do the investigation. Documentation of the efforts is evidence that a thorough investigation was conducted. If there is evidence or fact in the case that are unavailable this must be documented as well. It is the reasonable effort that is required and then documented for the report.

After the case is assigned for investigation, there are instances where it is later determined the reported incident does not meet the definition of abuse. In these situations, the Abuse Investigator (AI) may request the investigation be returned for a county review.

The Abuse Investigation Coordinators (AIC) at OAAPI are available for consultation regarding screening, investigations and report writing.

***The following are some tips for FAQs regarding three types of AP's you may be investigating and how to think about screening solely on rule definitions.***

**1. If the AP is law enforcement (for this purpose broadly includes corrections, probation and parole, and peace officers plus to some degree other first responders like firefighters or EMT). This list also includes the staff of jails and corrections facilities. The short names used below for this list is "officer" and "jail".**

Professional conduct of officers which can include confrontation and reasonable use of force would not be considered abuse and could be screened out. That is because it is lawful conduct.

AI's may interview officers, the same as any AP. This means:

- If the officer, their supervisor, or their agency declines an interview, follow the same process in which a witness in a civil investigation declines to be interviewed.
- Most officers belong to unions, so Weingarten rights apply. Follow similar protocols as any witness who is a union member requesting union representation.
- If the officer is a county employee then your office may consider requesting the assistance from a different county or OAAPI.

The following are examples of how the AI would apply abuse types as seen in OAR 407-045-0260 and what could be considered as part of the screening process:

#### Verbal abuse

Officers have standards of engagement with the public. Verbal abuse would include, but not be limited to, talking about the protected person's vulnerability or disability in a despairingly or degrading way. In addition, given the protected person's vulnerability, conduct that is unnecessarily cruel, inhumane or callous. Professional conduct does not allow for those behaviors.

#### Physical abuse

Lawful uses of force may have natural consequences of minor injury treated by first aid and temporary pain. These types of injuries may justify screening-out if consistent with reasonable use of force. On the other hand, serious physical harm such as fractures, internal injuries, or any injury requiring significant medical, dental, or clinical attention need more consideration and should be screened-in. Serious injuries or serious risk of injury brings up the question of appropriate and reasonable use of force. The severity of the injury would only be part of the screening consideration, if there are other unprofessional concerns, then the situation should be screened-in, even if injuries were minor.

#### Wrongful restraint and involuntary seclusion

Officers are allowed the lawful use of restraint and seclusion. Exceptions to what officers are allowed to do include, but are not limited to:

- Chemical restraint, in which officers are also required to have medical assessments and prescriptions from health care providers before managing behaviors with medications, and
- Any unreasonable use of force.

Consider using physical abuse if that definition reasonably applies. Wrongful restraint or involuntary seclusion may be difficult to translate to officer protocols.

### Neglect and Abandonment

Generally, if neglect occurs, it would be during incarceration, but could happen while in a police vehicle. Jails and officers are responsible for basic care for individuals in their custody. One of the particular problems about neglect in jails is determining who the responsible person is. Is it one person's actions or how the jail is run? Judgement of what are reasonable expectations in jail would be key in which may involve, but is not limited to identifying legitimate jail conditions and chain of responsibility.

### Sexual abuse

This abuse type should always be taken seriously and screened-in. One exception may be privacy expectations in jail for showers or dressing may differ from what an individual experiences outside of incarceration, but do not rise to abuse in that setting.

### Financial abuse

Exploitation by officers is not professional conduct and should be screened-in. However, if minor cash is missing during incarceration, check with jail policies as jails may not be responsible for money that inmates have on them.

## **2. If the accused person is a stranger or a vague acquaintance whose name is not known or the individual regularly places self at risk with people or homeless situations.**

Reports about strangers or acquaintances in the community, must be screened-in for investigation, if the allegation of abuse meets an abuse definition. In addition, a report of abuse should not be screened-out because a consumer is homeless or frequently takes social relationship risks, or has multiple sexual relationships.

If there have been frequent reports investigated, but a different incident or a new accused person is identified, then screen-in.

A common problem is identifying the accused person:

- The conduct can be investigated without knowing the name of the accused. While there could not be any accountability to an unknown person, there is other value in the investigation. The alleged victim will have a voice, be assessed, and provided with protected services. The nature of the abuse would be determined.
- Reasonable efforts must be made to identify the AP. If you have someone targeting vulnerable persons on public transport, in malls, or convenience stores, private security or law enforcement, or workers may know who it is or have videos. These investigative efforts are normally not high risk to the AI.

- Should a higher risk situation arise for the AI, such as some homeless camps or a private home with guard dogs or criminal activity, conduct a worker safety risk assessment, develop a safety plan, and staff with supervisor and OAAPI on how best to proceed. Consultation with the Worker Safety Coordinator at OAAPI is also available.

The following are examples of how the AI would apply abuse types as seen in OAR 407-045-0260 and what could be considered as part of the screening process

#### Verbal abuse

The verbal abuse definition contains language about 'significance'. Thus some discretion may be used in differentiating abuse from passing public rudeness. If the impact is fleeting, random, and minor then it may not meet the definition of abuse. Example, a stranger says something unkind as they walk past a vulnerable individual which is distressing when it happens, but a reasonable person would not say it was significant.

#### Physical abuse

Injuries, pain, and forceful contact to do harm are screened-in; unless on occasion, like with verbal abuse, something public occurs that is very minor, fleeting, and random like a slight shove in a crowd. Upon consideration and using the reasonable person standard, the report may not rise to the level of injury or willful infliction of pain or injury.

#### Neglect or Abandonment

Generally would not apply, if there is no assumed responsibility or duty of care.

#### Wrongful restraint or Involuntary seclusion

Controlling someone in this manner outside of a care giving setting may be a crime such as using date rape drugs or holding someone against their will. Staffing is available to determine how to proceed.

#### Financial exploitation

Screen-in, if meets abuse definition. Random pick pocketing or one time extortion may not be traceable and arguably be a thin investigation. However, a pattern like extortion at a transit center or a convenience clerk keeping the change needs to be addressed which takes an investigation.

#### Sexual abuse

Screen-in, if it meets the abuse definition. Even if the consumer has a lifestyle where there are frequent calls of concern or the consumer self-reports when they break-up with someone. If there is a new AP or significant new information, or another incident, an investigation must be conducted.

**3. The accused person is a Health Care Professional or it occurs in a Health Care setting such as hospitals, emergency departments, and clinics. It includes, but is not limited to entities licensed by OHA Health Systems like In-home agencies, hospice, and EMTs. This is a broad category and also may include but is not limited to other licensed professionals related to health such as dentists, hygienists, optometrists, chiropractors, and audiologists. The short name for this list is “health professionals.”**

In general, if the complaint is something an AI would normally investigate a care provider for, then screen-in. However, complaints about health procedures that exceed what is described in rule, might have grounds to be screened-out. A distinction is that if the complaint is about cancer treatment and the hospital RN failed to administer a treatment, then that should be screened-in as neglect. However, if the complaint is that the wrong treatment was prescribed by an oncologist then that may be screened out as outside of our abuse rules.

AIs can screen-in and investigate health professionals and in settings like hospitals and ERs. The above tips regarding law enforcement interviews being declined or denied and investigating union members may also apply to health professionals. In addition, professionals may obtain attorneys and you would follow the procedures and trainings for attorney involvement.

The following are examples of how the AI would apply abuse types as seen in OAR 407-045-0260 and what could be considered as part of the screening process.

#### Verbal abuse

Health professional conduct has high standards of respect and dignity and thus would be screened-in if the report meets the definition of verbal abuse.

#### Physical abuse

Reports of forceful infliction of pain or injury would be screened-in if meets definition. However, injury or pain secondary to medical procedures such as bruises from IVs and pain from stitches, of course are not abuse. Sometimes medications side-effects can be confused with physical abuse, but may need to be screened-in to find out.

#### Neglect

Failure of basic care that fits with abuse definitions such as lack of ADL and standard medical care would be screened-in. Health care settings have a responsibility to provide basic care and services for individuals who cannot provide that care themselves. Examples include, but are not limited to untreated pressure sores, poor incontinence care, and misadministration of prescribed medications such as missing doses.

### Abandonment

Unsafe discharges are within AI expertise. Physicians, health care providers, hospitals, and health care settings have standards for discharging patients from services and terminating care. If they breach these standards and improperly and prematurely discharge or terminate care then that can be screened-in as abandonment or neglect. If the individual has Medicaid or Oregon Health Plan, then it is likely the health care professional or health setting is accountable for safe terminations and discharges.

### Wrongful restraint or involuntary seclusion

This is already a known area of investigation for AIs and normally is screened-in. Some health providers lack understanding of protective holds or physical and chemical restraints and are unknowingly abusing their patients. However, as professionals and as mandatory reporters, they are mandated to be aware.

### Financial and sexual abuse

Financial abuse is screened-in if the report meets abuse definitions. It is not common, but does occur. For sexual abuse, this includes if the health professional reports that the individual was confused about peri-care or a pelvic exam. All complaints of sexual abuse are taken seriously and investigated.