

**CHAPTER 411
DIVISION 20**

ADULT PROTECTIVE SERVICES -- GENERAL

411-020-0000 Purpose and Scope of Program
(Amended 11/15/1994)

(1) The Seniors and People with Disabilities Division (SDSD) has responsibility to provide Adult Protective Services to aged, blind, or disabled individuals 18 years of age or older. The intent of the program is to provide protection and intervention on behalf of those adults who are unable to protect themselves from harm or neglect.

(2) Oregon has adopted specific laws and protections to address different types of adult abuse or neglect. In addition to general Adult Protective Service statutes, Oregon has adopted specific laws relate to elder abuse and facility abuse. Depending upon the nature of the complaint, specific governing statutes must be referenced for more complete guidance in conducting these various types of investigations.

(3) As a human services agency, the Division embraces a social model of intervention which focuses on the immediate safety and protection of the alleged victim.

(4) The Division relies upon other key sources, such as law enforcement, legal, medical, and regulatory professionals, to assist in responding to the overall problems associated with at-risk adults.

(5) The Division supports avenues which promote public education and outreach services to identify and prevent abuse, neglect and exploitation of vulnerable adults.

Stat. Auth.: ORS 410.070, ORS 410.610 - ORS 410.700, ORS 411.116,
ORS 441.635, ORS 443.500 & ORS 443.767
Stats. Implemented: ORS 410.040, ORS 410.070 & ORS 411.116

411-020-0002 Definitions

(Adopted 11/15/1994)

(1) "Abuse" means:

(a) Abandonment, which is the desertion or wilful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed a dependent adult by a caretaker or other person;

(b) Financial exploitation, which is the illegal or improper use of another individual's resources for personal profit or gain;

(c) Neglect, which is the failure (whether intentional, careless or due to inadequate experience, training or skill) to provide basic care or services when agreed to by legal, contractual or otherwise assumed responsibility;

(d) Physical abuse, which is use of excessive force, physical assault, or physical contact with an individual including, but not limited to, hitting, slapping, biting, pinching or shoving;

(e) Psychological abuse, which is the use of derogatory names, phrases, or profanity; ridicule; harassment; coercion; threats; or intimidation toward an individual, or denial of civil rights, which results in emotional injury;

(f) Self-neglect, which is a person's failure to provide the necessary goods and/or services and placing another individual at-risk; or

(g) Sexual abuse, which is sexual contact that is forced, tricked, threatened, or otherwise coerced upon another person.

(2) "Area Agency on Aging (AAA)" means the agency designated by the Division which is charged with the responsibility to provide a comprehensive and coordinated system of service to the elderly and/or the disabled in a designated planning and service area.

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

(4) "Conservatorship" means that a court appointed trustee has authority to manage the estate of a protected person.

(5) "Division" means the Seniors and People with Disabilities Division or its designees (Area Agencies on Aging).

(6) "Elder Abuse" means abuse, as defined in these Rules, of any person 65 years of age or older.

(7) "Elderly Person", for the purpose of these Rules, means any person 65 years of age or older.

(8) "Facility Abuse" means abuse or neglect of care that occurs in facilities that should be licensed, such as a Residential Care Facility, Adult Foster Home, Assisted Living Facility, or a Nursing Facility.

(9) "Field Office" means the local service staff of the Division or Area Agency on Aging.

(10) "Guardianship" means a court has appointed another person to have responsibility for the care, and/or comfort, and/or maintenance of an incapacitated person.

(11) "Imminent Danger" means there is reasonable cause to believe a person's life or physical well-being is in danger if no intervention is initiated immediately.

(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) "Licensed Care Facility" means a facility licensed by the Division, including Nursing Facilities, Assisted Living Facilities, Residential Care Facilities, and Adult Foster Homes.

(14) "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 any person residing in a nursing facility or an elderly person in any setting has suffered abuse or neglect.

(15) "Protective Service" means a service to be provided in response to the need for protection from harm or neglect to an aged, disabled, or blind person 18 years of age or older regardless of income.

(16) "Public or Private Official" means:

(a) Physician, including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health service;

(c) Employee of the Department of Human Resources, county health department, community mental health and developmental disabilities program or a long term care facility or a person who contracts to provide services to a long term care facility;

(d) Peace officer;

(e) Clergy;

(f) Licensed clinical social worker;

(g) Physical, speech or occupational therapist;

(h) Senior center employee;

(i) Information & Referral or outreach worker;

(j) Area Agency on Aging employee; and

(k) For Nursing Facility Abuse, includes all of the above, plus legal counsel, guardian, or family member of the resident.

Stat. Auth.: ORS 410.070, ORS 410.610 - ORS 410.700, ORS 411.116,
ORS 441.635, ORS 443.500 & ORS 443.767
Stats. Implemented: ORS 410.070 & ORS 411.116

411-020-0005

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

411-020-0010 Authority and Responsibility

(Amended 11/15/1994)

(1) The Division is granted statutory authority and responsibility to protect elderly persons and blind or disabled adults, age 18 years or older, from harm or neglect. Specific authorizing statutes include:

(2) General Adult Protective Services – ORS 411.116 authorizes the Division to adopt rules, consistent with federal and state laws and regulations, for providing social services, including protection, to individuals needing or requesting services.

(3) Alleged Abuse in Adult Foster Homes – ORS 443.767 requires the Division to promptly investigate a complaint alleging the existence of any circumstances that could result in injury, abuse or neglect of a resident and could place the resident's health or safety in imminent danger.

(4) Alleged Abuse in Residential Care Facilities – ORS 443.435 allows the Division access to a facility to determine whether it is maintained and operated in accordance with ORS 443.400 - 443.455.

(5) Alleged Resident Abuse in Nursing Facilities – ORS 441.635 requires mandatory reports and investigations of allegedly abused residents (see ORS 441.630 - 441.680).

(6) Alleged Abuse in Room and Board Facilities – ORS 443.500 allows the Division 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.

(7) Alleged Elder Abuse – ORS 410.620 requires mandatory reports and investigations of allegedly abused elderly persons (see ORS 410.610 - 411.700).

Stat. Auth.: ORS 410.070 & ORS 411.116

Stats. Implemented: ORS 410.070 & ORS 411.116

411-020-0015 Eligibility Criteria

(Amended 11/15/1994)

SDSD Protective Services are available for aged, blind, or disabled individuals age 18 or older, who are alleged to be victims of "abuse" as defined in these rules and who are not entitled to services from Mental Health and Disability Services Division under ORS 430.735 - ORS 430.765.

Stat. Auth.: ORS 410.070 & ORS 411.116

Stats. Implemented: ORS 410.070 & ORS 411.116

411-020-0020 Reporting

(Adopted 11/15/1994)

(1) Mandatory reporters shall report instances of suspected elder abuse or abuse of residents in nursing facilities to a Division field office or a local law enforcement agency.

(2) Reporting of instances involving abuse and/or neglect of adults is highly encouraged for non-mandatory reporters.

(3) The identity of the person reporting the suspected abuse shall be confidential. The identity of the person reporting the abuse shall only be disclosed with the consent of that person, by judicial process, or as required to perform the investigation by the Division or a law enforcement agency.

Stat. Auth.: ORS 410.070, ORS 410.610 - ORS 410.700, ORS 411.116, ORS 441.635, ORS 443.500 & ORS 443.767

Stats. Implemented: ORS 410.070 & ORS 411.116

411-020-0030 Confidentiality

(Adopted 11/15/1994)

(1) Oregon statutes provide for the confidentiality of the identity of certain persons and information obtained as a result of an adult protective service intervention. Confidentiality of information is important to protect the privacy of individuals, encourage the reporting of abuse and neglect, and to facilitate the obtaining of information.

(2) All information involving non-facility based investigations is confidential. Such information shall be disclosed only by judicial process or with the consent of the victim, but no names may be released without the consent of the person named.

(3) If the investigation involves a licensed care facility, information regarding the complaint and subsequent findings shall be made available to the general public upon request. On these types of complaints, information regarding the identity of the complainant, the alleged victim, and all witnesses, shall remain confidential, unless otherwise dictated by judicial process.

(4) Where deemed appropriate by the Division the names of the complainant, alleged victim, witnesses and any investigative report may be made available to the following sources:

(a) Any law enforcement agency;

(b) An agency which licenses or certifies a facility where the alleged abuse occurred, or licenses or certifies the person practicing therein;

(c) The Mental Health and Developmental Disability Services Division;

(d) The Long Term Care Ombudsman; or

(e) Any private non-profit agency providing protective services to the alleged victim which meets the confidentiality standards of ORS 410.610 through 410.700.

Stat. Auth.: ORS 410.070, ORS 410.610 - ORS 410.700, ORS 411.116,
ORS 441.635, ORS 443.500 & ORS 443.767
Stats. Implemented: ORS 410.070 & ORS 411.116

411-020-0040 Services Provided

(Renumbered 11/15/1994)

(1) Local field offices shall follow procedural guidelines consistent with Division policies guiding protective service response activities. Cooperative agreements with regulatory and enforcement agencies, such as local law enforcement, District Attorney's Office, and licensing agencies are desirable.

(2) The Division shall establish and maintain agreements and understandings with other key agencies having a role in protecting the interests and rights of individuals targeted in these rules; e.g., Oregon State Police and the Department of Justice.

(3) Initial Response:

(a) The Division shall provide for a prompt and timely initial response to all protective service referrals meeting the eligibility criteria established in these rules. The specific time lines for response shall be governed by the nature of the complaint and the laws related to the category of complaint. The Division shall cause an investigation to begin immediately if the Division determines circumstances exist which could result in injury abuse, or neglect and could place the adult's health or safety in imminent danger.

(b) General time frames for response as determined by the Division are as follows:

(A) Elder Abuse - Immediately if the elderly person is in imminent danger and before the end of the next working day if it is believed the elderly person is not in imminent danger.

(B) Nursing Facilities - Within two hours if the resident's health or safety is in imminent danger or prior to the end of the next working day if circumstances exist that could result in abuse.

(C) Adult Foster Homes - Within two hours if the complaint alleges the client has been injured, abused, or neglected and placed in imminent danger, or by the end of the next working day if circumstances exist which could result in injury, abuse or neglect.

(D) Other Protective Services - By the end of the next work day.

(c) Upon receipt of a complaint, the Division will screen the complaint to determine if the referral meets the eligibility criteria established in these rules. Information will be secured to determine a reasonable level of intervention to ensure protection of the adult identified at-risk.

(4) Assessment and Investigation:

(a) In instances where a preliminary screening suggests the individual may be a victim of abuse or neglect, the Division shall conduct an assessment and/or investigation.

(b) The assessment is the diagnostic component of the protective services intervention. The assessment focuses on the individual's level of functioning and determining the person's ability to protect his/her own interests. Attention is given to assessing the individual's support system, including family, friends, neighbors, and others that may be able to offer help.

(c) An investigation is the process of determining the nature and cause of the alleged abuse. When abuse or neglect is substantiated, the investigation may become the impetus for civil or criminal sanctions against the perpetrator or care facility.

(d) In conducting facility abuse investigations, the Division protocols governing activities of investigations include:

(A) Providing an opportunity for the complainant or a designee thereof, or both, an opportunity to accompany the investigator to the site of the alleged violation:

(B) Conducting an unannounced on-site visit:

(C) Gathering all available evidence and observing physical circumstances relevant and material to the complaint:

(D) Interviewing available witnesses identified by any sources as having personal knowledge relevant to the complaint:

(E) Advancing reports indicating the need for a sanction by either the local licensing authority or the Division shall be referred to the appropriate office for corrective action immediately upon completion of the investigation; and

(F) Arranging for immediate protection. The worker shall direct the provider to correct any substantiated problem immediately.

(G) Immediately notifying the Division's Client care Monitoring Unit when an investigation reveals issues indicative of facility-wide problems in Nursing Facilities or Residential care Facilities. The Client Care Monitoring Unit shall initiate further review to determine whether there are systemic care Problems requiring corrective action.

(e) For all adult protective services cases, the Division shall immediately notify law enforcement if any of the following conditions exist:

(A) There is reason to believe a crime has been committed:

(B) Access to the alleged abused person is denied and assistance is needed in gaining access:

(C) The situation is believed to present a clear and present danger to the Division worker and police escort is advisable; or

(D) Photographic evidence is needed.

(5) Intervention:

(a) The individual at-risk has the right to refuse services if, in the estimation of the Division, the person is able to make an informed choice;

(b) Depending upon the nature of the problem(s), plan development and follow-up activity by the protective services worker may include the following:

(A) Counselling the individual at risk and/or the individual's family or significant other(s) and/or the community:

(B) Assisting in or arranging for appropriate services or alternate living arrangement;

(C) Assisting in linking the individual to medical, legal or other needed services;

(D) Providing advocacy to assure the individual's rights and entitlements are protected; or

(E) In instances where the at-risk adult lacks the capacity to self-direct and make informed decisions, other legal recourses may be sought, such as guardianship and/or conservatorship.

(6) Follow-Up:

(a) Adult Protective Services is normally limited to assessment and/or investigation and intervention as identified in these rules. Service ends when the identified problem has been resolved or a plan has been instituted which assures continuing care and protection for the individual.

(b) Depending upon the nature of the Adult Protective Services situation, follow-up activity may be indicated when a case situation remains unstable, ongoing monitoring of these types of situations may be provided funding resources allow.

Stat. Auth.: ORS 410.070, ORS 410.610 - ORS 410.700, ORS 411.116, ORS 441.635, ORS 443.500 & ORS 443.767

Stats. Implemented: ORS 410.070 & ORS 411.116

411-020-0050 Documentation

(Adopted 11/15/1994)

(1) The Division may designate documentation requirements for Adult Protective Services assessments and investigations including, but not limited to, a summary of findings, conclusions, and any plans of action that are recommended and/or taken by the Division worker.

(2) If the Division has cause to believe a crime has been committed, copies of the investigation shall be forwarded to the local law enforcement agency.

(3) The Division may collect standardized state-wide data on all types of Adult Protective Services including, but not limited to, information on the number of cases, types of incidents, client population characteristics and outcomes.

(4) Investigations conducted on licensed care facilities shall be documented by the field office and forwarded to the Division within 60 days.

Stat. Auth.: ORS 410.070, ORS 410.610 - ORS 410.700, ORS 411.116,
ORS 441.635, ORS 443.500 & ORS 443.767

Stats. Implemented: ORS 410.070 & ORS 411.116