

**DEPARTMENT OF HUMAN SERVICES
ADULT ABUSE PREVENTION AND INVESTIGATIONS
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 20**

ADULT PROTECTIVE SERVICES -- GENERAL

411-020-0000 Purpose and Scope of Program

(Amended 7/1/2010)

(1) **RESPONSIBILITY.** The Department of Human Services (Department), Seniors and People with Disabilities Division (Division) has responsibility to provide Adult Protective Services (APS) to older adults and to adults with physical disabilities whose situation is within the Division's jurisdiction to investigate.

(2) **INTENT.** The intent of the APS Program is to provide protection and intervention for older adults and adults with physical disabilities who are unable to protect themselves from harm and neglect.

(3) **SCOPE OF SERVICES.** The scope of services includes:

- (a) Receiving reports of abuse, neglect, or self-neglect;
- (b) Providing and documenting risk assessment of reported victims;
- (c) Conducting and documenting investigations of reported wrongdoing; and
- (d) Providing appropriate resources for victim safety.

(4) **AVAILABILITY.** Adult protective services are available from the Division to any adult resident of a Department-licensed facility, to nursing facility residents regardless of age and to any adult residing in the community who meets the eligibility criteria listed in OAR 411-020-0015.

(5) **INTERVENTION MODEL.**

(a) As a human services agency, the Division embraces a social model of intervention with a primary focus on offering safety and protection to the reported victim. The over-arching ethical value in adult protective services is the obligation to balance the duty to protect older adults and adults with physical disabilities with the duty to protect their rights to self-determination.

(b) 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 abuse and neglect, and encourages active participation and sharing of appropriate information by APS staff on multidisciplinary teams.

(c) The Division supports efforts to promote education and outreach services that help identify and prevent abuse and neglect of older adults and adults with physical disabilities.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.050 – 124.095, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, & 443.767

411-020-0002 Definitions

(Temporary Effective 6/1/2012 - 11/28/2012)

(1) "Abuse" means any of the following:

(a) PHYSICAL ABUSE.

(A) Physical abuse includes:

(i) The use of physical force that may result in bodily injury, physical pain, or impairment; or

(ii) Any physical injury to an adult caused by other than accidental means.

(B) For purposes of this section, conduct that may be considered physical abuse includes but is not limited to:

(i) Acts of violence such as striking (with or without an object), hitting, beating, punching, shoving, shaking, kicking, pinching, choking, or burning; or

(ii) The use of force-feeding or physical punishment.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults in a coma or adults otherwise incapable of expressing injury or pain.

(b) **NEGLECT.** Neglect including:

(A) Active or passive failure to provide the care, supervision, or services necessary to maintain the physical health and emotional well-being of an adult that creates a risk of serious harm or results in physical harm, significant emotional harm or unreasonable discomfort, or serious loss of personal dignity. The expectation for care, supervision, or services may exist as a result of an assumed responsibility or a legal or contractual agreement, including but not limited to where an individual has a fiduciary responsibility to assure the continuation of necessary care.

(B) Failure of an individual who is responsible to provide care or services to make a reasonable effort to protect an adult from abuse.

(C) An older adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall, for this reason alone, not be considered subjected to abuse by reason of neglect as defined in these rules.

(c) **ABANDONMENT.** Abandonment including desertion or willful forsaking of an adult for any period of time by an individual who has assumed responsibility for providing care, when that desertion or forsaking results in harm or places the adult at risk of serious harm.

(d) VERBAL OR EMOTIONAL ABUSE.

(A) Verbal or emotional abuse includes threatening significant physical harm or threatening or causing significant emotional harm to an adult through the use of:

(i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or

(ii) Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(B) For the purposes of this section:

(i) Conduct that may be considered verbal or emotional abuse includes but is not limited to the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance, regardless of their ability to comprehend.

(ii) The emotional harm that may result from verbal or emotional abuse includes but is not limited to anguish, distress, fear, unreasonable emotional discomfort, loss of personal dignity, or loss of autonomy.

(e) FINANCIAL EXPLOITATION. Financial exploitation including:

(A) Wrongfully taking, by means including but not limited to deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of an adult;

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out;

(C) Misappropriating or misusing any money from any account held jointly or singly by an adult; or

(D) Failing to use income or assets of an adult for the benefit, support, and maintenance of the adult.

(f) SEXUAL ABUSE. Sexual abuse including:

(A) Sexual contact with a non-consenting adult or with an adult considered incapable of consenting to a sexual act. Consent, for purposes of this definition, means a voluntary agreement or concurrence of wills. Mere failure to object does not, in and of itself, constitute an expression of consent;

(B) Sexual harassment or sexual exploitation of an adult or inappropriately exposing an adult to, or making an adult the subject of, sexually explicit material or language;

(C) Any sexual contact between an employee or volunteer of a facility or caregiver and an adult served by the facility or caregiver, unless a pre-existing relationship existed. Sexual abuse does not include consensual sexual contact between an adult and a caregiver who is the spouse or domestic partner of the adult;

(D) Any sexual contact that is achieved through force, trickery, threat, or coercion; or

(E) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467, or 163.525 except for incest due to marriage alone.

(g) INVOLUNTARY SECLUSION. Involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult.

(A) Involuntary seclusion may include:

(i) Confinement or restriction of an adult to his or her room or a specific area; or

(ii) Placing restrictions on an adult's ability to associate, interact, or communicate with other individuals.

(B) In a facility, emergency or short-term, monitored separation from other residents may be permitted if used for a limited period of time when:

(i) Used as part of the care plan after other interventions have been attempted;

(ii) Used as a de-escalating intervention until the facility can evaluate the behavior and develop care plan interventions to meet the resident's needs; or

(iii) The resident needs to be secluded from certain areas of the facility when their presence in that specified area would pose a risk to health or safety.

(h) WRONGFUL USE OF A PHYSICAL OR CHEMICAL RESTRAINT OF AN ADULT.

(A) A wrongful use of a physical or chemical restraint includes situations where:

(i) A licensed health professional has not conducted a thorough assessment prior to implementing a licensed physician's prescription for restraint;

(ii) Less restrictive alternatives have not been evaluated prior to the use of the restraint; or

(iii) The restraint is used for convenience or discipline.

(B) Physical restraints may be permitted if used when a resident's actions present an imminent danger to self or others and only until immediate action is taken by medical, emergency, or police personnel.

(2) "Adult" means an older adult, an individual with a physical disability who is 18 years of age or older, or a resident of a Department licensed residential care facility, assisted living facility, or adult foster home.

(3) "APS" means adult protective services.

(4) "APS Risk Management" means the process by which adult protective services continues to maintain ongoing active contact with a reported victim who continues to be at serious risk of harm.

(5) "Area Agency on Aging (AAA)" means the agency designated by the Department with responsibility to provide a comprehensive and coordinated system of service to older adults or adults with disabilities in a designated planning and service area.

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

(7) "Community Based Care Facility" means an assisted living facility, residential care facility, adult foster home, or registered room and board facility.

(8) "Conclusion" means:

(a) For the purposes of a facility investigation, a determination by the adult protective services worker whether an incident occurred and, if it did, whether the incident was the result of wrongdoing; and

(b) For the purposes of a community investigation or self-neglect assessment, a determination by the adult protective services worker as to whether an incident occurred and, if it did, whether the incident was the result of wrongdoing or self-neglect.

(9) "Conservatorship" means that a court has issued an order appointing and investing an individual with the power and duty of managing the property of another individual.

(10) "Department" means the Department of Human Services. The term "Department" is synonymous with "Division".

(11) "Evidence" for the purpose of these rules, means material gathered, examined, or produced during the course of an adult protective services investigation. Evidence includes but is not limited to witness statements, documentation, photographs, and relevant physical evidence.

(12) "Financial Institution" has the meaning given that term in ORS 192.583.

(13) "Guardianship" means a court has issued an order appointing and investing an individual with the power and duty of managing the care, comfort, or maintenance of an incapacitated adult.

(14) "Health Care Provider" has the meaning given that term in ORS 192.556.

(15) "Imminent Danger" means there is reasonable cause to believe an adult's life, physical well-being, or resources are in danger if no intervention is initiated immediately.

(16) "Inconclusive" means that after a careful analysis of the evidence gathered in an investigation, a determination of whether wrongdoing occurred cannot be reached by a preponderance of the evidence.

(17) "Informed Choice" means the individual has the mental capacity, adequate information, and freedom from undue influence to understand the current situation, understand the options available and their likely consequences, and be able to reasonably choose from among those options and communicate that choice.

(18) "Law Enforcement Agency" means:

- (a) Any city or municipal police department;
- (b) Any county sheriff's office;
- (c) The Oregon State Police;
- (d) Any district attorney; or
- (e) The Oregon Department of Justice.

(19) "Licensed Care Facility" means a facility licensed by the Department, including nursing facilities, assisted living facilities, residential care facilities, and adult foster homes.

(20) "Local Office" means the local service staff of the Department or Area Agency on Aging.

(21) "Mandatory Reporter" for the purpose of these rules, means any public or private official who is required by statute to report suspected abuse or neglect.

(a) If an individual is a mandatory reporter and, while acting in an official capacity, comes in contact with and has reasonable cause to believe that any individual living in a nursing facility or an older adult in any setting has suffered abuse or neglect, the mandatory reporter must immediately file a report with local law enforcement or an office of the Department.

(b) Definitions of abuse or neglect for these purposes and procedures for investigation are defined in ORS 124.050 to 124.095 or ORS 441.615 to 441.695 and OAR 411-085-0005, 411-085-0360, and 411-085-0370 (Nursing Facility Abuse).

(c) Mandatory reporting is also required if the individual, while acting in an official capacity, comes into contact with anyone who has abused an older adult or any individual living in a nursing facility.

(d) The public or private officials who are mandatory reporters are:

(A) Physician, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident;

(B) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health agency;

(C) Employee of the Department, county health department, community mental health program, community developmental disabilities program, or a nursing facility, or an individual who contracts to provide services to a nursing facility;

(D) Peace officer;

(E) Clergy;

(F) Licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist;

(G) Physical, speech, or occupational therapist, audiologist, or speech language pathologist;

(H) Senior center employee;

(I) Information and referral or outreach worker;

(J) Area Agency on Aging employee;

(K) Firefighter;

(L) Emergency Medical Technician;

(M) Psychologist;

(N) Licensee of an adult foster home or an employee of the licensee; and

(O) For nursing facility abuse, all of the above, plus legal counsel, guardian, or family member of the resident.

(22) "Multidisciplinary Team (MDT)" means a county-based investigative and assessment team that coordinates and collaborates for allegations of adult abuse and self-neglect. The team may consist of personnel of law enforcement, the local district attorney office, local Department or Area Agency on Aging offices, community mental health and developmental disability programs, plus advocates for older adults and individuals with disabilities, and individuals specially trained in abuse.

(23) "Multidisciplinary Team (MDT) Member" means an individual or a representative of an agency that is allowed by law and recognized to participate on the multidisciplinary team.

(24) "Older Adult" for the purpose of these rules, means any individual 65 years of age or older.

(25) "Physical Disability" for the purpose of these rules, means any physical or cognitive condition such as brain injury and dementia that significantly interferes with an adult's ability to protect his or her self from harm or neglect. (See OAR 411-020-0015, Eligibility)

(26) "Protected Health Information" has the meaning given that term in ORS 192.556.

(27) "Relevant" means tending to prove or disprove the allegation at hand.

(28) "Reported Perpetrator (RP)" means the facility, an agent or employee of the facility, or any individual reported to have committed wrongdoing.

(29) "Reported Victim (RV)" means the individual whom wrongdoing or self-neglect is reported to have been committed against.

(30) "Risk Assessment" means the process by which an individual is evaluated for risk of harm and for the physical and cognitive abilities to protect his or her interests and personal safety. The living situation, support system, and other relevant factors are also evaluated to determine their impact on the individual's ability to become or remain safe.

(31) "Self-Determination" means an adult's ability to decide his or her own fate or course of action without undue influence.

(32) "Self-Neglect" means the inability of an adult to understand the consequences of his or her actions or inaction when that inability leads to or may lead to harm or endangerment to self or others.

(33) "Serious Risk of Harm" means that without intervention the individual is likely to incur substantial injury or loss.

(34) "Services" as used in the definition of abuse includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other service essential to the well-being of an adult.

(35) "Substantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is true.

(36) "These Rules" mean the rules in OAR chapter 411, division 020.

(37) "Undue Influence" means the process by which an individual uses his or her role and power to exploit the trust, dependency, and fear of another individual and to deceptively gain control over the decision making of the second individual.

(38) "Unsubstantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is not true.

(39) "Wrongdoing" means:

(a) For the purposes of a facility investigation, an act that violates a licensing or other rule without regard to the intent of the reported perpetrator or the outcome to the reported victim; and

(b) For the purposes of a community investigation, an action or inaction that meets the definition of abuse, without regard to the intent of the reported perpetrator or the outcome to the reported victim.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.050 – 124.095, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, 443.767, & 2012 Or. Laws Chapter 70

411-020-0005

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

411-020-0010 Authority and Responsibility

(Amended 7/1/2010)

The Division is granted statutory authority and responsibility to protect older adults and adults with physical disabilities from harm or neglect. Specific authorizing statutes include:

(1) General Adult Protective Services:

(a) ORS 410.020 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.

(b) These rules detail the steps in the adult protective services process.

(2) ADULT FOSTER HOMES.

(a) ORS 443.767 requires the Division to promptly investigate any complaint that a resident of an adult foster home has been injured, abused, or neglected and is in imminent danger, or has died or been hospitalized, and any 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.

(b) OAR 411-050-0455 details the steps for filing, investigating, and documenting complaints in Adult Foster Homes.

(3) RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES.

(a) ORS 443.435 allows the Division access to a facility to determine whether it is maintained and operated in accordance with ORS 443.400 to 443.455 and 443.991(2) and the rules in OAR chapter 411, division 054.

(b) OAR 411-054-0105 details methods for conducting inspections and investigations in residential care and assisted living facilities.

(4) NURSING FACILITIES.

(a) ORS 441.635 requires mandatory reports and investigations of reportedly abused residents while ORS 441.650 to 441.695 addresses the process of investigation.

(b) OAR 411-089-0010 to 411-089-0030 details the procedure for receiving, investigating, and documenting investigations in nursing facilities and the corrective action procedure for substantiated complaints.

(5) ROOM AND BOARD FACILITIES.

(a) 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. If the Division has reasonable cause to believe any facility is operating without registration in violation of ORS 443.480 to 443.500, the Division may apply to the circuit court for a search warrant.

(b) OAR 411-068-0060 to 411-068-0075 details procedures for filing and investigating complaints in room and board facilities.

(6) ELDER ABUSE.

(a) ORS 124.050 to 124.095 mandates reports and investigations of reportedly abused older adults.

(b) These rules detail the procedures for reporting, investigating, and documenting complaints of reported abuse to older adults.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070 & 411.116

411-020-0015 Eligibility Criteria

(Amended 7/1/2010)

(1) Adult protective services as described in OAR 411-020-0040 are available for:

(a) Adults aged 65 and older;

(b) Adults aged 18 and older who have a physical disability as defined in these rules; and

(c) Anyone living in a nursing facility when they are reported to be victims of "abuse" as defined in these rules.

(2) Reported abuse to individuals who are entitled to services from the Division under ORS 430.735 to 430.765 and OAR 407-045-0250 to 407-045-0360 should be referred for investigation by the community mental health or developmental disabilities program or the Office of Investigations and Training.

(3) Eligibility for adult protective services is not dependent upon income or source of income.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070 & 411.116

411-020-0020 Reporting of Abuse and Neglect (Amended 7/1/2010)

(1) Mandatory reporters must report instances of suspected elder abuse (as defined in ORS 124.050) or abuse of residents in nursing facilities (as defined in ORS 441.630) to a Division designated local office or a local law enforcement agency. A psychiatrist or psychologist does not have to report privileged information covered under ORS 40.225 to 40.295.

(2) Reporting of instances involving abuse or neglect of older adults and adults with physical disabilities is highly encouraged for non-mandatory reporters. Anyone participating in the making of a report of elder abuse on reasonable grounds and good faith shall have immunity from any civil liability. The same immunity applies to participating in any judicial proceeding resulting from the report.

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

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.055 – 124.075, 124.090, 410.070, 411.116, 441.635 – 441.655, 441.671 – 441.675, & 443.765

411-020-0025 Multidisciplinary Team (MDT)

(Adopted 7/1/2010)

(1) The local Division or AAA office must participate in their county MDT to coordinate and collaborate on allegations of abuse and self-neglect of older adults and adults with physical disabilities. Adult protective services, when provided by the local office in conjunction with their participation on their county MDT, shall be provided as described in OAR 411-020-0040.

(2) All confidential information protected by federal and state law that is shared or obtained by the MDT members in the exercise of their duties on the MDT is confidential and may not be further disclosed except by law, authorization by the adult, or by court order.

(3) The local office must annually provide the MDT with the number of substantiated allegations of abuse of adults investigated by APS and also the number of APS cases referred to law enforcement in the county.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070, 411.116, & section 8, chapter 837,
Oregon Laws 2009

411-020-0030 Confidentiality

(Temporary Effective 6/1/2012 - 11/28/2012)

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

(2) All information involving non-facility based investigations is confidential except for disclosure of the conclusion under OAR 411-020-0100(6) and may be disclosed only by judicial process, or as required by specific exceptions under state and federal law, or with the consent of the victim, but no names may be released without the consent of the individual named except as provided in section (4) of this rule.

(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 reported victim, all witnesses, and the protected health information of any party shall remain confidential, unless release is specifically authorized by the affected individual or otherwise dictated by judicial process.

(4) Where the Department deems it is appropriate for the purpose of furthering a protective service, or when necessary to prevent or treat abuse, or when deemed to be in the best interest of an older adult, the names of the reported victim, witnesses (other than the complainant except as expressly permitted below), any investigative report, and any records compiled during the course of an investigation, may be made available to:

(a) Any law enforcement agency, to which the name of the complainant may also be made available;

(b) An agency that licenses or certifies a facility where the reported abuse occurred, or licenses or certifies the individual who practices there;

(c) A public agency that licenses or certifies an individual that has abused or is alleged to have abused an older adult;

(d) The Long Term Care Ombudsman;

(e) Any governmental or private non-profit agency providing adult protective services to the reported victim when that agency meets the confidentiality standards of ORS 124.090, including any federal law enforcement agency that has jurisdiction to investigate or prosecute for abuse defined in these rules, including but not limited to the Federal Bureau of Investigation (FBI), the Federal Trade Commission, or the U.S. Postal Inspection Service;

(f) The MDT for the purpose of adult protective services for the abuse and self-neglect of older adults and adults with physical disabilities;

(g) A court, pursuant to court order; or

(h) An administrative law judge in an administrative proceeding when necessary to provide protective services, investigate, prevent, or treat abuse of an older adult or when in the best interest of an older adult.

(5) Recipients of information disclosed under section (4) of this rule must maintain the confidentiality of the information as required by Oregon statute unless superseded by other state or federal law.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.050 – 124.095, 410.070, 410.150, 411.116, 441.630 – 441.695, 443.769, & 2012 Or. Laws Chapter 70

411-020-0040 Services Provided

(Amended 7/1/2010)

(1) Local Division designated offices must follow procedural guidelines consistent with Division policies guiding APS response activities. Although the role of APS is civil rather than criminal investigation, cooperative agreements with regulatory and enforcement agencies, such as local law enforcement, district attorneys, 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 who are the subject of these rules, including the Oregon State Police and the Department of Justice.

(3) The adult protective services function consists of a standard series of activities, including screening, triage or consultation, on-site assessment, investigation, intervention, documentation, and APS risk management. Deviations from these activities may be appropriate in order to protect the reported victim, but the reasons for these deviations must be staffed and properly documented in the investigative record.

(4) Adults have the right to make informed choices (as defined in 411-020-0002) that do not conform to societal norms as long as those decisions are not harmful to others. This includes the right to refuse participation in APS assessments, investigation, or intervention.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070 & 411.116

411-020-0050

(Renumbered to OAR 411-020-0120 7/1/2005)

411-020-0060 Screening

(Amended 7/1/2010)

(1) All calls or contacts involving the possibility of abuse or neglect must be directed to APS screening.

(2) Screening is the skilled interviewing process used to gather and assess information in order to determine eligibility for adult protective services. This activity includes a determination of whether the complaint meets the definition of abuse as contained in administrative rules.

(3) If the complaint meets the definition of abuse, screening activities may include but are not limited to:

(a) Gathering information about the reported victim's current level of functioning;

(b) Gathering demographic information and the history of the current problem;

(c) Reviewing any agency records related to the complaint; or

(d) Gathering information from collateral sources.

(4) If the complaint does not meet the definition of abuse but requires intervention, response shall include referral to other resources, including case management, licensing, or other services as appropriate.

(5) If the complaint does not meet the definition of abuse or require intervention but may be addressed by specialized information or assistance, a referral to APS consultation may be appropriate.

(6) If the complaint involves a client who is currently receiving case management or eligibility services, the worker assigned to the client must

be notified. If the complaint involves a commercial adult foster home, the local licenser must be notified.

(7) Each local office must develop a protocol for tracking the outcome of every APS screening referral. A call number or other identifier must be assigned and shared with the complainant at the time of screening so that the complainant may re-contact the office and determine the disposition of the report.

(8) Each local office must establish an after hours reporting system.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070, 411.116, & 443.767

411-020-0070 Consultation

(Amended 7/1/2010)

(1) Consultation is the process by which APS provides specialized information or assistance, enhanced referral, or technical assistance via electronic means, including telephone, fax, or e-mail, to assist in harm reduction.

(2) Consultation as an alternative to assessment or investigation is only appropriate when the report does not meet eligibility criteria for abuse or neglect or for investigation of licensing violation.

(3) The local office must maintain a record of reports resolved by consultation.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070, 411.116, & 443.767

411-020-0080 Triage

(Amended 7/1/2010)

(1) Triage is the APS process of determining the nature and severity of risk to individuals and the immediacy of response required.

(2) The Division shall provide for a prompt and timely initial response to all APS referrals meeting the eligibility criteria established in these rules. The

specific times for response are governed by the nature and severity of the complaint and the rules and laws related to the category of complaint.

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

(a) COMMUNITY CASES (Non-facility, elder abuse, and APS).

(A) IMMEDIATELY: Contact 911 when an emergency situation exists. An emergency is a situation in which evidence suggests that a human life is in jeopardy. The individual is in the process of being harmed due to criminal activity, medical emergency, fire, etc., or is a clear and present danger to self or others;

(B) WITHIN TWO HOURS OF RECEIPT OF COMPLAINT: Initiate investigation within two hours when the reported victim is identified as being in imminent danger;

(C) BY THE END OF THE NEXT DIVISION WORKING DAY: Initiate investigation by the end of the next working day when the individual is identified as being in a hazardous situation that is one that could lead to increased harm or risk; or

(D) WITHIN FIVE DIVISION WORKING DAYS: When screening determines that the situation is problematic, one that is chronic or ongoing, or is a general complaint that an immediate response is unlikely to change the reported victim's risk level, an investigation should be initiated within five working days.

(b) FACILITY CASES.

(A) NURSING FACILITY CASES.

(i) WITHIN TWO HOURS:

(I) If the resident's health or safety is in imminent danger; or

(II) The resident has recently died, been hospitalized, or been treated in an emergency department as a result of suspected abuse or neglect.

(ii) PRIOR TO THE END OF THE NEXT WORKING DAY: If circumstances exist that may result in abuse.

(B) ADULT FOSTER HOMES.

(i) WITHIN TWO HOURS:

(I) If the complaint alleges the resident has been injured, abused, or neglected and that any resident's health or safety is in imminent danger; or

(II) That the resident has died or been hospitalized due to abuse or neglect.

(ii) BY THE END OF THE NEXT DIVISION WORKING DAY: If circumstances exist that may result in injury, abuse, or neglect.

(C) ASSISTED LIVING FACILITY, RESIDENTIAL CARE FACILITY, ROOM AND BOARD FACILITY.

(i) IMMEDIATELY: If circumstances exist that may result in injury, abuse, or neglect and may place the resident's health or safety in imminent danger; or

(ii) BY THE END OF THE NEXT WORKING DAY: In all other cases.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.065 – 124.070, 410.070, 411.116, 441.645 – 441.650, 443.500, & 443.767

411-020-0085 Law Enforcement Notification
(Temporary Effective 6/1/2012 - 11/28/2012)

(1) The Department shall immediately notify law enforcement if any of the following conditions exist and proceed collaboratively in a way that does not further endanger the reported victim. Any law enforcement officer accompanying the investigator must be identified as such to any party interviewed. Conditions include:

- (a) There is reasonable cause to believe a crime has been committed;
- (b) Access to the reportedly abused individual is denied and legal assistance is needed in gaining access;
- (c) The situation presents a credible danger to the Department worker or others and police escort is advisable;
- (d) Forensic photographic or other evidence is needed; or
- (e) As required under OAR 411-020-0123 or 411-020-0126.

(2) Written notice, regardless of any verbal notice given, shall be provided to law enforcement for all instances when the Department finds that there is reasonable cause to believe a crime has been committed.

(3) When the local Department or AAA office notifies a law enforcement agency of suspected crime committed against a reported victim, the local office must track the progress as reported from the law enforcement agency on the investigation and the district attorney's office on the prosecution of the crime.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.065 – 124.070, 410.070, 411.116, 441.645 – 441.650, 443.500, & 443.767

411-020-0090 Assessment

(Amended 7/1/2010)

(1) Assessment is the process by which the APS worker determines the reported victim's degree of risk, level of functioning, adequacy of information, and ability to protect his or her own interests. Assessment additionally determines the reported victim's ability to reduce the risk of

harm in his or her environment and to make informed choices and understand the consequences of those choices. These factors are evaluated in relation to the allegation of abuse or neglect.

(2) Assessment in APS cases shall be conducted in person with the reported victim, usually in the reported victim's home or the facility where the reported victim lives.

(3) The assessment may include:

(a) Consultation with family, neighbors, law enforcement, mental health, hospice, in-home services, medical practitioners, domestic violence providers, etc. in keeping with Department confidentiality guidelines.

(b) The use of accepted screening tools as well as the worker's professional judgment to determine the reported victim's safety and functional abilities.

(4) If there is evidence that the reported victim's cognitive abilities may be impaired, recognized assessment tools may be administered to gauge those abilities. The initial assessment results shall be used as a screening to determine the need for professional diagnostic or clinical evaluation of the reported victim's capacity to make informed choices, and to determine an appropriate course of action if clinical evaluation is not available.

(5) Upon completion of the initial APS assessment, the complaint shall be continued for investigation where there is a reported perpetrator, or shall proceed directly to intervention where self-neglect is established. Where there is no perpetrator and self-neglect is not established, the reported victim shall be offered resource information, and the case shall be documented and closed.

(6) Results of the APS assessment of the reported victim's cognitive and functional abilities shall be recorded in the relevant portions of the Client Assessment and Planning System or other Department-approved system. A summary of the relevant portions shall be included in the APS report.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070, 411.116, & 443.767

411-020-0100 Community Investigation, Documentation, and Notification

(Amended 7/1/2010)

(1) Investigation is the process of determining whether abuse or neglect occurred. The investigation results in a finding as to whether the initial complaint is substantiated or unsubstantiated, or whether the results of the investigation are inconclusive.

(2) An investigation shall be completed and documented when a perpetrator is reported to have abused or neglected a victim.

(3) Investigations are to be objective, professional, and complete.

(4) In completing the investigation, the APS worker must:

(a) Identify the reported victim, the reported perpetrator, and any parties reported to have information relevant to proving or disproving the allegation;

(b) Conduct unannounced interviews with the parties described in section (a) above to gather all relevant available evidence. All interviews must be private unless the individual being interviewed requests the presence of someone else. Any individuals sitting in must be advised of the confidential nature of the investigation;

(c) Obtain and review any available and relevant documentary or physical evidence;

(d) Create additional investigatory aids, such as maps or drawings that may aid in proving or disproving the allegation;

(e) Maintain a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;

(f) Determine the facts of the case based on a fair and objective review of the available relevant evidence; and

(g) Conclude whether the preponderance (majority) of the evidence indicates whether the incident occurred and whether abuse or neglect is substantiated or unsubstantiated, or determine that the evidence is inconclusive.

(5) The local office must document the investigation in a timely manner and in a standard report format consistent with Division policy.

(a) Documentation of community assessments and investigations must include but not necessarily be limited to:

(A) A summary of the findings;

(B) Conclusions; and

(C) Any plans of action that are recommended or taken.

(b) Data in the report must include:

(A) Characteristics of the reported victim;

(B) Relationship of the reported victim to the complainant, witnesses, and reported perpetrator;

(C) Type of reported mistreatment or abuse;

(D) Conclusion; and

(E) Outcome.

(c) Reports must be written and closed on a Department-approved system, (e.g., Oregon ACCESS).

(6) When a community complaint investigation has been completed, the complainant, the reported victim, and the reported perpetrator may be informed (verbally, unless notification in writing is requested) that appropriate action is being taken, and that no abuse was found (unsubstantiated), abuse was found (substantiated), or the investigation was 'inconclusive'.

(7) The Department or the law enforcement agency may photograph, or cause to have photographed, any reported victim for the purposes of preserving evidence of the reported victim's condition observed at the time of the investigation. The photographs shall be considered records and subject to confidentiality rules.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.065 - 124.070, 124.080, 410.070, 411.116, 441.645 – 441.650, 441.660, 443.500, & 443.767

411-020-0110 Community Intervention

(Amended 7/1/2010)

(1) Intervention is the process by which APS assists the victim to reduce or remove the threat of harm that has placed the victim at risk.

(2) Intervention may include but is not necessarily limited to:

(a) Arranging for emergency services such as law enforcement, emergency medical care, etc. as needed;

(b) Providing education and counseling to the individual at risk and other parties as appropriate;

(c) Facilitating the delivery of additional available support services, including legal, medical, and other services, and helping to arrange for possible alternative living arrangements or alternate decision makers as needed; or

(d) Providing advocacy to assure the rights of the reported victim are protected.

(3) Intervention may happen one or more times during the assessment or investigation process, or as an end result of the assessment or investigation. The initial APS intervention is designed to be short-term crisis response. Longer term intervention may be made available through APS risk management or through non-APS case management.

(4) An individual who can make an informed choice may refuse assistance or intervention. In this case, the worker must provide the individual with appropriate resource information and a way to re-contact APS should a threat of harm recur or reach a level unacceptable to the individual.

(5) If the individual at risk is unable to make an informed choice due to a lack of capacity, appropriate intervention must include medical assessment to determine whether capacity may be improved or restored.

(6) If the individual at risk is unable to consent to assessment or treatment, consideration must be given to involuntary intervention, including as appropriate, guardianship, conservatorship, protective orders, or civil commitment. In all such cases the intervention initiated must be the least restrictive available, must respect the values of the individual at risk, and must be sought only when it has been determined that there is no surrogate decision maker in place, or that such individual is not acting responsibly in that role.

(7) If the individual lacks appropriate information, the worker must provide or arrange for the provision of all relevant information in a manner that is timely, accessible to the individual, and balanced, in order to support the individual's right to make an informed choice.

(8) When the assessment or investigation is complete, the case shall be either:

(a) Documented and referred to APS risk management for further monitoring and intervention if the situation meets the criteria in OAR 411-020-0130, or

(b) Closed and documented because:

(A) The situation is resolved or has been referred to appropriate services for resolution; or

(B) The individual at risk, having the ability to do so, decides not to have further adult protective services.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070, 411.116, & 443.767

411-020-0120 Facility Investigation, Documentation, and Notification
(Amended 7/1/2010)

- (1) Investigations shall be objective, professional, and complete.
- (2) In completing the investigation, the APS worker must:
 - (a) Identify the reported victim, the reported perpetrator, and any parties reported to have information relevant to proving or disproving the allegation;
 - (b) Conduct interviews with the parties described in section (a) above to gather all relevant available evidence. Interviews shall be unannounced whenever possible. All interviews must be private unless the individual being interviewed requests the presence of someone else. Any individuals sitting in must be advised of the confidential nature of the investigation;
 - (c) Obtain and review any available and relevant documentary or physical evidence;
 - (d) Create additional investigatory aids, such as maps or drawings that may aid in proving or disproving the allegation;
 - (e) Maintain a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;
 - (f) Determine the facts of the case based on a fair and objective review of the available relevant evidence; and
 - (g) Conclude whether the preponderance (majority) of the evidence indicates the incident occurred and whether wrongdoing was substantiated or unsubstantiated, or determine that the evidence is inconclusive. The determination as to whether substantiated wrongdoing meets the definitions of abuse shall be determined by the Division's Central Office.

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

(a) Notifying the Division's Client Care Monitoring Unit (CCMU) if:

(A) A situation exists in a nursing facility that meets criteria for CCMU to complete the investigation. Where CCMU shall conduct the investigation, the local office must provide coordination to assure victim safety; or

(B) A situation exists in a residential care facility or an assisted living facility that may cause CCMU to conduct a survey. This includes reports of facility-wide issues.

(b) Providing an opportunity for the complainant or a designee of the complainant, or both, to accompany the investigator to the site of the reported violation for the sole purpose of identifying individuals or objects relevant to the investigation;

(c) Conducting an unannounced site visit to the facility; and

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

(4) The local office must submit detailed investigation reports written on the Division's Facility Report Writing System to the Office of Licensing and Quality of Care in Central Office. The local office must refer these reports to the appropriate office within 60 days of the receipt of the complaint for a community based care facility and within 62 days for a nursing facility.

(a) Facility investigations must be written at the local office on the Division's Facility Report Writing System. Documentation of facility investigations must include for each allegation:

(A) A statement of the allegation;

(B) Summary of witness statements;

(C) Investigator observations, including documentary review;

(D) Findings of fact; and

(E) Conclusion.

(b) When wrongdoing is substantiated, findings in the investigation may be used to support civil or criminal sanctions against the perpetrator or care facility.

(c) The local office must retain hard copies of facility investigation reports for a period of 10 years after last activity.

(5) When a facility investigation has been completed, notification to the complainant and other appropriate parties must be done according to procedures as specified in the relevant facility licensing rules or policy.

(6) If the reported abuse is also the subject of a law enforcement report or criminal prosecution, copies of investigation reports must be forwarded to the law enforcement agency having jurisdiction.

(7) The Division may collect standardized statewide data on all types of adult protective services including but not limited to information on the number of cases, types of incidents, individual characteristics, and outcomes.

(8) The Department or the law enforcement agency may photograph, or cause to have photographed, any reported victim for the purposes of preserving evidence of the reported victim's condition observed at the time of the investigation. The photographs shall be considered records and subject to confidentiality rules.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.065 - 124.070, 124.080, 410.070, 411.116, 441.645 – 441.650, 441.660, 443.500, & 443.767

411-020-0123 Accessing Protected Health Information and Records
(Temporary Effective 6/1/2012 - 11/28/2012)

Protected health information from a health care provider may be obtained in the course of an APS investigation into alleged abuse as follows:

(1) COMMUNITY BASED. In a community setting where the reported victim is an older adult:

(a) CONSENT BY REPORTED VICTIM. APS may obtain a reported victim's protected health information for an APS investigation with that reported victim's consent.

(b) DECLINED CONSENT. If a reported victim is able to make an informed choice and declines to consent to APS obtaining protected health information, APS may not obtain the reported victim's protected health information.

(c) REPORTED VICTIM INCAPABLE OF CONSENT. If a reported victim does not have the ability to make an informed choice to consent to APS obtaining the reported victim's protected health information, and the reported victim does not have a fiduciary or legal representative that can consent to APS accessing the reported victim's protected health information, or when the fiduciary or legal representative is a reported perpetrator and refuses to consent to APS accessing the reported victim's protected health information, then the following procedure must be followed:

(A) APS must request the appropriate law enforcement agency to submit a written request for the health care provider to allow the law enforcement agency to inspect and copy, or otherwise obtain, the protected health information.

(B) APS shall inform the law enforcement agency that the written request must state that an investigation into abuse is being conducted under ORS 124.070 (elder abuse) or ORS 441.650 (nursing facility resident abuse).

(C) APS shall inform the law enforcement agency that the written request must notify the health care provider that they are required, per 45 CFR 164.512(c)(2), to promptly inform the individual to whom the medical record belongs that protected health information has been or shall be disclosed, unless:

(i) The health care provider, in the exercise of their professional judgment, believes that informing the

individual may place the individual at risk of serious harm;
or

(ii) The health care provider may be informing a personal representative of the individual and the health care provider reasonably believes that the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person may not be in the best interests of the individual as determined by the health care provider in the exercise of their professional judgment.

(2) LICENSED CARE FACILITY. In a licensed care facility where the reported victim is an older adult:

(a) HIPAA AUTHORIZATION FOR HEALTH CARE PROVIDERS. For an abuse investigation involving a resident of a licensed care facility, a health care provider is authorized to disclose to APS (as a health oversight agency), per 45 CFR 164.512(d), a reported victim's protected health information for purposes of oversight of that facility, including oversight through investigation of complaints of abuse of residents in such facility. APS shall inform the health care provider of their authority to disclose protected health information under HIPAA regulation 45 CFR 164.512(d) when requesting protected health information of a resident of a licensed care facility.

(b) HEALTH CARE PROVIDER REFUSAL TO DISCLOSE. If a health care provider refuses to release protected health information pursuant to the authority granted them under 45 CFR 164.512(d), APS may follow the procedure outlined under section (1)(c) of this rule.

(c) OBTAINING RESIDENT RECORDS MAINTAINED BY A LICENSED CARE FACILITY. Licensed care facilities must provide APS access to all resident and facility records, including protected health information, maintained by the facility as required by their respective Oregon Administrative Rules.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.050 – 124.095, 410.020, 410.040, 410.070,

411.116, 441.630 – 441.695, 443.450, 443.500, 443.767, & 2012 Or. Laws
Chapter 70

411-020-0126 Accessing Financial Records

(Temporary Effective 6/1/2012 - 11/28/2012)

(1) Financial records from a financial institution, including a bank or credit union, may be obtained in the course of an APS investigation into alleged abuse.

(2) **DEFAULT STANDARD.** APS may not request or receive from a financial institution financial records of customers unless one of the following exceptions applies and the corresponding procedures followed:

(a) **CUSTOMER AUTHORIZATION.** APS may request and receive from a financial institution financial records of a customer when the customer authorizes such disclosure. The authorization must:

(A) Be in writing, signed, and dated by the customer;

(B) Identify with particularity the records authorized to be disclosed;

(C) Name the Department or Area Agency on Aging to whom disclosure is authorized;

(D) Contain notice to the customer that the customer may revoke such authorization at any time in writing; and

(E) Inform the customer as to the reason for such request and disclosure.

(b) **FINANCIAL INSTITUTION INITIATES CONTACT.** Where a financial institution initiates contact with APS or a law enforcement agency regarding suspected financial exploitation, the financial institution may share financial records with APS or the law enforcement agency and is not otherwise precluded from communicating with and disclosing customer financial records to APS or the law enforcement agency.

(c) CUSTOMER INCAPABLE OF AUTHORIZING. If a financial institution has not initiated contact with APS or a law enforcement agency and: the reported victim does not have the ability to make an informed choice to consent to APS obtaining the reported victim's financial records; or a fiduciary or legal representative who is a reported perpetrator refuses to authorize disclosure; or the account is jointly held by a reported perpetrator as well as the reported victim and the reported perpetrator refuses to authorize disclosure, these procedures must be followed:

(A) APS shall work with the appropriate law enforcement agency to obtain a subpoena issued by a court or on behalf of a grand jury to request financial records of the reported victim's individually or jointly held accounts.

(B) APS shall:

(i) Confirm to the law enforcement agency that an investigation under ORS 124.070 (elder abuse, including older adult residents in a community based care facility) or under ORS 441.650 (abuse of a nursing facility resident) is open and that the individual about whom financial records are sought is the alleged victim in the abuse investigation.

(ii) Provide or work with the law enforcement agency to obtain the name and social security number of the individual about whom financial records are sought.

(C) A bank or credit union may request reimbursement for the production of records under this process, pursuant to ORS 192.602. If local law enforcement, the district attorney's office, or the local APS office are unable to reimburse a financial institution upon that financial institution's request for reimbursement, the financial institution may refuse to disclose requested financial records.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.050 – 124.095, 192.586, 192.600, 192.602,

410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, 443.767, & 2012 Or. Laws Chapter 70

411-020-0130 APS Risk Management

(Amended 7/1/2010)

(1) APS risk management is the process by which APS continues to provide active reassessment and intervention to a reported victim once the initial assessment or investigation phase has been completed.

(2) Referral to APS risk management is appropriate when:

(a) Assessment indicates that the reported victim continues to be vulnerable and at serious risk of harm;

(b) Continued reassessment and intervention may reduce the risk of harm; and

(c) There is no other source of case management available to the reported victim.

(3) APS risk management includes:

(a) The development and implementation of an individualized plan to reduce the risk of harm to the reported victim;

(b) Regular active contact with the reported victim to reassess the risk of harm and the effectiveness of interventions; and

(c) Documentation of assessments and interventions.

(4) APS risk management continues until assessment demonstrates that the level of harm has been reduced to an acceptable level. Approval by supervisor or designee must be required to continue an APS risk management case beyond one year.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070, 411.116, & 443.767