OREGON DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
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 12/27/2018)

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

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

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

(a) Receiving reports of abuse or self-neglect;

(b) Providing and documenting risk assessment of alleged victims;

(c) Conducting and documenting investigations of alleged abuse and self-neglect;

(d) Providing appropriate resources for victim safety; and

(e) Collection of statewide data of Adult Protective Services.

(4) AVAILABILITY. Adult Protective Services are available from the Department to any adult resident of a licensed care facility, to nursing

facility residents regardless of age, and to any adult residing in the community who meets the eligibility criteria in OAR 411-020-0015.

(5) INTERVENTION MODEL.

(a) As a human services agency, the Department embraces a social model of intervention with a primary focus on offering safety and protection to the alleged 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 right to self-determination.

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

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

Stat. Auth.: ORS 124.055, 124.065, 124.070, 179.040, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.435, 443.450, 443.500, 443.765, 443.767

411-020-0002 Definitions
(Amended 12/27/2018)

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 020:

(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 these rules, 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.

(A) For the purposes of these rules, neglect means the active or passive failure to provide the basic care or services necessary to maintain the health and safety of an adult, when that failure:

(i) Results in physical harm, significant emotional harm, unreasonable discomfort, or serious loss of personal dignity to the adult; or

(ii) Creates the risk of serious harm to the adult.

(B) The expectation for care may exist because 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 or services.

(C) An adult, who in good faith, is voluntarily under treatment solely by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination

shall, for this reason alone, not be considered subjected to abuse by reason of neglect as defined in these rules.

(c) ABANDONMENT. Abandonment includes 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 using:

(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 these rules:

(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 reasonably believes the threat conveyed maybe carried out;

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

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

(E) The taking, borrowing, or accepting of assets, funds, property, or medications from an adult residing in a facility by an employee of the facility, unless the adult and employee are related and the action described in this paragraph does not constitute a wrongful taking as described in (A).

(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) Verbal or physical harassment of a sexual nature, including, but not limited to severe, threatening, pervasive, or inappropriate exposure of an adult to sexually explicit material or language;

(C) Sexual exploitation of an adult;

(D) Any sexual contact between an employee of a facility and an adult residing in the facility unless the two are spouses or domestic partners;

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

(F) 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 their 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 evaluates the behavior and develops 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 the specified areas poses 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 before implementing a licensed physician’s prescription for restraint;

(ii) Less restrictive alternatives have not been evaluated before 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) "Administrative Closure" means an abuse or self-neglect investigation was initiated and closed with no determination as to whether abuse or self-neglect occurred or not.

(3) "Adult" means an individual who is 18 years of age or older.

(4) "Aging and People with Disabilities (APD)" means the Aging and People with Disabilities program within the Department of Human Services.

(5) Alleged Perpetrator (AP)" means the licensee, employees, volunteers, or contracted personnel of the facility, or any adult reported to have committed abuse.

(6) "Alleged Victim (AV)" means the individual against whom abuse or self-neglect is reported to have been committed.

(7) "Adult Protective Services (APS)" means APD program services to respond to abuse and self-neglect of older adults and adults with physical disabilities as described in these rules, including screening, triage or consultation, on-site assessment, investigation, intervention, documentation, and APS risk management.

(8) "APS Risk Management" means the process by which Adult Protective Services staff provide short-term, active assessment and intervention with an alleged victim who is at serious risk of harm, or continues to be at serious risk of harm, after an investigation is complete.

(9) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of service to individuals in a planning and service area.

(10) "Authority" means the Oregon Health Authority.

(11) "Basic Care" means care essential to maintain the health and safety needs of an adult, but is not limited to, assistance with medication administration, medical needs, nutrition, supervision for safety, as well as activities of daily living including assistance with bathing, dressing, hygiene, eating, mobility, and toileting.

(12) "Community-Based Care Facility" means an assisted living facility, residential care facility, or adult foster home.

(13) "Conclusion" means a determination of whether abuse or self-neglect occurred.

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

(15) "Department" means the Department of Human Services (DHS).

(16) "Evidence" means material gathered, examined, or produced during an APS investigation. Evidence includes, but is not limited to, witness statements, documentation, photographs, audio or video recordings, and relevant physical evidence.

(17) "Financial Institution" has the meaning given in ORS 192.583.

(18) "Financial Records" has the meaning given in ORS 192.583.

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

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

(21) "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.

(22) "Inconclusive" means that after a careful analysis of the evidence gathered in an investigation, a determination of whether abuse or self-neglect occurred cannot be reached by a preponderance of the evidence.

(23) "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, be able to reasonably choose from among those options, and communicate that choice.

(24) "Investigation" means the process of determining whether abuse or self-neglect occurred. The investigation results in a conclusion as to whether the alleged abuse or self-neglect is substantiated, unsubstantiated, inconclusive, or administratively closed.

(25) "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.

(26) "Licensed Care Facility" means a facility licensed by, APD including assisted living facilities, residential care facilities, and adult foster homes. For these rules "licensed care facility" does not include nursing facilities.

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

(28) "Mandatory Abuse Reporter" for the purpose of these rules, means any public or private official who is required by state abuse statutes to report alleged abuse. The public or private officials who are mandatory reporters are:

(a) Physicians, psychiatrists, naturopathic physicians, osteopathic physicians, chiropractors, podiatric physicians, physician assistants, or surgeons, including any interns or residents;

(b) Licensed practical nurses, registered nurses, nurse practitioners, nurse's aides, home health aides, or employees of an in-home health service;

(c) Employees of DHS, community developmental disabilities programs, or Area Agencies on Aging;

(d) Employees of the Oregon Health Authority, county health departments, or community mental health programs;

(e) Employees of a nursing facility or an individual who contracts to provide services to a nursing facility;

(f) Peace officers;

(g) Members of the Clergy;

(h) Regulated social workers, licensed professional counselors, or licensed marriage and family therapists;

(i) Physical, speech, or occupational therapists, audiologists, or speech language pathologists;

(j) Senior center employees;

(k) Information and referral or outreach workers;

(l) Firefighter or emergency medical services providers;

(m) Psychologists;

(n) Licensees of an adult foster home or an employee of the licensee;

(o) Attorneys;

(p) Dentists;

(q) Optometrists;

(r) Members of the Legislative Assembly;

(s) Personal support workers;

(t) Home care workers;

(u) Referral Agents as defined in OAR 411-058-0000(12); and

(v) For nursing facilities, all of the above, plus legal counsel, guardians, or family members of the resident.

(29) "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 AAA offices, community mental health and developmental disability programs, plus advocates for older adults and individuals with disabilities, and individuals specially trained in abuse.

(30) "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.

(31) "Older Adult" means any individual 65 years of age or older.

(32) "Physical Disability" means any physical condition or cognitive condition such as brain injury or dementia that significantly interferes with an adult's ability to protect themselves from abuse or self-neglect.

(33) "Preponderance of the Evidence" means the majority of the evidence collected during an investigation supports a particular conclusion.

(34) "Protected Health Information" has the meaning given in ORS 192.556.

(35) "Protective Services" means a service provided by the Department, directly or through type B AAAs, in response to the need to protect elderly persons and persons with physical disabilities from harm or neglect.

(36) "Regulated Providers" means service providers regulated through licensing, certification, registration, contracts, provider enrollment agreements, and other means over which the Department and Authority have administrative authority and responsibility.

(37) "Reporter" means the individual or entity who reports alleged abuse or self-neglect to the Department or a law enforcement agency.

(38) "Required Reporter" means the individual or entity who is required by the Department's or the Authority's administrative rules, contracts, or policy to report alleged abuse or self-neglect to the Department. "Required reporter" is also used when other agencies or entities internally require their own abuse reporting to the Department.

(39) "Restraint" means:

(a) Physical restraints are any manual method or physical or mechanical device, material, or equipment attached to or adjacent to the individual's body that the individual cannot remove easily, which restricts freedom of movement or normal access of the individual to the individual's body. Any manual method includes physically restraining someone by manually holding someone in place.

(b) Chemical restraints are any substance or drug used for the purpose of discipline or convenience that has the effect of restricting the individual's freedom of movement or behavior and is not used to treat the individual's medical or psychiatric condition.

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

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

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

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

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

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

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

(47) "Undue Influence" means the process by which an individual uses their 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.

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

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 125.005, 192.583, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.435, 443.450, 443.500, 443.765, 443.767, Oregon Laws 2013 Chapter 352

411-020-0010 Authority and Responsibility
(Amended 12/27/2018)

The Department is granted with the statutory authority and responsibility for the delivery and administration of programs and services relating to older adults and adults with physical disabilities, including adult protective

services. These rules detail the components of the Adult Protective Services process. Specific authorizing statutes include:

(1) GENERAL ADULT PROTECTIVE SERVICES.

(a) ORS 409.010, authorizing Adult Protective Services for older adults and adults with disabilities.

(b) ORS 410.020, authorizing the protection of older adults and adults with disabilities from physical and mental abuse and from fraudulent practices.

(c) ORS 410.040, defining Adult Protective Services as a service to be provided by the Department directly or through type B area agencies, in response to the need for protection from harm or neglect to older adults and adults with disabilities.

(d) ORS 410.070, authorizing the Department to serve as an advocate for older adults and adults with disabilities by conducting investigations concerning matters affecting the health, safety, and welfare of older adults and adults with disabilities, and to adopt rules for providing Adult Protective Services.

(2) ADULT FOSTER HOMES.

(a) ORS 443.767 requires the Department 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 may result in injury, abuse, or neglect of a resident and may place the resident's health or safety in imminent danger.

(b) OAR 411-050-0665 details the steps for filing, investigating, and documenting complaints in Adult Foster Homes.

(3) RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES.

(a) ORS 443.435 allows the Department 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) 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 alleged abuse or self-neglect of older adults.

(5) ADULTS WHO RECEIVE MEDICAID SERVICES.

(a) Section 1915(c) of the Social Security Act, Home and Community-Based Services (HCBS) Waiver (see Waiver Survey, Appendix Item G-1-a) mandates the Department to take reports of and investigate critical incidents (e.g., abuse, neglect, and exploitation) that reportedly occur to Medicaid recipients, and develop strategies to reduce or prevent future incidents.

(b) ORS 124.070, 409.010, 410.020, 410.040, 410.070, and 443.767 provide the Department with authority to designate Adult Protective Services as under these rules.

(c) OAR 411-065-0000 to 411-065-0050 details APD contracted services for recipients of Medicaid services.

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 179.040, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116

411-020-0015 Eligibility Criteria
(Amended 12/27/2018)

(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) Any adult living in n APD licensed care facility.

(d) Older adults and adults with physical disabilities who receive services from regulated providers and are not eligible for abuse investigation by another Department or Authority program.

(2) Eligibility for Adult Protective Services is not dependent upon income or source of income.

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

411-020-0020 Reporting of Abuse and Self-Neglect
(Amended 12/27/2018)

(1) For the purpose of these rules, mandatory abuse reporters are those "public and private officials" listed in ORS 124.50. Mandatory reporters must immediately report instances of alleged elder abuse to the Department, local office, or a local law enforcement agency.

(a) A mandatory reporter must report if they come into contact with, and have reasonable cause to believe, that an older adult in any setting has suffered abuse or neglect.

(b) Definitions of abuse or neglect for mandatory reporting are defined in ORS 124.050 to 124.095.

(c) Anyone making a mandatory report of abuse with reasonable grounds and good faith shall have immunity from any civil or criminal liability. The same immunity applies to participating in any judicial proceeding resulting from the report.

(d) Exceptions to mandatory reporting. A psychiatrist, psychologist, attorney, or member of the clergy does not have to report privileged information covered under ORS 40.225 to 40.295. An attorney is not required to make a report of information communicated to the attorney in the course of representing a client if disclosure of the information would be detrimental to the client.

(2) Some individuals are also required under, law, Department's administrative rules, contracts, or policy to report abuse. These required reporters must report instances of alleged abuse of older adults and persons with physical disabilities to the Department or local office. Required abuse reporting includes, but is not limited to:

(a) An individual who works, volunteers or is contracted personnel in an Assisted Living or Residential Care Facility under OAR 411-054-0028(2)(a)(b) and have reasonable cause to suspect abuse has occurred to a resident in those community-based settings.

(b) Many DHS and OHA contractors have requirements in their contracts to report abuse.

(c) Oregon law mandates that stock brokers, financial advisors, and other professionals regulated by the Department of Consumer Business Services (DCBS) shall report financial abuse to DCBS. DCBS then shall notify the Department or local office. Once notified by DCBS, the local APS office shall inform DCBS of the screening outcome.

(3) Reporting of instances involving abuse or self-neglect of older adults and adults with physical disabilities is highly encouraged for non-mandatory reporters.

(4) The identity of the individual reporting the alleged abuse shall be confidential and may be disclosed only with the consent of that individual, by judicial process, or exceptions in law, e.g., a law enforcement agency.

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.116, 443.435, 443.450, 443.500, 443.765

411-020-0025 Multidisciplinary Team (MDT)
(Amended 12/27/2018)

(1) Where a county district attorney or delegated designee has developed a multidisciplinary team (MDT), the local office must participate 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 these rules.

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

(3) Upon request, the local office must annually provide the MDT with the number of substantiated allegations of abuse of adults investigated by APS and the number of APS cases referred to law enforcement according to reporting procedures developed by the MDT.

Stat. Auth.: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, Oregon Laws 2009 chapter 837, section 8, Oregon Laws 2013 Chapter 352, Section 10

411-020-0030 Confidentiality
(Amended 12/27/2018)

(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 critical to protect the privacy of individuals, to encourage the reporting of abuse and self-neglect, and to facilitate obtaining information.

(2) All information involving investigations that do not involve allegations against regulated providers is confidential, except for disclosure of the conclusion under OAR 411-020-0100(7), and may be disclosed only by judicial process, as required by specific exceptions under state and federal law, or with the consent of the victim. No names may be released without the consent of the individual named except as provided in section (5) of this rule.

(3) If an investigation involves a regulated provider, the following provisions apply:

(a) Information and records regarding the report of alleged abuse and subsequent findings may be made available internally to the appropriate regulating authority upon request or by operational procedures.

(b) Redacted copies of investigations involving regulated providers may also be made available to the provider and alleged perpetrator when the investigation is the basis for regulatory action or when providing the information to the provider is necessary for safety or protective purposes.

(c) Redacted copies of investigations involving APD-licensed facilities may be made available to the general public upon request or by operational procedures.

(d) Any disclosures of APS information and reports involving regulated providers must comply with applicable State and Federal confidentiality and privacy laws.

(4) The Department shall make the APS report and underlying investigatory materials available to the protection and advocacy system designated by ORS 192.517, e.g. Disability Rights Oregon, when the alleged victim is an individual with a disability or mental illness as identified by ORS 192.517.

(5) Where the law and the Department deem appropriate, for the purpose of furthering a protective service, when it is necessary to prevent or treat abuse, or when deemed to be in the best interest of an alleged victim, the names of the alleged victim, witnesses (other than the reporter except as

expressly permitted below), any investigative report, and any records compiled during an investigation, may be made available to:

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

(b) An agency that licenses or certifies a facility where the alleged 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 alleged 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 Federal Offices of Inspector General.

(f) An MDT as described in OAR 411-020-0025.

(g) A court, pursuant to court order, to which the name of the complainant may also be made available as required by the court order.

(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.

(i) The Oregon Public Guardian as required by ORS chapter 125.

(j) A court or petitioning attorney pursuant to ORS 125.012 (guardians and conservators).

(6) The Department shall limit the use and disclosure of APS reports and information to that which is reasonably necessary to accomplish the intended purpose of the disclosure.

(7) 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 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767, 45 CFR 164.512(j)
Stats. Implemented: ORS 124.020,124.050 - 124.095, 125.012, 125.683, 192.355, 192.517, 409.010, 410.020, 410.040, 410.070, 410.150, 411.060, 411.116, 443.769, Oregon Laws 2013 Chapter 352, 45 CFR 164.512(j)

411-020-0040 Services Provided
(Amended 12/27/2018)

(1) Local offices must follow procedural guidelines consistent with Department 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 Department 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.

(4) Deviations from these rules may be warranted to protect the safety of any party or as otherwise allowed by policy. The reasons for these deviations must be reviewed with a supervisor or designee and properly documented in the investigative record.

(5) 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. This does not include the right to prevent an investigation from occurring.

(6) The local office must retain records that document the APS functions for a period of 15 years after last activity.

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116

411-020-0060 Screening
(Amended 12/27/2018)

(1) All calls or contacts involving the possibility of abuse or self-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 reported concern meets the definition of abuse or self-neglect.

(3) All complaints regarding a person receiving services in a Nursing Facility must be referred immediately to the APD Nursing Facility Survey Unit (NFSU) for screening, triage, and Facility investigation. NFSU will refer any concerns regarding external parties (e.g. family members) back to APS for screening and potential investigation under Community APS rules.

(4) If the reported concern meets the definition of abuse or self-neglect, screening activities may include, but are not limited to:

(a) Gathering information about the alleged 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 reported concern.

(d) Gathering information from collateral sources.

(5) If the reported concern does not meet the definition of abuse or self-neglect, but requires intervention, response shall include referral to other resources, including case management, licensing, APS risk management, or other services as appropriate.

(6) If the reported concern does not meet the definition of abuse or self-neglect or require intervention, but may be addressed by specialized information or assistance, a referral to APS consultation may be appropriate.

(7) If the reported abuse involves an individual who is currently:

(a) Receiving APD case management or eligibility services, the assigned APD worker must be notified.

(b) An adult foster home resident, the local licensor must be notified.

(c) Receiving services from a regulated provider, the appropriate regulating authority must be notified.

(d) Receiving services from an APD contracted provider, then the appropriate Central APD unit must be notified.

(e) A minor with Child Welfare involvement or an individual up to age 21 receiving services from a Child Caring Agency, then Child Welfare must be notified.

(8) The local office must give the reporter of abuse enough information to re-contact the office to determine the disposition of the report, e.g. contact information and intake number for the report.

(9) Each local office must establish an afterhours reporting system.

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.116, 443.767

411-020-0070 APS Consultation

(Amended 12/27/2018)

(1) APS 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) APS consultation, as an alternative to assessment or investigation, is only appropriate when the reported concern does not meet eligibility criteria for abuse or self-neglect.

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

Stat. Auth.: ORS 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.116, 443.767

411-020-0080 Triage
(Amended 12/27/2018)

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

(2) The local office 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 reported abuse and the rules and laws related to the category of reported abuse.

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

(a) COMMUNITY CASES.

(A) IMMEDIATELY FOR EMERGENCY SITUATIONS: Immediately contact 911 when the evidence presented suggests an emergency situation exists, such as the following:

(i) A human life is in jeopardy.

(ii) The individual is in the process of being harmed due to criminal activity.

(iii) A medical emergency.

(iv) A fire.

(v) There is a clear and present danger of harm to self or others.

(B) BY THE END OF THE SAME WORKING DAY: Initiate an investigation by the end of the same working day when the alleged victim has been identified as being in imminent danger.

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

(D) WITHIN FIVE WORKING DAYS: Initiate an investigation within five working days when screening determines the situation is problematic, one that is chronic or ongoing, or is a situation where an immediate response is unlikely to change the alleged victim's risk level.

(b) ASSISTED LIVING, RESIDENTIAL CARE, AND ADULT FOSTER HOME CASES.

(A) IMMEDIATELY FOR EMERGENCY SITUATIONS: Immediately contact 911 when the evidence presented suggests an emergency situation exists, such as the following:

(i) A human life is in jeopardy.

(ii) The individual is in the process of being harmed due to criminal activity.

(iii) A medical emergency.

(iv) A fire.

(v) There is a clear and present danger of harm to self or others.

(B) BY THE END OF THE SAME WORKING DAY: Initiate an investigation by the end of the same working day when the alleged victim has been identified as being in imminent danger.

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

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.500, 443.767

411-020-0085 Law Enforcement Notification
(Amended 12/27/2018)

(1) The Department or local office shall immediately notify law enforcement if any of the following conditions exist:

(a) Reasonable cause to believe a crime has been committed;

(b) Access to the allegedly 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) Those required under OAR 411-020-0123 or 411-020-0126.

(2) The Department or local office shall proceed collaboratively with law enforcement in a way that does not further endanger the alleged victim.

Any law enforcement officer accompanying the investigator must be identified as such to any party being interviewed.

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

(4) When the local office notifies a law enforcement agency of suspected crime committed against an alleged victim, the local office shall retain any record of the law enforcement agency's confirmation of receipt of notification.

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.060, 410.070, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.060, 410.070, 411.116, 443.500, 443.767

411-020-0090 Assessment
(Amended 12/27/2018)

(1) Assessment is the process by which the APS worker determines the alleged victim's degree of risk, level of functioning, adequacy of information, and ability to protect their own interests. Assessment additionally determines the alleged victim's ability to reduce the risk of harm in their 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 self-neglect.

(2) Assessment in APS cases shall be conducted in person with the alleged victim, usually in the alleged victim's home or the facility where the alleged 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, and other relevant individuals, in keeping with Department confidentiality guidelines.

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

(4) If there is evidence the alleged 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 alleged 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 assessment, APS involvement shall be continued for investigation where there is an alleged perpetrator, or shall proceed directly to intervention where self-neglect is established.

(6) Results of the APS assessment of the alleged victim shall be recorded in the Centralized Abuse Management (CAM) system.

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

411-020-0100 Community Investigation, Documentation, and Notification
(Amended 12/27/2018)

(1) Community investigations shall be objective, professional, and thorough.

(2) A community abuse investigation shall be conducted and documented when the alleged perpetrator is reported to have abused:

(a) An older adult or adult with a physical disability residing in a non-facility setting.

(b) An adult residing in an APD licensed facility setting when the alleged perpetrator is not employed by, volunteers for, or is contracted personnel with the facility.

(c) An adult with Medicaid services who receives services from a regulated provider.

(3) A community self-neglect investigation shall be conducted and documented when an adult eligible for Adult Protective Services is reported to be unable to understand the consequences of their actions or inaction, and that inability leads to, or may lead to, harm or endangerment to themselves. Assessment is a key element of self-neglect investigations.

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

(a) Identify the alleged victim, any alleged perpetrators, and any other parties reported to have information relevant to proving or disproving the allegations.

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

(c) Interview the alleged victim and any alleged perpetrators unannounced and in-person, unless a deviation under OAR 411-020-0040(4) is required for the safety of any party, an in-person interview is unable to be obtained, or at the request of law enforcement. Key witnesses should be interviewed in person.

(d) Obtain and review all available documentary or physical evidence relevant to reaching a finding, including any information establishing the severity of the incident under investigation.

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

(f) Gather and include evidence relevant to determining the conduct of any alleged perpetrators and the severity of the risk or outcome to the alleged victim.

(g) Create additional investigatory aids, such as maps or drawings that may aid in proving or disproving the allegations.

(h) Maintain a record of interviews and evidentiary review, in notes, recordings, records, photographs, scanned documents, or other appropriate means.

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

(j) Conclude whether the preponderance of the evidence indicates whether abuse or self-neglect is substantiated or unsubstantiated, that the evidence is inconclusive, or that the investigation will be closed administratively without a determination.

(5) Investigations must be documented and closed in the Centralized Abuse Management (CAM) system.

(6) The local office must complete community investigations on or before 120 days from date of screening decision (unless delayed by a concurrent criminal investigation or otherwise by policy) and prepare a final report that includes, but is not limited to, the following information:

(a) The dates, locations, and description of the initial reported abuse.

(b) The date that the investigation was commenced and completed, and by whom.

(c) Characteristics of the alleged victim including identified language, race, and ethnicity.

(d) Relationship of the alleged victim to the reporter, witnesses, and any alleged perpetrators.

(e) A statement of the specific allegations investigated.

(f) The statements of all parties interviewed regarding the allegations.

(g) A description of the documents and records reviewed during the investigation, summarizing their content to the extent necessary to

explain their relevance to the investigation and support the findings of fact.

(h) A summary of any direct observations by the investigator that are relevant to the investigation and its findings.

(i) A statement of the factual basis for any findings and a summary of the findings made as a result of the investigation, including attributions to witness statements, documents, or observations that support each finding of fact.

(j) A conclusion.

(k) A summary of protective services offered to the alleged victim, with outcomes, if known.

(l) A summary of referrals to other agencies or authorities resulting from the investigation, with outcomes, if known.

(m) Reasons for any deviations from required timelines or standard practices.

(7) When a community complaint investigation has been completed, the reporter, the alleged victim, and the alleged perpetrators may be informed (verbally, unless notification in writing is requested) that:

(a) There was an allegation of abuse or self-neglect and the type of abuse or self-neglect being investigated.

(b) Appropriate action is being taken.

(c) The outcome of the investigation as one of the following:

(A) No abuse or self-neglect was found (unsubstantiated).

(B) Abuse or self-neglect was found (substantiated).

(C) The investigation was 'inconclusive'.

(D) The investigation was closed without a determination of whether abuse or self-neglect occurred (Administrative Closure).

(8) When the community investigation is closed, the local office must retain case records for a period of 15 years after last activity. Final community APS records are maintained and distributed by the local office, as appropriate.

(9) The Department must collect statewide data on all aspects of Adult Protective Services as specified by Department policy and procedure. As reasonably requested, the local offices shall provide data not otherwise available through centralized Department data systems.

Stat. Auth.: ORS 124.055, 124.065, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.500, 443.767

411-020-0105 Community Abuse Investigations Review and Due Process
(Adopted 12/16/2024)

(1) As used in this rule, “community abuse investigation” means the process of determining whether abuse or self-neglect occurred to an alleged victim:

(a) Who resides in a non-facility setting;

(b) Who resides in a non-licensed care facility;

(c) Who resides in a licensed care facility when the alleged perpetrator is not employed by, volunteers for, or is contracted with the facility; or

(d) Who receives Medicaid funded services from a regulated provider.

(2) CENTRAL APS REVIEW OF COMMUNITY ABUSE INVESTIGATIONS WITH SUBSTANTIATED CONCLUSIONS.

(a) Central APS is responsible for reviewing and approving substantiated allegations in APS Community abuse investigations, not including self-neglect. These reviews must be approved before an investigation is considered completed.

(b) Central APS is notified in the Centralized Abuse Management (CAM) system whenever a local office has completed work on an APS Community abuse investigation that has one or more substantiated allegations against an alleged perpetrator.

(c) Central APS shall review the investigation and associated documents in the Centralized Abuse Management (CAM) system, consulting with local office staff as needed, to ensure that the substantiation is based on a complete and thorough investigation and is supported by a preponderance of the available, documented evidence.

(d) Central APS may issue amendment requests to local offices to request clarification, additional investigative work or other changes to the investigation, documentation, or conclusion. In instances of disagreement with a local office, Central APS may change investigative conclusions as needed, but will not revise information entered by the local office or perform any additional investigative work.

(e) When Central APS confirms a substantiation under these rules, it shall issue a Notice of Substantiated Abuse (NOSA) to the alleged perpetrator in accordance with these rules.

(3) PROVIDING NOTICE OF AN APS SUBSTANTIATED CONCLUSION.

(a) Central APS must deliver a NOSA to the person identified as the alleged perpetrator in the substantiated conclusion in Community abuse investigations in one of the following ways:

(A) By certified mail, restricted delivery, with a return receipt requested to the last known address of the alleged perpetrator; or

(B) By hand delivery to the alleged perpetrator. If hand delivered, the notice must be addressed to the alleged perpetrator and a copy of the notice must be signed and dated by the alleged perpetrator to acknowledge receipt, signed by the person delivering the notice, and filed in the APS case file.

(b) A NOSA is not required if safety concerns have been identified, and providing the notice would substantially increase the risk of harm, or would place the adult victim's health or safety in imminent danger. This exception may only be made with approval from the APS Program Administrator or designee based on documentation of risk.

(c) The delivery of the NOSA must be documented in the Centralized Abuse Management (CAM) system. A copy of the original NOSA delivered to the alleged perpetrator must be saved in the Centralized Abuse Management (CAM) system. The documentation must include:

(A) Who made the notification;

(B) To whom the notification was made; and

(C) The date the notification was made.

(d) If an alleged perpetrator believes they are entitled, under these rules to a NOSA, but has not received one, the alleged perpetrator may contact Central APS.

(e) The NOSA includes the following:

(A) The investigation number for the APS Community abuse investigation that resulted in the substantiated conclusion.

(B) The name of the alleged perpetrator who has been identified as responsible for the abuse as it is recorded in the case record.

(C) A statement that the APS conclusion was recorded as "substantiated" including a description of the type of abuse identified.

(D) A brief description of how the APS substantiated conclusion was determined.

(E) A statement about the right of the alleged perpetrator to submit a request for review of the substantiated conclusion.

(F) Instructions for making a request for review, including the requirement that the alleged perpetrator provide a full explanation of why they believe the substantiated conclusion is in error.

(G) A statement that the alleged perpetrator waives the right to request review if the request is not received by the Central APS within 30 calendar days the NOSA was mailed.

(4) MAKING A REQUEST FOR AN ADMINISTRATIVE REVIEW OF AN APS SUBSTANTIATED CONCLUSION.

(a) An alleged perpetrator substantiated for abuse in an APS Community abuse investigation may submit a written request for Central APS administrative review using information contained in their NOSA.

(b) The request for administrative review must be received by Central APS within 30 calendar days of the mailing or hand delivery of the NOSA and must include the following information:

(A) Date of the request for review;

(B) Investigation number;

(C) Full name of the alleged perpetrator;

(D) A full explanation of why the alleged perpetrator disagrees with the substantiated conclusion;

(E) Any additional relevant information and materials the alleged perpetrator wants considered during the review;

(F) The alleged perpetrator's current address and telephone number; and

(G) The alleged perpetrator's signature.

(5) CENTRAL APS ADMINISTRATIVE REVIEW OF SUBSTANTIATED CONCLUSIONS IN COMMUNITY ABUSE INVESTIGATIONS.

(a) When a timely request for review is received, Central APS must conduct an administrative review and issue a final order to the alleged perpetrator.

(b) The Central APS administrative review must consider the following:

(A) All relevant information and materials contained in the APS Community abuse investigation case file, including the APS Community abuse investigation report and conclusion, screening information, all relevant associated documents, and any new information provided by the alleged perpetrator;

(B) Whether there is a preponderance of evidence to conclude the alleged abuse occurred;

(C) Whether there is a preponderance of evidence to conclude the alleged perpetrator is responsible for the abuse; and

(D) Whether there is a preponderance of evidence to conclude the type of abuse for which the APS Community abuse investigation was substantiated is correctly identified.

(c) Upon completion of the administrative review, Central APS will make recommendations as follows:

(A) Retain the substantiated conclusion;

(B) Change the conclusion to "not substantiated" or "inconclusive"; or

(C) Change the type of abuse for which the APS Community abuse investigation was substantiated.

(d) At the conclusion of the review, Central APS must make their recommendations known to the APS Program Manager or designee.

(e) The APS Program Manager or designee must:

(A) Ask questions as needed for clarification;

(B) Consider the recommendations and the basis for the recommendations; and

(C) Make one of the following decisions:

(i) Retain the substantiated conclusion;

(ii) Change the conclusion to “not substantiated” or “inconclusive”; or

(iii) Change the type of abuse for which the APS Community abuse investigation was substantiated.

(f) The decision and the basis for the decision following the administrative review must be documented in a final order.

(6) NOTICE OF CENTRAL APS ADMINISTRATIVE REVIEW DECISION IN APS COMMUNITY ABUSE INVESTIGATIONS.

(a) The APS Program Manager or designee must prepare a written final order following the administrative review.

(b) The final order must include the following:

(A) Whether there is a preponderance of evidence to conclude that abuse occurred;

(B) Whether there is a preponderance of evidence to conclude the alleged perpetrator was responsible for the abuse;

(C) If the APS substantiated conclusion is changed, whether it will be changed to "inconclusive" or to "not substantiated";

(D) If the conclusion is determined to be “inconclusive” or “not substantiated”, notice of the change will be documented in the Centralized Abuse Management system; and

(E) A summary of the information and reasoning upon which the decisions were based.

(c) Central APS must place the request for administrative review and a copy of the final order following review in the case file and amend the electronic file to appropriately reflect the results of the review.

(d) Central APS must send the final order by certified mail, restricted delivery, with a return receipt requested, to the alleged perpetrator.

(7) LATE ADMINISTRATIVE REVIEW REQUESTS FOR APS COMMUNITY ABUSE INVESTIGATIONS.

(a) Unless other applicable statutes or agency rules provide a different standard, Central APS may accept a late administrative review request if there is good cause for the failure to request the review in a timely manner. “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake, surprise, excusable neglect, reasonable reliance on the statement of a party or agency relating to procedural requirements, from fraud, misrepresentation, or other misconduct of a party or agency participating in the proceeding.

(b) In determining whether to accept a late administrative review request, Central APS may require the request to be supported by an affidavit or other writing that explains why the request for review is late and may conduct such further inquiry as it deems appropriate.

Stat. Auth.: ORS 124.055, 124.065, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 – 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.500, 443.767

411-020-0110 Intervention
(Amended 12/27/2018)

(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 limited to:

(a) Arranging for emergency services, such as law enforcement and emergency medical care 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.

(d) Providing advocacy to assure the rights of the alleged 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 a short-term crisis response. Longer term interventions 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 shall provide the individual with appropriate resource information and a way to re-contact APS if a threat of harm recurs or reaches a level unacceptable to the individual.

(5) If the individual lacks appropriate information to make an informed choice, the worker must provide or arrange for the provision of 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.

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

(7) If the individual at risk is unable to consent to assessment or treatment, consideration may be given to involuntary intervention, including, as appropriate, guardianship, conservatorship, protective orders, or civil commitment. In all such cases, the intervention initiated must be:

(a) The least restrictive available;

(b) Respectful of the values of the individual at risk; and

(c) 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.

Stat. Auth.: ORS 124.055, 124.065, 124.070, 125.012, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 125.012, 409.010, 410.020, 410.040, 410.070, 411.116, 443.767

411-020-0120 Facility Investigation, Documentation, and Notification
(Amended 12/27/2018)

(1) Facility investigations shall be objective, professional, and complete.

(2) A facility investigation shall be conducted and documented when a resident of a facility licensed by APD is reported to have been abused by a licensee, staff member, contractor or volunteer of the facility.

(3) Facility investigations may also occur when a facility resident is reported to have been abused by an alleged perpetrator not employed, contracted or supervised by the facility, to determine whether the licensee or facility staff failed to protect the resident.

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

(a) Identify the alleged victim, the alleged perpetrators, 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 in person and unannounced whenever possible. All interviews must be private unless the individual being interviewed requests the presence of someone else. Any individuals listening to the interview must be advised of the confidential nature of the investigation.

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

(d) Gather and include evidence relevant to determining the conduct of the alleged perpetrators and severity of the risk or outcome to the alleged victim.

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

(f) Create additional investigatory aids, such as maps or drawings, that may aid in proving or disproving the allegations.

(g) Maintain a record of interviews and evidentiary review, in notes, recordings, photographs, scanned documents, or other appropriate means.

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

(i) Conclude whether the preponderance (majority) of the evidence indicates that abuse was substantiated or unsubstantiated, that the evidence is inconclusive, or that the investigation should be closed administratively without a determination.

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

(a) Notifying the Department's Office of Safety, Oversight and Quality (SOQ) if a situation exists in a licensed care facility that may cause SOQ to conduct a survey or provide an immediate regulatory response. This includes reports of facility-wide issues.

(b) Providing an opportunity for the reporter, a designee of the reporter, 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.

(d) Confirming that immediate protection for facility residents is in place. The worker must obtain and document a safety plan from the provider to correct any problem immediately, and communicate with SOQ as needed.

(6) Investigations must be documented and closed in the Centralized Abuse Management (CAM) system.

(7) The local office must complete the facility investigation within the timelines determined by the Department and relevant statute (unless delayed by a concurrent criminal investigation or otherwise by policy) and prepare a preliminary report that includes, but is not limited to, the following information:

(a) The dates, locations, and a description of the initial reported abuse.

(b) The date that the investigation was commenced and completed, and by whom.

(c) Characteristics of the alleged victim including identified language, race, and ethnicity.

(d) Relationship of the alleged victim to the reporter, witnesses, and alleged perpetrators.

(e) A statement of the specific allegations investigated.

(f) The statements of all parties interviewed regarding the allegation.

(g) A description of documents and records reviewed during the investigation, summarizing their content to the extent necessary to explain their relevance to the investigation, and support the findings of fact.

(h) A summary of any direct observations by the investigator that are relevant to the investigation and its findings.

(i) A statement of the factual basis for any findings and a summary of the findings made as a result of the investigation, including attributions to witness statements, documents, or observations that support each finding of fact.

(j) A conclusion.

(k) A summary of actions taken by the licensee or provider to ensure the safety of the victim and other residents of the facility.

(l) A summary of protective services offered to the alleged victim, with outcomes, if known.

(m) A summary of referrals to other agencies or authorities resulting from the investigation, with outcomes, if known.

(n) Reasons for any deviations from required timelines or standard practices.

(8) When the preliminary facility investigation is closed, the local office shall distribute a copy of substantiated reports to the facility for their information and safety planning. The local office must retain facility investigation records for a period of 15 years after last activity.

(9) Upon receipt of the preliminary report from the local office, SOQ will review and finalize the report. Final facility reports are maintained and distributed by APD central office. When abuse is substantiated, findings

may be used to support civil or criminal sanctions against the perpetrators or the care facility.

(10) The Department must collect statewide data on all aspects of Adult Protective Services as specified by Department policy and procedure. As reasonably requested, the local offices shall provide data not otherwise available through centralized Department data systems.

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.090, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.500, 443.767

411-020-0121 Administrative Closure
(Adopted 12/27/2018)

(1) Administrative closure is a mechanism by which a DHS supervisor or designee may close an assigned investigation without the investigation reaching a conclusion as to if abuse or self-neglect occurred.

(2) Administrative closure is applicable only for specific administrative purposes when it is not feasible to reach an evidentiary conclusion. It is not intended to replace "inconclusive" or "unsubstantiated" findings, which are evidence-based conclusions. As appropriate, protective services of assessment and intervention must be provided.

(3) To qualify for administrative closure, an investigation must be completed to the extent necessary to determine that one or more of the following situations exist:

(a) The basis for assigning and conducting the investigation is discovered to be invalid, because:

(A) The alleged victim does not meet eligibility criteria under these rules.

(B) Additional information is discovered that clearly indicates the report of abuse or self-neglect does not meet criteria for an abuse investigation.

(C) The alleged perpetrator is deceased or a minor.

(D) The reported abuse or self-neglect would clearly lead to a repeat investigation. To qualify, the situation must be the same abuse type, substantially the same allegations and involve the same alleged victim and perpetrators as a currently open or a previous investigation. A new assessment of the alleged victim must also indicate that there has been no significant change in the alleged victim's capacity or risk level since the previous investigation.

(b) Unable to determine because:

(A) Necessary material evidence exceeds the Department's scope of services and its expertise and authority to reasonably investigate the allegation, including, but not limited to:

(i) Complex legal matters customarily requiring an attorney.

(ii) Court findings.

(iii) Commercial business deals.

(iv) Professional standards and performance.

(v) Medical malpractice.

(vi) The Federal Government or the Oregon Legislature has authorized other entities to respond to the reported concerns, including, but not limited to:

(I) Investigative agencies (e.g. Oregon Department of Justice, Federal Bureau of Investigations, and Inspector General's Offices);

(II) Licensing bodies (e.g. Medical Board, State Bar, and the Construction Contractors Board); and

(III) The legal system (e.g. attorneys and courts).

(B) Substantial or essential material witnesses and evidence are verified to be unavailable to such an extent that an evidence-based conclusion may not be reached.

(C) Verifiable safety concerns relating to deviations under OAR 411-020-0040(4) extensively prevent adequate gathering of necessary material evidence to determine an evidence-based conclusion.

(D) The investigation has been open more than one year and is not being acted upon or there is no pending action by the Department. The local and central offices must both determine that the investigation may not reasonably proceed to an evidenced-based conclusion.

(4) Before closing an investigation administratively, the following conditions must be met:

(a) A recent assessment of the alleged victim was completed and, as appropriate, protective services provided.

(b) Reasonable diligence was applied to compete the investigation to the extent circumstances allowed or were warranted.

(c) As appropriate, subject matter experts were consulted, including, but not limited to law enforcement, domestic violence service providers, health providers, or attorneys representing the alleged victim.

(d) If there is a reasonable cause to believe a crime has been committed, law enforcement was notified.

(e) As appropriate, referrals were made to other investigation and regulatory entities and advocacy resources.

(5) Administrative closure shall be documented in the Centralized Abuse Management (CAM) system including, but not limited to the following information:

(a) Documentation of interview statements and evidence gathered.

(b) Explanation of any deviations from these rules and the reasonable diligence taken to comply with rules.

(c) Justification for the administrative closure with supporting evidence and consultation.

(d) Identification of protective services provided to the alleged victim and referrals made to others in response to the situation.

(e) Identification of the supervisors who approved the administrative closure, and date of approval.

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.500, 443.767

411-020-0123 Accessing Protected Health Information, including Records
(Amended 12/27/2018)

Protected health information from a health care provider may be obtained during an APS investigation either from a mandatory reporter performing that reporter’s duties required by Oregon statute or as follows:

(1) DISCLOSURE BY HEALTH CARE PROVIDER. A health care provider may disclose, in accordance with 45 CFR 164.512(j), protected health information to APS to prevent or lessen a serious and imminent threat to the health or safety of a person or the public if the health care provider, in good faith, believes the disclosure is necessary to prevent or lessen the threat. APS may request protected health information during a self-neglect or abuse investigation under this provision to prevent or lessen a serious and imminent threat.

(2) COMMUNITY ABUSE INVESTIGATION. During an APS investigation into abuse in a community-based setting where the process under section (1) of this rule does not apply or is declined by the health care provider:

(a) CONSENT BY ALLEGED VICTIM. APS may obtain an alleged victim’s protected health information for an APS investigation with the alleged victim’s consent.

(b) DECLINED CONSENT. If an alleged victim can make an informed choice and declines to consent to APS obtaining protected health information, APS may not obtain the alleged victim's protected health information beyond the information a mandatory reporter is required to disclose.

(c) ALLEGED VICTIM INCAPABLE OF CONSENT. If an alleged victim is an older adult and does not have the ability to make an informed choice to consent to APS obtaining the alleged victim’s protected health information, and the alleged victim does not have a fiduciary or legal representative that consents to APS accessing the alleged victim’s protected health information, or when the fiduciary or legal representative is an alleged perpetrator and refuses to consent to APS accessing the alleged victim’s protected health information, then the following procedure must be followed in order for APS to obtain the protected health information:

(A) APS must request that the appropriate law enforcement agency submit a written request to 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).

(3) HEALTH CARE PROVIDER NOTICE. In investigations where APS is seeking disclosure of protected health information by a health care provider under sections (1) or (2) of this rule, APS shall inform the health care provider, either directly or through the law enforcement agency requesting the information, that the health care provider is required, in accordance with 45 CFR 164.512(c)(2), to promptly inform the individual to whom the protected health information pertains that information has been or shall be disclosed, unless:

(a) 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

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

(4) LICENSED CARE FACILITY INVESTIGATIONS. During an APS investigation into abuse in a licensed care facility:

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

(b) DISCLOSURE BY HEALTH CARE PROVIDER. A health care provider, such as a hospital, a medical office, or a provider other than a licensed care facility, may disclose, in accordance with 45 CFR 164.512(d), an alleged victim’s protected health information to APS as a health oversight agency for purposes of oversight of that facility, including oversight through investigation of reports of abuse of

residents in such facility. APS shall inform the health care provider of its authority as a health oversight agency and that such disclosures are permitted in accordance with 45 CFR 164.512(d).

(c) HEALTH CARE PROVIDER REFUSAL TO DISCLOSE. If a health care provider refuses to disclose protected health information to APS as a health oversight agency, APS may follow the procedure set forth in section (2)(c) of this rule if the alleged victim is an older adult.

Stat. Auth.: ORS 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767, 45 CFR 164.512(j)
Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.116, 443.450, 443.500, 443.767, Oregon Laws 2012 Chapter 70, 45 CFR 164.512(j)

411-020-0126 Accessing Financial Records
(Amended 12/27/2018)

(1) Financial records may be obtained from a financial institution during an APS investigation into alleged abuse.

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

(a) CUSTOMER AUTHORIZATION. APS may request and receive financial records from a financial institution when the customer authorizes such disclosure in accordance with ORS 192.593. The authorization must:

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

(B) Identify with detail 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.

(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 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 alleged victim does not have the ability to make an informed choice to consent to APS obtaining the alleged victim's financial records, a fiduciary or legal representative who is an alleged perpetrator refuses to authorize disclosure, or the account is jointly held by an alleged perpetrator as well as the alleged victim and the alleged perpetrator refuses to authorize disclosure of the alleged victim's financial records, 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 alleged victim.

(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 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 financial institution, before making disclosures pursuant to a subpoena described in this section, may require reimbursement to produce records, in accordance with ORS 192.602.

Stat. Auth.: ORS 59.480 - 59.505, 124.055, 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 192.583, 192.586, 192.593, 192.597, 192.600, 192.602, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.500, 443.767, Oregon Laws 2012 Chapter 70

411-020-0130 APS Risk Management
(Amended 12/27/2018)

(1) APS risk management is the process by which APS provides short-term active assessment and intervention to an alleged victim.

(2) Referral to APS risk management is appropriate:

(a) After the abuse and self-neglect investigation is completed.

(b) When the alleged victim would benefit from protective services, but the situation does not meet criteria for an investigation and all of the following apply:

(A) Assessment indicates the alleged victim is at risk of serious harm.

(B) The alleged victim is eligible for Adult Protective Services under OAR 411-020-0015.

(C) Continued protective services may reduce the risk of harm.

(D) There is no other source of case management or protective services available to the alleged victim.

(c) When otherwise directed by APD or AAA executive management to respond to reported serious harm of a vulnerable adult.

(3) APS risk management includes:

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

(b) Regular active contact with the alleged 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:

(a) The level of harm has been reduced to an acceptable level; or

(b) APS involvement no longer benefits the alleged victim.

(5) Approval by a supervisor or designee must be required to continue an APS risk management case beyond one year.

Stat. Auth.: ORS 124.065, 124.070, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.050 - 124.095, 409.010, 410.020, 410.040, 410.070, 411.060, 411.116, 443.767