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**RULES:**

407-045-0120, 407-045-0130, 407-045-0140, 407-045-0150, 407-045-0160, 407-045-0170, 407-045-0180, 407-045-0190, 407-045-0200, 407-045-0210, 407-045-0220, 407-045-0230, 407-045-0240, 407-045-0250, 407-045-0260, 407-045-0280, 407-045-0285, 407-045-0291, 407-045-0295, 407-045-0298, 407-045-0300, 407-045-0320, 407-045-0325, 407-045-0330, 407-045-0360, 407-045-0370, 407-045-0405, 407-045-0415, 407-045-0425, 407-045-0435, 407-045-0445, 407-045-0455, 407-045-0465, 407-045-0475, 407-045-0485, 407-045-0495, 407-045-0605, 407-045-0615, 407-045-0645, 407-045-1000, 407-045-1010, 407-045-1020, 407-045-1030, 407-045-1040, 407-045-1050, 407-045-1060, 407-045-1070, 407-045-1080, 407-045-1090, 407-045-1100, 407-045-1110

RENUMBER: 407-045-0120 to 419-110-0000

RULE TITLE: Adult Mental Health Abuse Rules: Purpose and Scope

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

**RULE TEXT:**

(1) Effective 07/01/2019, these rules, OAR 407-045-0120 to 407-045-0240, prescribe the standards and procedures for the investigation of reported abuse, and the assessment for and provision of protective services for adults:

- (a) With a severe and persistent mental illness while in mental health treatment from a community program; or
- (b) While receiving services for mental illness in a facility.

(2) The Department's Office of Training, Investigations and Safety (OTIS) has the duties, functions and powers of training, coordinating, assisting, directing and approving the services provided by the community mental health programs (CMHP) related to these rules. OTIS is responsible to ensure investigations are conducted in a uniform, objective and thorough manner.

(3) For the purpose of carrying out these rules, OAR 407-045-0120 to 407-045-0240, community mental health programs are Department designees as used in ORS 430.731 and 430.735 through 430.765.

(4) OTIS or CMHP shall receive all reports of alleged abuse, assess the need for protective services and conduct thorough and unbiased investigations to make findings as required by ORS 430.735 to 430.768 and these rules.

(5) These rules ensure affording safety and protection assessments to adults with mental illness upon receipt of a complaint of abuse, while balancing the duty of the Department and community mental health program designees to

investigate alleged abuses within services. Therefore investigations of alleged abuse are limited to incidents involving:

(a) Residents receiving services at facilities; or

(b) Adults with severe and persistent mental illness while receiving mental health treatment from a community program and the accused is either:

(A) A mental health treatment service provider; or

(B) A caregiver for the adult.

(6) Minors, who are persons under the age of 18 years old and not considered emancipated, may not be named as an accused person (AP) in an abuse investigation conducted under these rules, OAR 407-045-0120 to 407-045-0240.

(7) Complaints of alleged abuse of adults while a patient at the Oregon State Hospital shall be reported to OTIS for possible action under OAR 407-045-0405 to 407-045-0495.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 409.010, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 409.027, 413.036, 430.610 to 430.695, 430.735 to 430.765, 430.768, 443.400 to 443.465, 443.705 – 443.825, 443.875

RENUMBER: 407-045-0130 to 419-110-0010

RULE TITLE: Adult Mental Health Abuse Rules: Definitions and Acronyms

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

In addition to the definitions in ORS 430.735, the following terms are defined as used in OAR 407-045-0120 to 407-045-0240.

- (1) "Abuse" means as defined in ORS 430.735.
- (2) "Abuse Investigation and Protective Services Report" means a written report completed under these rules (OAR 407-045-0120 to 407-045-0240).
- (3) "Adult" as defined in ORS 430.735 and used in OAR 407-045-0120 to 407-045-0240 means an individual who is 18 years of age or older:
  - (a) With a severe and persistent mental illness and is receiving mental health treatment from a community program; or
  - (b) Who is receiving services for a mental illness in a facility; and
  - (c) Is the reported or alleged victim of abuse.
- (4) "Adult protective services" as defined in ORS 430.735 means the necessary actions taken to prevent abuse or exploitation of an adult, to prevent self-destructive acts, and to safeguard the adult's person, property, or funds, including petitioning for a protective order as defined in ORS 125.005. Any actions taken to protect an adult shall be undertaken in a manner that is least intrusive to the adult and provides for the greatest degree of independence.
- (5) "Accused Person" or "Accused Provider" (AP formerly known as "Alleged Perpetrator") means a person, caregiver, facility or service provider who is the respondent in an abuse investigation under these rules, alleged or determined to have committed abuse of an adult.
- (6) "Authority" means the Oregon Health Authority (OHA).
- (7) "Caregiver" as defined in ORS 430.735 means an individual, whether paid or unpaid, or a facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.
- (8) "Closed without abuse determination" means after diligent efforts have been made, the investigator is unable to locate the AP, the alleged victim or another individual who might have information critical to the outcome of the investigation; or relevant records or documents are unavailable, so that the investigation cannot be completed.
- (9) "Community program" as defined in ORS 430.735 includes:
  - (a) A community mental health program (CMHP) or a community developmental disabilities program (CDDP) as established in ORS 430.610 to 430.695.
  - (b) A provider that is paid directly or indirectly by the Oregon Health Authority to provide mental health treatment in the community.
- (10) "Designee" means the community mental health or developmental disabilities program. A community mental health program is considered a designee of the Department for the purposes of these rules and ORS 430.731 to 430.765.
- (11) "Department" means the Oregon Department of Human Services (ODHS).
- (12) "Exception for religious practice" as described in ORS 430.765 means an 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 under ORS 430.735 to 430.765.
- (13) "Facility" as defined in ORS 430.735 means a residential treatment home or facility, residential care facility, adult foster home, residential training home or facility or crisis respite facility.
- (14) "Good cause" for an extension means:
  - (a) When law enforcement is conducting an investigation or in process of prosecution;
  - (b) A material party or witness is temporarily unavailable; or
  - (c) New evidence is discovered that leads to additional alleged abuses being investigated (allegations).
- (15) "Intimidation" as defined in ORS 430.735 means compelling or deterring conduct by threat.

(16) "Investigator" means an OTIS employee or community mental health program designee who is authorized and receives OTIS approved training to screen complaints of abuse, assess protective services and investigate alleged abuse (allegations) under these rules.

(17) "Law enforcement agency" (LEA) as defined in ORS 430.735 means:

- (a) Any city or municipal police department;
- (b) A police department established by a university under ORS 352.121 or 353.125;
- (c) Any county sheriff's office;
- (d) The Oregon State Police; or
- (e) Any district attorney

(18) "Not substantiated" means there is less than a preponderance of evidence to show that abuse occurred.

(19) "OTIS" means the Department's Office of Training, Investigations and Safety, formerly known as "OAAPI" (Office of Adult Abuse Prevention and Investigations).

(20) "Provider" means a person or entity:

- (a) Licensed by the Department or Authority to provide residential services for mental illness in a facility; or
- (b) Certified by or contracted with the Authority to provide mental health treatment services.

(21) "Redacted" means information deemed confidential under state or federal laws that are excluded from public record release.

(22) "Self-defense" as defined on ORS 430.768 and used in OAR 407-045-0200, means the use of physical force upon another person in self-defense or to defend a third person.

(23) "Services" as defined in ORS 430.735 includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult.

(24) "Severe and persistent mental illness" or "SPMI" (also known as serious and persistent mental illness) means the current Diagnostic Statistical Manual of Mental Disorders diagnostic criteria for:

(a) At least one of the following conditions as a primary diagnosis for an adult age 18 or older:

- (A) Schizophrenia and other psychotic disorders;
- (B) Major depressive disorder;
- (C) Bipolar disorder;
- (D) Anxiety disorders, limited to Obsessive Compulsive Disorder (OCD) and Post Traumatic Stress Disorder (PTSD);
- (E) Schizotypal personality disorder; or
- (F) Borderline personality disorder.

(b) For purpose of mandatory abuse reporting of an adult with SPMI and ORS 430.765, the adult with SPMI shall also have a serious functional impairment that currently substantially interferes with or limits their ability to protect themselves from abuse as documented by their health record or other credible evidence. These additional requirements do not apply to other chapters of the Oregon Administrative Rules that address persons with SPMI in Chapters 410 and 309.

(25) "State Hospital" as described in ORS 426.010 means the Oregon State Hospital campuses in Salem and in Junction City for persons with mental illness for care and treatment.

(26) "Substantiated" means that the preponderance of evidence establishes the abuse occurred.

(27) "Unbiased investigation" means an investigation that is conducted by an investigator that does not have an actual or potential conflict of interest with the outcome.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, ORS 409.027, 413.036, 430.610 to 430.695, 430.735 to 430.765, 430.768, 443.400 to 443.465, 443.705 – 443.825, 443.875

RENUMBER: 407-045-0140 to 419-110-0020

RULE TITLE: Adult Mental Health Abuse Rules: Training for Individuals Investigating Reports of Alleged Abuse

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) OTIS shall provide sufficient and timely training and consultation to ensure that the investigator is able to conduct a thorough and unbiased investigation and make a determination about the alleged abuse.

(a) Training shall include initial and continuing education to address initial action on complaints, screening and conducting abuse investigations.

(b) The training and quarterly meetings shall address the cultural and social diversity of Oregon, focus on the vulnerable populations served and those who provide services, and include trauma-informed practices.

(2) Each CMHP shall designate at least one employee to conduct abuse investigations. CMHP shall require the designated employee to participate in training, quarterly meetings and to demonstrate an understanding of investigative core competencies. Core competencies in the areas of:

(a) Interviewing;

(b) Gathering relevant information through records and site visits;

(c) Weighing the evidence; and

(d) Making abuse determinations

(3) OTIS employees conducting investigations under OAR 407-045-0120 to 407-045-0240 are also required to participate in the training and quarterly meetings provided investigators and demonstrate an understanding of investigative core competencies. Core competencies in the areas of:

(a) Interviewing;

(b) Gathering relevant information through records and site visits;

(c) Weighing the evidence; and

(d) Making abuse determinations.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 443.875, 430.731, 409.027, 413.036, 430.610 to 430.695, 430.735 to 430.765, 430.768, 443.400 to 443.465, 443.705 – 443.825

RENUMBER: 407-045-0150 to 419-110-0030

RULE TITLE: Adult Mental Health Abuse Rules: Initial Action on Complaints of Alleged Abuse

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) OTIS or CMHP receiving a complaint alleging abuse shall document the reported information required by ORS 430.743 and any additional information reported. OTIS or CMHP shall attempt to elicit the following information from the reporter:

- (a) The name, age and present location of the allegedly abused adult;
- (b) The names and addresses of the persons, programs or facilities responsible for the adult's care;
- (c) The nature and extent of the alleged abuse, including any evidence of previous abuse;
- (d) Any information that led the reporter to suspect abuse occurred;
- (e) Any other information that the reporter believes might be helpful in establishing the cause of the abuse and the identity of the AP; and
- (f) The date of the incident.

(2) If there is reason to believe a crime has been committed, the investigator shall immediately within one business day notify the law enforcement agency having jurisdiction within the county where the report was made.

(a) The investigator shall follow-up with law enforcement if it was reported a police report was filed to ensure the suspected crime or alleged abuse was reported; and

(b) Obtain copies of any law enforcement reports.

(3) The investigator shall notify the appropriate medical examiner in cases when there is reasonable cause to believe that an adult has died as a result of abuse.

(4) If OTIS receives the initial complaint, OTIS shall gather the information as detailed in section (1) and within one business day begin to:

(a) Screen the complaint for possible OTIS investigation if it involves a state hospital, state-operated residential treatment facility or state-operated residential training home; or

(b) Transfer the information to the local CMHP or CDDP for screening, assessment of protective services and investigation if required.

(5) Upon receipt of a complaint of alleged abuse, the investigator shall immediately, within one business day, begin to:

(a) Screen the complaint to determine whether an abuse investigation is required per 407-045-0160;

(b) Determine whether the alleged victim sustained any serious injury, and

(c) Assess the need for protective services per OAR 407-045-0170.

(6) Upon receipt of a complaint of alleged abuse, the investigator shall notify:

(a) The case manager of the agency providing primary case management services to the adult; and

(b) The guardian of the adult (if applicable).

(c) Unless the notification would undermine the integrity of the investigation because the guardian or case manager is suspected of committing abuse.

(7) OTIS and CMHP shall maintain all complaints of alleged abuse in a confidential location.

(8) Each CMHP shall establish an after-hours reporting system.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, ORS 409.027, 413.036, 430.610 to 430.695, 430.735 to 430.765, 430.768, 443.400 to 443.465, 443.705 – 443.825, 443.875

RENUMBER: 407-045-0160 to 419-110-0040

RULE TITLE: Adult Mental Health Abuse Rules: Screening Activities and Initial Notices

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) Screening is the process used by an investigator to gather and assess information in order to determine the responses and whether the complaint meets the definition of abuse and there is reasonable cause to believe the abuse of an adult requires investigation as stated in these rules, OAR 407-045-0120 to 407-045-0240.
- (a) The investigator shall document screening activities completed and the information supporting the decision to either assign an abuse investigation or close the complaint at screening.
- (b) The investigator shall assure initial notifications, referrals and required cross-reporting are completed.
- (c) OTIS or CMHP shall have a protocol to track the outcome of every screening to ensure completion.
- (2) The CMHP may request OTIS screen a complaint of alleged abuse for instances where there is a potential conflict of interest, as an investigation may need to be conducted under OAR 407-045-0190(1)(a).
- (a) Requests shall be made to an OTIS coordinator or OTIS manager, and
- (b) Be in writing in the format provided by OTIS.
- (3) OTIS shall screen all complaints of alleged abuse for possible abuse investigation involving adults receiving services in a state hospital, or state-operated residential facility licensed under ORS 443.400.
- (a) Upon screening, OTIS may determine a CMHP designee shall conduct the investigation per OAR 407-045-0230.
- (b) OTIS shall notify the adult's CMHP of screening determinations per this rule or OAR 407-045-0230.
- (4) A screening determination shall be made by the end of the third business day after receiving the alleged abuse complaint except as provided in subsection (b).
- (a) The investigator shall consult with an OTIS coordinator or OTIS manager if a screening decision is not made after three business days.
- (b) An OTIS coordinator or OTIS manager may grant a screening extension if law enforcement has been contacted for a criminal investigation of the alleged abuse incident. The investigator shall document:
- (A) The name of the law enforcement agency, assigned case number and crime being investigated;
- (B) The plan for follow-up contacts with the law enforcement agency; and
- (C) The approval of an OTIS coordinator or OTIS manager.
- (5) When a law enforcement agency is conducting a criminal investigation of the alleged abuse:
- (a) OTIS or CMHP need not conduct its own investigation of the same incident.
- (b) OTIS or CMHP may also perform its own investigation as long as it does not interfere with the law enforcement agency investigation. Circumstances that indicate a need for OTIS or CMHP to conduct their own investigation:
- (A) There is potential for action by a licensing or certifying agency;
- (B) Timely investigation by law enforcement is not probable; or
- (C) The law enforcement agency does not complete a criminal investigation.
- (c) When a law enforcement agency is conducting an investigation of the alleged abuse and a screening extension has been granted by OTIS, the investigator shall communicate and cooperate with the law enforcement agency. The investigator shall ensure regular and timely follow-up with the law enforcement agency related to:
- (A) The status of the criminal investigation,
- (B) Explanation for no criminal investigation or suspension of a criminal investigation, and
- (C) Any actions taken by the district attorney.
- (6) If after screening, it is determined the complaint meets the criteria for an investigation per OAR 407-045-0160(1), an investigator will be assigned and promptly begin an investigation.
- (a) The CMHP will immediately, within one business day, notify OTIS in the format provided.
- (b) OTIS shall notify the CMHP of investigations conducted per OAR 407-045-0160(2) or 407-045-0230.
- (c) OTIS shall notify the ODHS office for licensing a facility or certification of service providers when named as the AP in

an investigation under these rules.

(d) OTIS shall notify the Authority's Health Systems Division (HSD) of all investigations opened under these rules.

(7) The notifications described in (6) shall provide the case number, identify the investigator and provide information regarding how the assigned investigator may be contacted.

(8) The OTIS investigator shall also notify relevant ODHS/OHA Human Resources or HSD units of complaints of abuse received and opened for investigation involving APs who are employees of state-operated residential facilities;

(9) Within three business days of a screening decision, the investigator shall:

(a) Provide the screening decision to (if applicable):

(A) The primary case management entity;

(B) The guardian; and

(C) The involved facility or community program.

(b) If a complaint of alleged abuse has been assigned for investigation, the screening decision shall provide the case number, identify the investigator and provide information regarding how the assigned investigator may be contacted.

(c) The notification to the guardian or case manager may be delayed if the notification would undermine the integrity of the investigation because the guardian or case manager is suspected of committing abuse.

(10) The investigator shall document how and when notifications were provided and maintain a record of all notices.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, ORS 409.027, 413.036, 430.610 to 430.695, 430.735 to 430.765, 430.768, 443.400 to 443.465, 443.705 – 443.825, 443.875



RENUMBER: 407-045-0170 to 419-110-0050

RULE TITLE: Adult Mental Health Abuse Rules: Assessment for and Provision of Protective Services to the Adult

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) The investigator shall ensure that appropriate and necessary adult protective services are offered to prevent further abuse. Any protective services provided shall be undertaken in a manner that is least intrusive to the adult and provide for the greatest degree of independence available within existing resources.

(2) An attempt at initial contact with the adult by the end of the next business day of receiving the complaint of alleged abuse shall occur as part of assessing adult protective service needs, determining if the adult is in danger or in need of immediate protective services.

(a) Initial contact as it relates to this section:

(A) Shall be conducted using the least intrusive communication methods available; and

(B) May be conducted by an investigator or the adult's community program case manager.

(b) The investigator may confer with the case management entity prior to completing the initial contact with the adult.

(c) The OTIS investigator shall confer with Authority staff on protective services for adults who are alleged victims receiving treatment, care and services from a state hospital or state-operated residential facility.

(d) If the investigator or case manager is unable to gain access to the adult, the investigator or case manager may contact the local law enforcement agency for assistance.

(e) If the adult has a guardian, the investigator or case manager shall immediately notify the guardian, unless the guardian is the AP per OAR 407-045-0150(6)(c).

(3) The assessment for the provision of adult protective services may include:

(a) Arranging for the immediate protection of the adult;

(b) In-person contact with the adult to assess their ability to protect their own interest or give informed consent;

(c) Determining the adult's ability to understand the nature of the protective service and their willingness to accept services;

(d) Coordinating evaluations to determine or verify the adult's physical and mental status, if necessary;

(e) Assisting in and arranging for appropriate services and alternative living arrangements;

(f) Assisting in or arranging the medical, legal, financial, or other necessary services to prevent further abuse;

(g) Providing advocacy to assure the adult's rights and entitlements are protected; and

(h) Consulting with the facility, community program, guardian or others as appropriate in developing recommendations and a determination of whether protective services are needed to prevent further abuse.

(4) The investigator and case manager may share confidential information appropriate or necessary for the health, safety and best interests of the adult in need of protection, prior to the completion of the abuse investigation and protective services report if the information is necessary for the provision of protective services.

(5) The investigator shall document the protective services assessment and provisions, including those needed, offered and declined, in the format provided by OTIS to be maintained as part of the complaint record. The assessment is considered confidential client information.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 413.085, ORS 430.731, 409.010

STATUTES/OTHER IMPLEMENTED: ORS 430.731, ORS 409.027, 413.036, 430.610 to 430.695, 430.735 to 430.765, 430.768, 443.400 to 443.465, 443.705 – 443.825, 443.875

RENUMBER: 407-045-0180 to 419-110-0060

RULE TITLE: Adult Mental Health Abuse Rules: Death Reporting

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) If the investigator reported a death to the medical examiner in cases where there was reasonable cause to believe that an adult has died as a result of abuse, an abuse investigation shall be immediately opened. Notifications shall occur in the same manner as all allegations of alleged abuse, outlined in OAR 407-045-0160.
- (2) CMHP shall notify OTIS of all the deaths of adults with SPMI receiving mental health treatment from a community program or services for mental illness in a facility within one business day of being informed of the adult's death.
- (3) CMHP shall report the death to OTIS via the format developed for death reporting. Upon receipt of the death reporting notice, OTIS shall assign a distinct case number for this special screening review and notify OHA HSD.
- (4) The investigator shall complete a death review screening report using the OTIS provided format within 55 calendar days of receiving the report of the adult's death.
- (5) The death review consists of ascertaining if abuse was a factor in the adult's death. This includes but is not limited to:
  - (a) A review of the adult's CMHP records for at least the past year;
  - (b) A review of service provider records for the adult if mental health treatment services were provided by a community program contractor;
  - (c) A review of facility records if the adult received licensed residential services;
  - (d) Any other relevant records, including but not limited to the police reports; and
  - (e) Any relevant information provided by individuals contacted related to the death review.
- (6) The investigator shall obtain the official cause and manner of death, such as a copy of the adult's death certificate or medical examiners report.
- (7) The investigator may obtain an extension of the due date for good cause by submitting a request in writing to OTIS.
- (8) Within 5 calendar days of receiving a completed death review, OTIS shall review and approve for closing. OTIS shall provide OHA HSD with a copy of the report.
- (9) If at any point the investigator ascertains during the death review that abuse was a factor, OTIS is to be notified immediately and the death review screening shall become an assigned abuse investigation. Notification shall occur in the same manner as OAR 407-045-0160.
- (10) Nothing in this section affects the community program's duties and responsibilities related to case management following the death of an enrolled adult.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, ORS 409.027, 413.036, 430.610 to 430.695, 430.735 to 430.765, 430.768, 443.400 to 443.465, 443.705 – 443.825, 443.875

RENUMBER: 407-045-0190 to 419-110-0070

RULE TITLE: Adult Mental Health Abuse Rules: Investigation of Alleged Abuse

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) Investigation of alleged abuse shall be thorough and unbiased.

(a) CMHP may not investigate allegations of abuse made against employees of the same CMHP.

(b) Investigations of CMHP staff shall be conducted by OTIS or another CMHP not subject to an actual or potential conflict of interest.

(2) In conducting an abuse investigation, the investigator shall attempt and, when possible, complete the following:

(a) Make in-person contact with the adult;

(b) Interview the adult, witnesses, the AP and other individuals who may have knowledge of the facts of the alleged abuse or related circumstances.

(A) Interviews shall be conducted in-person where practicable.

(B) For any person who needs an accommodation for the interview, such as language translation or other reasonable accommodation, the investigator shall note the information in the investigation report.

(C) The investigator shall ask the date of birth for each individual interviewed and shall obtain the date of birth of any AP.

(D) The investigator shall ask the AP if they are a Department or Authority employee or volunteer and document the response as part of the investigation interview information. If affirmed, the investigator shall give the AP the ODHS/OHA form letter that outlines their required obligation to notify ODHS/OHA Human Resources.

(E) The investigator shall document any relevant investigative interviews that did not occur, efforts made and the reason for no interview.

(F) The investigator shall make at least three attempts to contact the AP for an investigative interview when no response to an interview request occurs. At least one attempt shall be made by phone to the last known number and one by mail to the last known address.

(c) Review all records or evidence relevant and material to the complaint; and

(d) Photograph the adult's injuries consistent with trained guidelines, or arrange for the adult to be photographed, to preserve evidence of the condition of the alleged victim at the time of investigation, unless the adult knowingly refuses to be photographed.

(3) The investigator may enter a facility and inspect and copy records of a facility or community program if necessary for the completion of the investigation. A community program or facility shall provide the investigator access to employees, the adult and the premises for investigation purposes.

(a) Any relevant record used in an investigative interview shall be noted in the respective witness statement; and

(b) The relevant record shall be included as supporting document in the submitted investigation report.

(4) OTIS approval to close any abuse investigation opened under these rules, OAR 407-045-0120 to 407-045-0240, by the CMHP is required.

(5) Any variance from the investigative processes in this rule shall be staffed and approved by OTIS. The reason for the variance and the name of the OTIS coordinator or OTIS manager who approved the variance shall be documented clearly in the investigative report.

(6) If the investigator believes an allegation meets the conditions to be considered closed without an abuse determination, then OTIS approval to close shall be obtained.

(a) Investigative efforts and information obtained as described in (2) of this section shall be documented in the written report submitted for Department approval to close.

(b) The investigator is responsible for informing persons or entities who were notified of the opened investigation per OAR 407-045-0160, the allegation has been approved to close without an abuse determination.

(c) If the investigator informed the AP of the investigation being opened, then the investigator shall inform the AP the

allegation has been closed without an abuse determination.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, ORS 409.027, 413.036, 430.610 to 430.695, 430.735 to 430.765, 430.768, 443.400 to 443.465, 443.705 – 443.825, 443.875

RENUMBER: 407-045-0200 to 419-110-0080

RULE TITLE: Adult Mental Health Abuse Rules: Abuse Investigation Report

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) The investigator is required to follow the abuse investigation and protective services assessment report formats provided by OTIS.
- (2) Within 55 calendar days of receiving the complaint alleging abuse, a completed abuse investigation report shall be submitted by the investigator to OTIS for approval to close. The report shall include:
  - (a) A separate statement of the alleged abuse for each allegation investigated;
  - (b) The assessment of protective services, including those offered or provided and determined as needed to the adult;
  - (c) A list of all witnesses interviewed and a summary of the relevant information provided by each witness;
  - (d) Relevant records obtained;
  - (e) A summary of findings and a conclusion concerning each alleged abuse allegation;
  - (f) A specific finding of substantiated or not substantiated for each alleged abuse allegation investigated except those allegations approved to be closed without abuse determination;
  - (g) Any recommended actions and a determination of whether protective services are needed of the community program or facility with the timelines for completing these actions;
  - (h) A list of any notices to be made to licensing or certifying agencies;
  - (i) The name and title of the investigator completing the report;
  - (j) The name and title of the OTIS coordinator or OTIS manager who reviewed the report; and
  - (k) The date the report is submitted to OTIS for approval.
- (3) In cases where the investigator cannot complete an investigation within 55 calendar days and for good cause, the investigator may submit a request for an extension of time to OTIS. When granting an extension, OTIS may consult with the investigator about the need for an extension.
- (4) Within 5 calendar days of receiving a completed abuse investigation and protective services report, the OTIS coordinator or OTIS manager shall review the report and:
  - (a) Approve for closure, or
  - (b) Work with the investigator to obtain necessary information or corrections so the report can be approved to close.
- (5) The OTIS coordinator or OTIS manager shall list the name and address of entities who are to receive a copy of the confidential investigation report from OTIS. If applicable, OTIS shall distribute copies of confidential abuse investigation reports to:
  - (a) The Authority's Health Systems Division or the Department's licensing agency involving their regulated facilities or certified service providers.
  - (b) A law enforcement agency, if the findings are substantiated and there is reasonable cause to believe a crime occurred.
  - (c) The public agency that licenses or certifies a facility, if other than (a).
  - (d) The public agency or board that licenses or certifies the AP practicing therein, if the findings are substantiated and upheld following the contested case process.
  - (e) OTIS investigations for Authority-operated facilities licensed under ORS 443.400 that are located at State Hospital campuses described in ORS 426.010, shall also address in the written report:
    - (a) Whether the AP made a claim of self-defense during the investigation; and
    - (b) A finding whether the AP was acting in self-defense.
  - (c) In making this finding, the investigator shall find the allegation not substantiated when:
    - (A) The AP was acting in self-defense in response to the use or imminent use of physical force;
    - (B) The amount of force used was reasonably necessary to protect the AP from violence or assault; and
    - (C) The AP used the least restrictive procedures necessary under the circumstances in accordance with an approved

behavior management plan or other method of response approved by the Department or Authority by rule.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, ORS 409.027, 413.036, 430.610 to 430.695, 430.735 to 430.765, 430.768, 443.400 to 443.465, 443.705 – 443.825, 443.875, ORS 430.205 and 430.210

RENUMBER: 407-045-0210 to 419-110-0090

RULE TITLE: Adult Mental Health Abuse Rules: Notification of Outcome

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) After an abuse investigation report has been approved to close under OAR 407-045-0200, OTIS shall notify the AP of the outcome as provided in this section.

(a) OTIS shall provide a written notice of outcome to the AP for allegations determined as not substantiated under these rules.

(b) When an allegation is determined to be substantiated under these rules, OTIS shall send a Notice of Abuse Determination with a copy of the redacted abuse investigation report. The Notice of Abuse Determination shall include the information described in OAR 137-003-0505(1) and (2)(a) and ORS 183.415.

(c) The notices sent to the AP shall be by all of the following:

(A) Regular mail.

(B) Certified mail with return receipt requested.

(C) Alternative methods such as fax or electronic mail, when the respondent has requested an alternate method.

(2) If applicable, OTIS shall provide written notification to appropriate personnel within:

(a) The Authority or Department involving residential facilities, community programs and regulated service providers licensed, certified, endorsed by the Authority or Department;

(b) The facility or community program that employs the AP;

(c) ODHS/OHA Human Resources for APs who are state employees;

(d) The alleged victim's case management entity (community program or brokerage); and

(e) The alleged victim's guardian.

(3) The investigator may assure that the abuse finding is provided to the alleged victim by their case manager with a trauma informed approach as part of protective services follow-up.

(4) OTIS shall document the notices provided and maintain a record of all notifications provided in this rule section.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, ORS 409.027, 413.036, 430.610 to 430.695, 430.735 to 430.765, 430.768, 443.400 to 443.465, 443.705 – 443.825, 443.875, 183.415

RENUMBER: 407-045-0220 to 419-110-0100

RULE TITLE: Adult Mental Health Abuse Rules: Disclosure of the Abuse Investigation Report

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) Portions of the abuse investigation report and underlying investigatory documents are confidential and are not available for public inspection.

(a) Pursuant to ORS 430.763, names of abuse reporters, witnesses and the adult, as well as photographs of the adult are confidential and shall not be available for public inspection.

(b) Investigatory documents, including portions of the abuse investigation report and the protective services assessment contains "individually identifiable health information" as defined under ORS 192.556(6) and 45 CFR160.103, and are confidential under federal Health Insurance Portability and Accountability Act (HIPAA) privacy rules, 45 CFR Parts 160 and 164, ORS 192.553 through 192.581 and 179.505 to 179.509.

(2) Notwithstanding section (1) of this rule, the Department shall make confidential information available, including any photographs if appropriate, in accordance to ORS 430.763.

(3) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and may not re-disclose the confidential information to unauthorized individuals or entities, as required by state or federal law.

(4) The Department or Authority shall provide a redacted version of the written report to the public for inspection upon written request. Public record requests for written reports with substantiated abuse findings may not be released until after a Department Final Order is issued.

(5) A centralized record of all abuse complaints, investigations and protective services reports shall be maintained by the Department, in accordance to ORS 430.757.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, ORS 409.027, 413.036, 430.610 to 430.695, 430.735 to 430.765, 430.768, 443.400 to 443.465, 443.705 – 443.825, 443.875



RENUMBER: 407-045-0230 to 419-110-0110

RULE TITLE: Adult Mental Health Abuse Rules: Department Investigation of Alleged Abuse

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) If determined necessary or appropriate, OTIS may conduct an investigation rather than allow the CMHP to investigate the alleged abuse or in addition to the investigation by the CMHP. Under such circumstances, the CMHP shall receive authorization from OTIS before conducting any separate investigation.

(2) OTIS shall conduct all abuse investigations involving adults defined in ORS 430.735(2):

(a) Under these rules, OAR 407-045-0120 to 407-045-0240 for adults receiving services in an Authority-operated facility licensed under ORS 443.400.

(b) Under OAR 407-045-0250 to 407-045-0370 for adults with developmental disabilities in a Department-operated residential training home, or

(c) OAR 407-045-0405 to 407-045-0495 for patients of the state hospitals.

(3) OTIS may screen and assign an allegation of abuse involving adults described in section (2), to a CMHP designee to investigate under these rules or to a community developmental disabilities program to investigate under OAR 407-045-0250.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, ORS 409.027, 413.036, 430.610 to 430.695, 430.735 to 430.765, 430.768, 443.400 to 443.465, 443.705 – 443.825, 443.875

RENUMBER: 407-045-0240 to 419-110-0120

RULE TITLE: Adult Mental Health Abuse Rules: County Multidisciplinary Teams

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) The CMHP shall participate in its county Multidisciplinary Team (MDT) to coordinate and collaborate on protective services for the abuse of adults with developmental disabilities or mental illness or both.

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

(3) The CMHP designee or OTIS shall provide an annual report to the MDT reporting the number of investigated and substantiated allegations of abuse of adults and the number referred to law enforcement in the county.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, ORS 409.027, 413.036, 430.610 to 430.695, 430.735 to 430.765, 430.768, 443.400 to 443.465, 443.705 – 443.825, 443.875

RENUMBER: 407-045-0250 to 419-100-0000

RULE TITLE: Adult Developmental Disabilities Abuse Rules: Purpose and Scope

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) These rules, OAR 407-045-0250 to 407-045-0370, prescribe standards and procedures for the investigation of reported abuse, and assessment for and provision of protective services for adults with developmental disabilities in community programs and facilities, and the nature and content of the abuse investigation and protective services report.
- (2) The Department's Office of Training, Investigations and Safety (OTIS) has the duties, functions and powers of training, coordinating, assisting, directing and approving the services provided by the Community Developmental Disabilities Programs (CDDP) related to these rules. OTIS is responsible to ensure investigations are conducted in a uniform, objective and thorough manner.
- (3) For the purpose of carrying out these rules, Community Developmental Disabilities Programs (CDDP) are Department designees as used in ORS 430.731 and 430.735 through 430.765.
- (4) OTIS or CDDP shall receive all reports of alleged abuse, assess the need for protective services and conduct thorough and unbiased investigations to make findings as required by ORS 430.735 to 430.768 and these rules.
- (5) Minors, who are persons under the age of 18 years old and not considered emancipated, may not be named as an accused person in an abuse investigation conducted under these rules.
- (6) Alleged abuse of young adults who are 18 through 20 years old who are receiving 24-hour residential services from a facility licensed by the Department for children with developmental disabilities or certified as a child foster home, shall be immediately reported to the Department's child abuse reporting hotline for possible action under other Department rules.
- (7) Complaints of alleged abuse of adults while:
  - (a) A student of an educational provider and the accused person is a school employee, contractor, agent, or volunteer of the student's educational provider shall be reported to OTIS for possible investigation under these rules; or
  - (b) A patient at the Oregon State Hospital shall be reported to OTIS for possible action under OAR 407-045-0405 to 407-045-0495.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 409.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.735–430.765, 443.400–443.465, 443.705–443.825, 430.731, 430.662, 430.768, 443.875

RENUMBER: 407-045-0260 to 419-100-0010

RULE TITLE: Adult Developmental Disabilities Abuse Rules: Definitions

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

In addition to the definitions in ORS 430.735, the following terms are defined as used in OAR 407-045-0250 to 407-045-0370.

- (1) "Abuse" means as defined in ORS 430.735.
- (2) "Abuse Investigation and Protective Services Report" means a written report completed under these rules.
- (3) "Adult" as defined in ORS 430.735 and used in OAR 407-045-0250 to 407-045-0370 means an individual who is 18 years of age or older with a developmental disability who is:
  - (a) Currently receiving services from a community program or facility; or
  - (b) Was previously determined eligible for services as an adult by a community program or facility; and
  - (c) Is the reported or alleged victim of abuse.
- (4) "Adult protective services" means as defined in ORS 430.735 the necessary actions taken to prevent abuse or exploitation of an adult, to prevent self-destructive acts and to safeguard the adult's person, property and funds, including petitioning for a protective order as defined in ORS 125.005. Any actions taken to protect an adult shall be undertaken in a manner that is least intrusive to the adult and provides for the greatest degree of independence.
- (5) "Accused Person" or "Accused Provider" (AP, formerly known as alleged perpetrator) means:
  - (a) A person, caregiver, facility or service provider who is the respondent in an abuse investigation under these rules, alleged or determined to have committed abuse of an adult.
  - (b) "Accused person" does not include:
    - (A) Minors, who are persons under the age of 18 years old and not considered emancipated.
    - (B) A person who also qualifies as:
      - (i) An "adult" with a developmental disability as defined under ORS 430.735 (2)(a); or
      - (ii) Another individual who is receiving residential services from the same facility as the alleged victim.
  - (c) The exceptions of (b) (B) above do not apply if such accused person is a paid caregiver or service provider for the adult alleged or determined to have been abused.
- (6) "Brokerage" or "Support service brokerage" means an entity or distinct operating unit within an existing entity that performs the functions associated with planning and implementation of services for an individual with intellectual or developmental disabilities.
- (7) "Caregiver" means as defined in ORS 430.735 an individual, whether paid or unpaid, or facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.
- (8) "Closed without abuse determination" means after diligent efforts have been made, the investigator is unable to locate the AP, the alleged victim or another individual who might have information critical to the outcome of the investigation; or relevant records or documents are unavailable, so the investigation cannot be completed.
- (9) "Community program" as defined in ORS 430.735 includes:
  - (a) A community mental health program or a community developmental disabilities program as established in ORS 430.610 to 430.695; or
  - (b) A provider that is paid directly or indirectly by the Oregon Health Authority to provide mental health treatment in the community.
- (10) "Designee" means the community mental health or developmental disabilities program. A community developmental disability program is considered a designee of the Department for the purposes of these rules and ORS 430.731 and 430.735 to 430.765.
- (11) "Department" means the Oregon Department of Human Services (ODHS).
- (12) "Educational provider" means an education provider, as defined in ORS 339.370.
- (13) "Educational provider's licensed administrator" also known as "chief administrator" means the person designated

by the educational provider's policies adopted under ORS 339.372 as amended by Section 3 of 2019 SB 155 to receive complaints involving their school employees, contractors, agents, or volunteers. and includes an alternate licensed administrator, if the designee is the accused person.

(14) "Exception for religious practice" means an 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 thereof shall for this reason alone not be considered subjected to abuse under ORS 430.735 to 430.765.

(15) "Facility" means as defined in ORS 430.735 a residential treatment home or facility, residential care facility, adult foster home, residential training home or facility or crisis respite facility.

(16) "Good cause" for an extension means:

(a) When law enforcement is conducting an investigation or in process of prosecution;

(b) A material party or witness is temporarily unavailable; or

(c) New evidence is discovered that leads to additional alleged abuses being investigated (allegations).

(17) "Investigator" means an OTIS employee or CDDP designee who is authorized and receives OTIS approved training to screen reports or complaints of abuse, assess protective services and investigate alleged abuse (allegations) of adults with developmental disabilities under these rules.

(18) "Law enforcement agency" or LEA means:

(a) Any city or municipal police department,

(b) A police department established by a university under ORS 352.121 or 353.125,

(c) Any county sheriff's office,

(d) The Oregon State Police, or

(e) Any district attorney.

(19) "Not substantiated" means there is less than a preponderance of evidence to show that abuse occurred.

(20) "Office of Training, Investigations and Safety" or OTIS means the unit within the Department's Shared Services, formerly known as "OAAPI" (Office of Adult Abuse Prevention and Investigations).

(21) "Provider agency" means an entity licensed, certified or authorized by the Department to provide developmental disability services or which is responsible for the management of developmental disability services.

(22) "Redacted" means information deemed confidential under state or federal laws that are excluded from public record release.

(23) "Self-defense" as defined in ORS 430.768 and used in OAR 407-045-0320(7) means the use of physical force upon another person in self-defense or to defend a third person.

(24) "Services" as defined in ORS 430.735 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.

(25) "State Hospital" as described in ORS 426.010 means the Oregon State Hospital campuses in Salem and in Junction City for persons with mental illness for care and treatment.

(26) "Substantiated" means that the preponderance of evidence establishes the abuse occurred.

(27) "Unbiased investigation" means an investigation conducted by an investigator that does not have an actual or potential conflict of interest with the outcome.

(28) "Wrongful restraint" does not include physical emergency restraint to prevent immediate injury to an adult who is in danger of physically harming himself or herself or others, provided only that the degree of force reasonably necessary for protection is used for the least amount of time necessary.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 409.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.735 - 430.765, 443.400 - 443.465, 443.705 - 443.825, 410.600, 430.731, 430.662, 430.768, 443.875

RENUMBER: 407-045-0280 to 419-100-0020

RULE TITLE: Adult Developmental Disabilities Abuse Rules: Training and Qualifications for Individuals Investigating Reports of Alleged Abuse

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) OTIS shall provide sufficient and timely training and consultation to ensure that the investigator is able to conduct a thorough and unbiased investigation and make a determination about the alleged abuse.

(a) Training shall include initial and continuing education to address initial action on complaints, screening and conducting investigations.

(b) The training and quarterly meetings shall address the cultural and social diversity of Oregon, and focus on the vulnerable populations served and those who provide services, including trauma-informed practices.

(2) Each CDDP shall provide or have an agreement with another CDDP to provide a qualified abuse investigator specialist in accordance to OAR chapter 411, division 320.

(a) The number of employees to be at least in accordance to the current local CDDP contract with the Department.

(b) An employee providing case management services may not serve as the lead investigator in an investigation of alleged abuse of an adult under these rules.

(3) CDDP shall require the designated employee:

(a) Meet the qualifications of an abuse investigator specialist as stated in OAR chapter 411, division 320.

(b) Duties limited to conducting and reporting abuse investigations and protective services assessments for adults.

(c) Participate in training and quarterly meetings.

(d) Demonstrate an understanding of investigative core competencies. Core competencies in the areas of:

(A) Interviewing;

(B) Gathering relevant information through records and site visits;

(C) Weighing the evidence; and

(D) Making abuse determinations.

(4) OTIS employees conducting investigations under OAR 407-045-0250 to 407-045-0370 are also required to:

(a) Meet the qualifications of an abuse investigator specialist as stated in OAR chapter 411, division 320;

(b) Participate in the training and quarterly meetings provided investigators; and

(c) Demonstrate an understanding of investigative core competencies. Core competencies in the areas of:

(A) Interviewing;

(B) Gathering relevant information through records and site visits;

(C) Weighing the evidence; and

(D) Making abuse determinations.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 409.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825, 430.731, 430.662, 443.875, 430.768

RENUMBER: 407-045-0285 to 419-100-0030

RULE TITLE: Adult Developmental Disabilities Abuse Rules: Initial Action on Complaints of Alleged Abuse

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) OTIS or CDDP receiving a complaint alleging abuse shall document the reported information required by ORS 430.743 and any additional information reported. OTIS or CDDP shall attempt to elicit the following information from the reporter:

- (a) The name, age and present location of the allegedly abused adult;
- (b) The names and addresses of the persons, programs or facilities responsible for the adult's care;
- (c) The nature and extent of the alleged abuse, including any evidence of previous abuse;
- (d) Any information that led the reporter to suspect abuse had occurred;
- (e) Any information that the reporter believes might be helpful in establishing the cause of the abuse and the identity of the AP; and
- (f) The date of the incident.

(2) If there is reason to believe a crime has been committed, the investigator shall immediately within one business day notify the law enforcement agency having jurisdiction within the county where the report was made.

(a) The investigator shall follow-up with law enforcement if it was reported a police report was filed to ensure the suspected crime or alleged abuse was reported; and

(b) Obtain copies of any law enforcement reports.

(3) The investigator shall notify the appropriate medical examiner in cases when there is reasonable cause to believe that an adult has died as a result of abuse.

(4) If OTIS receives the initial complaint, OTIS shall gather the information as detailed in section (1) and within one business day begin to:

(a) Screen the complaint for possible OTIS investigation if it involves an educational provider, the state hospital, a state-operated residential treatment facility or a state-operated residential training home; or

(b) Transfer the information to the local CDDP or CMHP investigator for screening, assessment of protective services and investigation if required.

(5) Upon receipt of a complaint of alleged abuse, the investigator shall immediately, within one business day, begin to:

(a) Screen the complaint to determine whether an abuse investigation is required per OAR 407-045-0291;

(b) Determine whether the alleged victim sustained any serious injury; and

(c) Assess the need for protective services per OAR 407-045-0295.

(6) The CDDP shall immediately, but no later than one business day of receiving the complaint, notify ODHS it has received a report of abuse and if the reported victim has sustained any serious injury, in the format provided by the Department's Office of Developmental Disabilities Services (ODDS).

(7) Upon receipt of a complaint of alleged abuse, the investigator shall notify:

(a) The case manager of the agency providing primary case management services to the adult; and

(b) The guardian of the adult (if applicable).

(c) Unless the notification would undermine the integrity of the investigation because the guardian or case manager is suspected of committing abuse.

(8) OTIS and CDDP shall maintain all reports of abuse in a confidential location.

(9) Each CDDP shall establish an after-hours reporting system.

STATUTORY/OTHER AUTHORITY: 409.050, ORS 409.010, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.662, 430.735 - 430.765, 430.768, 443.400 - 443.465, 443.705 - 443.825, 443.875

RENUMBER: 407-045-0291 to 419-100-0040

RULE TITLE: Adult Developmental Disabilities Abuse Rules: Screening Activities and Initial Notices

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) Screening is the process used by an investigator to gather and assess information in order to determine the responses and whether the complaint meets the definition of abuse and there is reasonable cause to believe the abuse of an adult requires investigation as stated in these rules.
- (a) The investigator shall document screening activities completed and the information supporting the decision to either assign an abuse investigation or close the complaint at screening.
- (b) The investigator shall assure initial notifications, referrals and required cross-reporting are completed.
- (c) OTIS or CDDP shall have a protocol to track the outcome of every screening to ensure completion.
- (2) The CDDP may request OTIS screen a complaint of alleged abuse for instances where there is a potential conflict of interest, as an investigation may need to be conducted under OAR 407-045-0360(2)(a).
- (a) Requests shall be made to an OTIS coordinator or OTIS manager, and
- (b) Be in writing in the format provided by OTIS.
- (3) OTIS Investigation Unit Responsibilities.
- (a) OTIS shall screen all complaints of alleged abuse for possible abuse investigation involving adults:
- (A) When the primary association between the alleged victim and the accused person is due to their role as an educational provider's school employee, agent, contractor, or volunteer; or
- (B) While receiving services in a State hospital, Authority-operated residential treatment facility or home or Department-operated residential training homes.
- (b) Upon screening, OTIS may determine a CDDP designee shall conduct the investigation per OAR 407-045-0360.
- (c) OTIS shall notify the adult's CDDP of screening determinations of this rule or OAR 407-045-0360.
- (d) OTIS shall notify the licensed administrator of screening determinations for allegations received involving the educational provider's school employee, contractor, agent, or volunteer.
- (4) A screening determination shall be made by the end of the third business day after receiving the alleged abuse complaint.
- (a) The investigator shall consult with an OTIS coordinator or OTIS manager if a screening decision is not made after three business days.
- (b) An OTIS coordinator or OTIS manager may grant a screening extension if law enforcement has been contacted for a criminal investigation of the alleged abuse incident. The investigator shall document:
- (A) The name of the law enforcement agency, assigned case number and crime being investigated;
- (B) The plan for follow-up contacts with the law enforcement agency; and
- (C) The approval of an OTIS coordinator or OTIS manager.
- (5) When a law enforcement agency is conducting a criminal investigation of the alleged abuse:
- (a) OTIS or CDDP need not conduct its own investigation of the same incident.
- (b) OTIS or CDDP may also perform its own investigation as long as it does not interfere with the law enforcement agency investigation. Circumstances that indicate a need for the OTIS or CDDP to conduct their own investigation:
- (A) There is potential for action by a licensing or certifying agency;
- (B) Timely investigation by law enforcement is not probable; or
- (C) The law enforcement agency does not complete a criminal investigation.
- (c) When a law enforcement agency is conducting an investigation of the alleged abuse and a screening extension has been granted by OTIS, the investigator shall communicate and cooperate with the law enforcement agency. The investigator shall ensure regular and timely follow-up with the law enforcement agency related to:
- (A) The status of the criminal investigation,
- (B) Explanation for no criminal investigation or suspension of a criminal investigation, and



(C) Any actions taken by the district attorney.

(6) If after screening, it is determined the complaint meets the criteria for an investigation per (1), an investigator will be assigned and promptly begin an investigation.

(7) If the investigator determines that there is reasonable cause to believe that abuse occurred at a facility, the investigator shall immediately, within one business day of this screening determination, notify the appropriate licensing agency. The notification shall provide the case number, identify the investigator and provide information regarding how the assigned investigator may be contacted.

(8) The investigator shall also notify relevant ODDS units of complaints of abuse received and opened for investigation involving APs who are:

(a) Employees of department-operated residential training homes; or

(b) Independent Providers as defined in OAR 411, chapter 375, which includes Personal Support Workers.

(9) Within three business days of a screening decision, the investigator shall:

(a) Provide the screening decision to (if applicable):

(A) The primary case management entity, such as the Service Coordinator or Personal Agent;

(B) The guardian; and

(C) The involved facility or community program.

(b) If a complaint of alleged abuse has been assigned for investigation, the screening decision shall provide the case number, identify the investigator and provide information regarding how the assigned investigator may be contacted.

(c) The notification to the guardian or case manager may be delayed if the notification would undermine the integrity of the investigation because the guardian or case manager is suspected of committing abuse.

(10) The investigator shall document how and when notifications were provided and maintain a record of all notices.

STATUTORY/OTHER AUTHORITY: ORS 409.010, ORS 409.050, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.662, 430.735 - 430.765, 430.768, 443.400 - 443.465, 443.705 - 443.825, 443.875

RENUMBER: 407-045-0295 to 419-100-0050

RULE TITLE: Adult Developmental Disabilities Abuse Rules: Assessment for and Provision of Protective Services to the Adult

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) The investigator shall ensure that appropriate and necessary adult protective services are offered to prevent further abuse. Any protective services provided shall be undertaken in a manner that is least intrusive to the adult and provide for the greatest degree of independence available within existing resources.

(2) An attempt at initial contact with the adult by the end of the next business day of receiving the complaint of alleged abuse shall occur as part of assessing adult protective service needs, determining if the adult is in danger or in need of immediate protective services.

(a) Initial contact as it relates to this section:

(A) Shall be conducted using the least intrusive communication methods available; and

(B) May be conducted by an investigator or the case manager, such as the service coordinator, personal agent or community mental health program.

(b) The investigator may confer with the case management entity prior to completing the initial contact with the adult.

(c) The OTIS investigator shall confer with:

(A) The Oregon Health Authority (OHA) or the Department's ODDS on protective services for adults receiving care and services from a state hospital or state-operated facility; or

(B) The licensed administrator for an educational provider when the alleged abuse occurred by their school employee, contractor, agent, or volunteer.

(d) If the investigator or case manager is unable to gain access to the adult, the investigator or case manager may contact the local law enforcement agency for assistance.

(e) If the adult has a guardian, the investigator may request the case manager notify the guardian, unless the guardian is the AP, per OAR 407-045-0285.

(3) The assessment for the provision of protective services may include:

(a) Arranging for the immediate protection of the adult;

(b) Contacting the adult to assess his or her ability to protect his or her own interest or give informed consent;

(c) Determining the ability of the adult to understand the nature of the protective service and his or her willingness to accept services;

(d) Coordinating evaluations to determine or verify the adult's physical and mental status, if necessary;

(e) Assisting in and arranging for appropriate services and alternative living arrangements;

(f) Assisting in or arranging the medical, legal, financial, or other necessary services to prevent further abuse;

(g) Providing advocacy to assure the adult's rights and entitlements are protected; and

(h) Consulting with the facility, community program, brokerage, service provider, guardian or others as appropriate in developing recommendations and a determination of whether protective services are needed to prevent further abuse.

(4) The investigator and case manager may share confidential information appropriate or necessary for the health, safety and best interests of the adult in need of protection, prior to the completion of the abuse investigation and protective services report if the information is necessary for the provision of protective services.

(5) The investigator shall document the protective services assessment and provisions, including those needed, offered and declined, in the format provided by OTIS to be maintained as part of the complaint of abuse record. The assessment is considered confidential client information.

STATUTORY/OTHER AUTHORITY: ORS 430.731, 409.010, 409.050

STATUTES/OTHER IMPLEMENTED: ORS 430.731, ORS 430.662, 430.735 - 430.765, 430.768, 443.400 - 443.465, 443.705 - 443.825, 443.875



RENUMBER: 407-045-0298 to 419-100-0060

RULE TITLE: Adult Developmental Disabilities Abuse Rules: Death Reporting

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) Effective November 1, 2019, DD case management entities for adults enrolled in community developmental disabilities programs or support service brokerages are required to notify their local DD abuse investigator of all the deaths of adults receiving case management services within one business day of being informed of the death per ODDS policy and in the format required by ODDS or OTIS.

(2) If the investigator or law enforcement reported a death to the medical examiner in cases where there was reasonable cause to believe that an adult has died as a result of abuse, an abuse investigation shall be immediately opened per OAR 407-045-0300. Notifications shall occur in the same manner as all allegations of alleged abuse, outlined in OAR 407-045-0291.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, ORS 430.731, 430.662

STATUTES/OTHER IMPLEMENTED: ORS 430.731, ORS 430.735 - 430.765, 430.768, 443.400 - 443.465, 443.705 - 443.825, 443.875

RENUMBER: 407-045-0300 to 419-100-0070

RULE TITLE: Adult Developmental Disabilities Abuse Rules: Investigation of Alleged Abuse

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) Investigation of alleged abuse shall be thorough and unbiased.

(a) CDDP may not investigate alleged abuse made against employees of the same CDDP.

(b) Investigations of CDDP staff shall be conducted by OTIS or another CDDP not subject to an actual or potential conflict of interest.

(2) In conducting an abuse investigation, the investigator shall attempt and, when possible, complete the following:

(a) Make in-person contact with the adult;

(b) Interview the adult, witnesses, the AP and other individuals who may have knowledge of the facts of the alleged abuse or related circumstances.

(A) Interviews shall be conducted in-person where practicable.

(B) For any person who needs an accommodation for the interview, such as language translation or other reasonable accommodation, the investigator shall note the information in the investigation report.

(C) The investigator shall ask the date of birth for each individual interviewed and shall obtain the date of birth of any AP.

(D) The investigator shall ask the AP if they are a ODHS or OHA employee or volunteer, and document the response as part of the investigation interview information. If affirmed, the investigator shall give the AP the ODHS-OHA form letter that outlines their required obligation to notify ODHS-OHA Human Resources.

(E) The investigator shall document any relevant investigative interviews that did not occur, efforts made and the reason for no interview.

(F) The investigator shall make at least three attempts to contact the AP for an investigative interview when no response to an interview request occurs. At least one attempt shall be made by phone to the last known number and one by mail to the last known address.

(c) Review all records or evidence relevant and material to the complaint; and

(d) Photograph the adult's injuries consistent with trained guidelines, or arrange for the adult to be photographed, to preserve evidence of the condition of the alleged victim at the time of investigation, unless the adult knowingly refuses to be photographed.

(3) The investigator may enter a facility and inspect and copy records of a facility or community program if necessary for the completion of the investigation. A community program or facility shall provide the investigator access to employees, the adult and the premises for investigation purposes.

(a) Any relevant record used in an investigative interview shall be noted in the respective witness statement; and

(b) The relevant record shall be included as a supporting document in the submitted investigation report.

(4) OTIS approval to close any abuse investigation opened under these rules by the CDDP is required.

(5) Any variance from the investigative processes in this rule shall be staffed and approved by OTIS. The reason for the variance and the name of the OTIS coordinator or OTIS manager who approved the variance shall be documented clearly in the investigative report.

(6) If the investigator believes an allegation meets the conditions to be considered closed without an abuse determination, then OTIS approval to close shall be obtained.

(a) Investigative efforts and information obtained as described in (2) of this section shall be documented in the written report submitted for OTIS approval to close.

(b) The investigator is responsible for informing persons or entities who were notified of the opened investigation per OAR 407-045-0291, the allegation has been approved to close without an abuse determination.

(c) If the investigator informed the AP of the investigation being opened, then the investigator shall inform the AP the allegation has been closed without an abuse determination.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 409.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.735–430.765, 443.400–443.465, 443.705–443.825, 430.731, 430.662, 430.768, 443.875

RENUMBER: 407-045-0320 to 419-100-0080

RULE TITLE: Adult Developmental Disabilities Abuse Rules: Abuse Investigation and Protective Services Report

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) The investigator is required to follow the abuse investigation and protective services assessment report formats provided by OTIS.
- (2) Within 55 calendar days of receiving the complaint alleging abuse, a completed abuse investigation and protective services report shall be submitted by the investigator to OTIS for approval to close. The report shall include:
  - (a) A separate statement of the alleged abuse for each allegation investigated;
  - (b) A list of protective services assessed, offered or provided and determined as needed to the adult;
  - (c) A list of all witnesses interviewed and a summary of the relevant information provided by each witness;
  - (d) Relevant records obtained;
  - (e) A summary of findings and conclusion concerning each alleged abuse allegation;
  - (f) A specific finding of substantiated or not substantiated for each alleged abuse allegation investigated except those allegations approved to be closed without abuse determination;
  - (g) Any recommended actions and a determination of whether protective services are needed of the CDDP, brokerage, service provider agency or facility with the timelines for completing these actions;
  - (h) A list of any notices made to licensing or certifying agencies;
  - (i) The name and title of the investigator completing the report;
  - (j) The name and title of the OTIS coordinator or OTIS manager who reviewed the report; and
  - (k) The date the report is submitted to OTIS for approval.
- (3) In cases where the investigator cannot complete an investigation within 55 calendar days and for good cause, the investigator may submit a request for an extension of time to OTIS. When granting an extension, OTIS may consult with the investigator about the need for an extension.
- (4) Within 5 calendar days of receiving a completed abuse investigation and protective services report, the OTIS coordinator or OTIS manager shall review the report and:
  - (a) Approve for closure, or
  - (b) Work with the investigator to obtain necessary information or corrections so the report can be approved to close.
- (5) OTIS shall distribute copies of confidential abuse investigation reports.
- (6) OTIS investigations for alleged abuse at Department-operated residential training homes shall also address in the written report:
  - (a) Whether the AP made a claim of self-defense during the investigation; and
  - (b) A finding whether the AP was acting in self-defense.
- (c) In making this finding, the investigator shall find the allegation not substantiated when:
  - (A) The AP was acting in self-defense in response to the use or imminent use of physical force;
  - (B) The amount of force used was reasonably necessary to protect the AP from violence or assault; and
  - (C) The AP used the least restrictive procedures necessary under the circumstances in accordance with an approved behavior management plan or other method of response approved by the Department by rule.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 409.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825, 430.731, 430.662, 430.768, 443.875

RENUMBER: 407-045-0325 to 419-100-0090

RULE TITLE: Adult Developmental Disabilities Abuse Rules: Notifications at the Conclusion of an Investigation

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) After an abuse determination is made and the abuse investigation report has been approved to close, OTIS shall make and document the notifications described in this rule. OTIS shall notify the AP as provided in this section:
- (a) When a report is determined to be not substantiated under these rules, OTIS shall provide written notice to the AP.
  - (b) When a report is determined to be substantiated under these rules, OTIS shall send a Notice of Abuse Determination to the AP as provided in this subsection:
    - (A) The Notice of Abuse Determination with a copy of the redacted abuse investigation report shall be sent to the AP by all of the following:
      - (i) Regular mail.
      - (ii) Certified mail with return receipt requested.
      - (iii) Alternative methods such as fax or electronic mail only when the respondent has requested an alternate method.
    - (B) The Notice of Abuse Determination shall include the information described in OAR 137-003-0505(1) and (2)(a) and ORS 183.415.
- (2) If applicable, OTIS shall provide notifications to appropriate personnel within:
- (a) The Department involving facilities, community programs, and service providers licensed or certified by the Department;
  - (b) The Authority involving facilities, community programs, and service providers licensed or certified by the Authority;
  - (c) ODHS/OHA Human Resources for APs who are state employees;
  - (d) The facility, provider agency, community program if they employ the AP;
  - (e) The alleged victim's case management entity (community program or brokerage);
  - (f) The alleged victim's guardian; and
  - (g) The licensed administrator for the educational provider if the accused person is a school employee, contractor, agent, or volunteer.
- (3) The investigator shall provide a copy of any protective services and recommended actions to the appropriate case management entity and provider.
- (4) The investigator may assure that the abuse finding is provided to the alleged victim and guardian (if applicable) with a trauma-informed approach by the adult's primary case manager, such as the service coordinator or personal agent as part of protective services follow-up.
- (5) OTIS shall provide a redacted report to the alleged victim's case management entity (community program or brokerage) and the facility that oversees the AV's residential services (if applicable).

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.662, 430.735 - 430.765, 430.768, 443.400 - 443.465, 443.705 - 443.825, 443.875



RENUMBER: 407-045-0330 to 419-100-0100

RULE TITLE: Adult Developmental Disabilities Abuse Rules: Disclosure of the Abuse Investigation and Protective Services Report and Related Documents

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) Portions of the abuse investigation and protective services report and underlying investigatory documents are confidential and are not available for public inspection.
- (a) Pursuant to ORS 430.763, names of abuse reporters, witnesses and the adult, as well as photographs of the adult are confidential and may not be available for public inspection.
- (b) Investigatory documents, including portions of the abuse investigation and protective services report that contains "individually identifiable health information," as defined under ORS 192.556(6) and 45 CFR 160.103, are confidential under federal Health Insurance Portability and Accountability Act (HIPAA) privacy rules, 45 CFR Parts 160 and 164, and ORS 192.553 through 192.581 and 179.505 to 179.509.
- (2) Notwithstanding section (1) of this rule, the Department shall make this confidential information and any investigative report available, including any photographs if appropriate, in accordance to ORS 430.763.
- (3) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and may not re-disclose the confidential information to unauthorized individuals or entities, as required by state or federal law.
- (4) The Department shall provide a redacted version of the written report to the public for inspection upon written request. Public record requests for written reports with substantiated abuse findings may not be released until after a Department Final Order is issued following opportunity for a contested case hearing.
- (5) A centralized record of all abuse complaints, investigations and protective services reports shall be maintained by the Department, in accordance to ORS 430.757.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 409.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.735–430.765, 443.400–443.465, 443.705–443.825, 430.731, 430.662, 430.768, 443.875

RENUMBER: 407-045-0360 to 419-100-0110

RULE TITLE: Adult Developmental Disabilities Abuse Rules: Department Investigation of Alleged Abuse

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) If determined necessary or appropriate, OTIS may conduct an investigation rather than allow the CDDP to investigate the alleged abuse or in addition to the investigation by the CDDP. Under such circumstances, the CDDP shall receive authorization from OTIS before conducting any separate investigation.

(2) OTIS shall conduct all abuse investigations of adults with developmental disability:

(a) Under these rules for adults;

(A) Receiving services in Department-operated residential training homes licensed under ORS 443.400; or

(B) When the primary association between the alleged victim and the accused person is due to their role as an educational provider's school employee, contractor, agent, or volunteer.

(b) Under OAR 407-045-0120 through 407-045-0240 for residents of Authority-operated residential treatment facilities or homes.

(c) Under OAR 407-045-0405 through 407-045-0495 for patients of the state hospitals.

(3) OTIS may screen and assign an allegation of abuse involving adults described in section (2), to a CDDP designee to investigate under these rules or to a community mental health program to investigate under OAR 407-045-0120.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 409.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.735–430.765, 443.400–443.465, 443.705–443.825, 430.731, 430.662, 430.768, 443.875

RENUMBER: 407-045-0370 to 419-100-0120

RULE TITLE: Adult Developmental Disabilities Abuse Rules: County Multidisciplinary Teams

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) The CDDP shall participate in its county Multidisciplinary Team (MDT) to coordinate and collaborate on protective services for the abuse of adults with developmental disabilities or mental illness or both.

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

(3) The CDDP designee or OTIS shall provide an annual report to the MDT reporting the number of substantiated allegations of abuse of adults and the number substantiated allegations referred to law enforcement in the county.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 409.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825, 430.731, 430.662

RENUMBER: 407-045-0405 to 419-120-0000

RULE TITLE: Oregon State Hospital Patient Abuse Investigation Rules: Purpose and Scope

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419,

RULE TEXT:

(1) The purpose of these rules, OAR 407-045-0405 through 407-045-0495, is to establish the procedures for reporting, investigating and resolving allegations of patient abuse in the Oregon State Hospitals.

(2) The Department's Office of Training, Investigations and Safety (OTIS) has the duties, functions and powers of ensuring investigations of alleged patient abuse at the state hospitals are conducted in a uniform, objective and thorough manner.

(3) OTIS shall:

(a) Receive all mandatory reports of alleged patient abuse by state hospital staff or visitors;

(b) Coordinate the assessment for protective services with the state hospital; and

(c) Conduct thorough and unbiased the investigations to make abuse findings as required by ORS 430.735 to 430.768 and these rules.

STATUTORY/OTHER AUTHORITY: 430.731, ORS 409.010, 409.050, 413.085, 426.010

STATUTES/OTHER IMPLEMENTED: 430.731, 430.735 - 430.765, 430.768, ORS 179.390, 426.385, 430.210

RENUMBER: 407-045-0415 to 419-120-0010

RULE TITLE: Oregon State Hospital Patient Abuse Investigation Rules: Definitions and Acronyms

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

As used in OAR 407-045-0405 to 407-045-0495, the following definitions apply:

- (1) "Abuse" means as defined in ORS 430.735.
- (2) "Abuse Investigation and Protective Services Report" means a written report completed under these rules (OAR 407-045-0405 to OAR 407-045-0495).
- (3) "Adult" as used in OAR 407-045-0415 to 407-045-0495 means an individual who is 18 years of age or older and receiving services for a mental illness in a state hospital.
- (4) "Adult protective services" as defined in ORS 430.735 means the necessary actions taken to prevent abuse or exploitation of an adult, to prevent self-destructive acts, and to safeguard an allegedly abused adult's person, property, or funds, including petitioning for a protective order as defined in ORS 125.005. Any actions taken to protect an adult must be undertaken in a manner that is least intrusive to the adult and provides for the greatest degree of independence.
- (5) "Accused Person" (AP) means the OSH staff or visitor who is the respondent in an abuse investigation under these rules, alleged or determined to have committed abuse of a patient.
- (6) "Alleged victim" means the patient who is reported, alleged or determined to be subjected to abuse.
- (7) "Authority" means the Oregon Health Authority (OHA).
- (8) "Caregiver" as defined in ORS 430.735 means an individual, whether paid or unpaid, or a facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.
- (9) "Closed without abuse determination" means after diligent efforts have been made, the investigator is unable to locate the AP, the alleged victim or another individual who might have information critical to the outcome of the investigation; or relevant records or documents are unavailable, so that the investigation cannot be completed.
- (10) "Department" means the Oregon Department of Human Services (ODHS).
- (11) "Exception for religious practice" means as defined in ORS 430.765 an 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 under ORS 430.735 to 430.765.
- (12) "Good cause" for an extension means:
  - (a) When law enforcement is conducting an investigation or in process of prosecution;
  - (b) A material party or witness is temporarily unavailable; or
  - (c) New evidence is discovered that leads to additional allegations.
- (13) "Intimidation" means compelling or deterring conduct by threat.
- (14) "Investigator" means an OTIS employee who is authorized and receives required training to screen and investigate allegations of abuse under these rules.
- (15) "Law enforcement agency" (LEA) as defined in ORS 430.735 means:
  - (a) Any city or municipal police department;
  - (b) A police department established by a university under ORS 352.121 or 353.125;
  - (c) Any county sheriff's office;
  - (d) The Oregon State Police; or
  - (e) Any district attorney.
- (16) "Not substantiated" means there is less than a preponderance of evidence to show that abuse occurred.
- (17) "Office of Training, Investigations and Safety" (OTIS), formerly known as the Office Adult Abuse Prevention and Investigation" (OAAPI) means the unit within the Department of Human Services Shared Services.
- (18) "Patient" means a person who is in the care and custody of the state hospital.

(19) "Redacted" means information deemed confidential under state or federal laws that are excluded from public record release.

(20) "Self-defense" as defined on ORS 430.768 and used in OAR 407-045-0475(3), means the use of physical force upon another person in self-defense or to defend a third person.

(21) "Services" as defined in ORS 430.735 include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult.

(22) "Staff" means:

(a) State hospital employees, including contractors and their employees or volunteers.

(b) Staff does not mean patients who perform work at OSH in accordance to ORS 179.440.

(23) "State Hospital" as described in ORS 426.010 means the Oregon State Hospital (OSH) campuses in Salem and in Junction City for persons with mental illness for care and treatment.

(24) "Substantiated" means that the preponderance of evidence establishes the abuse occurred.

(25) "Superintendent" refers to the chief executive officer of the state hospital, and includes designees per ORS 179.390.

(26) "Visitor" means all non-patient and non-staff persons within the state hospital secure area.

(27) "Unbiased investigation" means an investigation that is conducted that does not have an actual or potential conflict of interest with the outcome.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, 426.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 179.390, 426.385, 430.210, 430.731, 430.735 - 430.765, 430.768

RENUMBER: 407-045-0425 to 419-120-0020

RULE TITLE: Oregon State Hospital Patient Abuse Investigation Rules: Training for Individuals Investigating Reports of Alleged Abuse

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) OTIS shall provide sufficient and timely training and consultation to ensure that the investigator is able to conduct a thorough and unbiased investigation and make a determination about the alleged abuse.

(a) Training shall include initial and continuing education to address initial action on complaints, screen and conduct abuse investigations.

(b) The training shall address the cultural and social diversity of Oregon, and focus on the vulnerable populations served and those who provide services, and include trauma-informed practices.

(2) OTIS employees conducting investigations under these rules (OAR 407-045-0405 to OAR 407-045-0495) are required to participate in the quarterly meetings provided investigators and demonstrate an understanding of investigative core competencies. Core competencies in the areas of:

(a) Interviewing;

(b) Gathering relevant information through records and site visits;

(c) Weighing the evidence; and

(d) Making abuse determinations.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, 426.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 179.390, 426.385, 430.210, 430.731, 430.735 - 430.765, 430.768

RENUMBER: 407-045-0435 to 419-120-0030

RULE TITLE: Oregon State Hospital Patient Abuse Investigation Rules: Initial Action on Complaints of Alleged Abuse

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) State hospital staff are required to immediately report alleged abuse of patients to:
  - (a) The Department's OTIS either by phone or in writing; and
  - (b) The OSH Superintendent or their designee.
- (2) Upon receiving a complaint alleging abuse, OTIS shall document the reported information required by ORS 430.743 and any additional information reported. OTIS shall attempt to elicit the following information from the reporter:
  - (a) The name, age and present location of the allegedly abused adult or patient;
  - (b) The names and addresses of the persons responsible for the adult's care;
  - (c) The nature and extent of the alleged abuse, including any evidence of previous abuse;
  - (d) Any information that led the reporter to suspect abuse occurred;
  - (e) Any other information that the reporter believes might be helpful in establishing the cause of the abuse and the identity of the AP; and
  - (f) The date of the incident.
- (3) If there is reason to believe a crime has been committed, the investigator shall immediately within one business day notify the law enforcement agency having jurisdiction.
  - (a) The investigator shall follow-up with law enforcement if it was reported a police report was filed to ensure the suspected crime or alleged abuse was reported;
  - (b) To ascertain if a criminal investigation is being conducted; and
  - (c) Obtain all copies of any law enforcement reports.
- (4) The investigator shall notify the appropriate medical examiner in cases when there is reasonable cause to believe that a patient has died as a result of abuse. The investigator shall also immediately notify the Authority Director.
- (5) Upon receipt of a complaint of alleged abuse, the investigator shall immediately, within one business day, begin to:
  - (a) Screen the complaint to determine whether an abuse investigation is required under these rules;
  - (b) Determine whether the alleged victim sustained any serious injury, and
  - (c) Assess the need for protective services per OAR 407-045-0455.
- (6) OTIS shall maintain all complaints of alleged abuse in a confidential location.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, 426.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 179.390, 426.385, 430.210, 430.731, 430.735 - 430.765, 430.768



RENUMBER: 407-045-0445 to 419-120-0040

RULE TITLE: Oregon State Hospital Patient Abuse Investigation Rules: Screening Activities and Initial Notice

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) Screening is the trained process used to gather and assess information in order to determine the responses and whether the complaint meets the definition of abuse and there is reasonable cause to believe the abuse of a patient requires investigation as stated in these rules, OAR 407-045-0405 to 407-045-0495.
- (a) The investigator shall document screening activities completed and the information supporting the decision to either assign an abuse investigation or close the complaint at screening.
- (b) The investigator shall assure initial notifications, referrals and required cross-reporting are completed.
- (c) The investigator shall immediately, within one business day, begin to assess and assure protective services, in collaboration with OSH, regardless if the complaint of alleged abuse is assigned for investigation or closed at screening.
- (2) OTIS shall have a protocol to:
- (a) Track the outcome of every screening to ensure completion;
- (b) Record how and when notifications were provided; and
- (c) Maintain confidential records of actions taken by OTIS.
- (3) A screening determination shall be made within by the end of the third business day of OTIS's receipt of the alleged abuse complaint.
- (a) The OTIS manager may grant a screening extension if the investigator is unable to make a screening determination because critical information to make a decision is needed. The investigator shall document:
- (A) The reason for the extension;
- (B) The critical information that remains to be collected; and
- (C) The approval of the OTIS manager.
- (b) The OTIS manager may grant a screening extension if law enforcement is conducting a criminal investigation of the alleged abuse incident. The investigator shall document:
- (A) The name of the law enforcement agency, assigned case number and crime being investigated;
- (B) The plan for follow-up contacts with the law enforcement agency; and
- (C) The approval of the OTIS manager.
- (4) When a law enforcement agency is conducting an investigation of the alleged abuse:
- (a) OTIS need not conduct its own investigation of the same incident.
- (b) OTIS may also perform its own investigation as long as it does not interfere with the law enforcement agency investigation. Circumstances that indicate a need for OTIS to conduct the investigation:
- (A) There is potential for action by a licensing or certifying agency;
- (B) Timely investigation by law enforcement is not probable; or
- (C) The law enforcement agency does not complete a criminal investigation.
- (c) OTIS shall ensure regular and timely follow-up with the law enforcement agency when a screening extension has been granted, related to:
- (A) The status of the criminal investigation,
- (B) Explanation for no criminal investigation or suspension of a criminal investigation, and
- (C) Any actions taken by the district attorney.
- (5) If the investigator determines that there is reasonable cause to believe that abuse was caused or aided by a person employed by OSH, the investigator shall notify:
- (a) The OSH Superintendent in writing of the screening decision, including but not limited to:
- (A) Identity of the alleged victim, AP and the abuse alleged;
- (B) The case number, due date, assigned investigator and how the investigator may be contacted;
- (C) Direction to OSH to ensure the patient's guardian is notified, if applicable; and

(D) Direction to OSH to ensure the AP is notified of the opened investigation.

(b) OTIS shall notify the ODHSOHA Human Resources by copy of the information provided in subsection (a) of this section.

(6) If the complaint is not within the definitions of patient abuse by an OSH staff or visitor, the investigator shall:

(a) Further screen the complaint under community abuse rules OAR 407-045-0120 or 407-045-0250 for possible assignment to OTIS or a community mental health or developmental disabilities program for investigation.

(b) Close the OSH complaint as does not meet the conditions for an abuse investigation under these rules (OAR 407-045-0405 to OAR 407-045-0495) and notify the Superintendent in writing, which includes:

(A) The information gathered and assessed to support the determination; and

(B) Provides the name and contact information for the investigator completing the screening.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, 426.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 179.390, 426.385, 430.210, 430.731, 430.735 - 430.765, 430.768

RENUMBER: 407-045-0455 to 419-120-0050

RULE TITLE: Oregon State Hospital Patient Abuse Investigation Rules: Assessment for and Provision of Protective Services for Patients

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) Upon receipt of a mandatory report of alleged abuse, OTIS shall contact OSH to begin assessing needed or provided protective services, in collaboration with OSH.

(a) An attempt at direct contact with the alleged victim by OTIS or facilitated by OSH upon OTIS request, by the end of the next business day of receiving the complaint of alleged abuse shall occur as part of assessing protective service needs, determining if the alleged victim is in danger or in need of immediate protective services.

(b) OTIS or OSH may delay direct contact if the patient's clinician states a health, safety or well-being concern exists.

(2) Assessment for the provision of protective services may include:

(a) Arranging for the immediate protection of the alleged victim;

(b) In-person contact with the alleged victim to assess their ability to protect their own interest or give informed consent;

(c) Determining the alleged victim's ability to understand the nature of the protective service and their willingness to accept services;

(d) Coordinating evaluations to determine or verify the alleged victim's physical and mental status, if necessary;

(e) Assisting in and arranging for appropriate services and alternative living arrangements;

(f) Assisting in or arranging the medical, legal, financial, or other necessary services to prevent further abuse;

(g) Providing advocacy to assure the alleged victim's rights and entitlements are protected; and

(h) Consulting with the guardian or others as appropriate in developing recommendations or requirements to prevent further abuse.

(3) OTIS shall communicate with OSH in coordinating the assessment and assurance of protective services for the alleged victim. OTIS and OSH may share confidential information appropriate or necessary for the health, safety and best interests of the alleged victim in need of protection if the information is necessary for:

(a) The provision of protective services;

(b) The function of licensing and certifying agencies; or

(c) Mandatory reporting to law enforcement agencies.

(4) OTIS shall document the protective services assessment and provisions provided by OSH, including those needed, offered and declined, to be maintained as part of the complaint record. The assessment is considered confidential patient information.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, 426.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 179.390, 426.385, 430.210, 430.731, 430.735 - 430.765, 430.768

RENUMBER: 407-045-0465 to 419-120-0060

RULE TITLE: Oregon State Hospital Patient Abuse Investigation Rules: Investigation by the Department's Office of Training, Investigations and Safety

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419,

RULE TEXT:

- (1) Investigation of allegations of abuse shall be thorough and unbiased by a trained OTIS investigator. OSH must provide the investigator access to employees, patients and the premises for investigation purposes.
- (2) In conducting the abuse investigation, the investigator shall attempt and, when possible, complete the following:
  - (a) Make in-person contact with the alleged victim;
  - (b) Interview the alleged victim, witnesses, the AP and others who may have knowledge of the facts of the abuse allegation or related circumstances.
    - (A) Interviews shall be conducted in-person where practicable.
    - (B) For any person interviewed who needs an accommodation, such as language translation or other accommodation, the investigator shall note the information in the investigation report.
    - (C) The investigator to ask the date of birth for each individual interviewed and shall obtain the date of birth of any AP.
    - (D) If the AP is an OSH visitor, the investigator shall ask if the AP is a Department or Authority employee or volunteer, and document the response as part of the investigation information.
      - (i) If affirmed, the AP must be given the Department form letter that outlines the required obligation to notify ODHS/OHA Human Resource; and
      - (ii) The investigator must ensure the findings in the approved abuse investigation report, including notice of outcome and final orders are provided to the ODHS/OHA Human Resources for follow-up.
    - (E) The investigator shall document any relevant investigative interviews that did not occur, efforts made and the reasoning.
      - (i) The investigator shall make at least three attempts to contact the AP for an investigative interview when no response to an interview request occurs.
      - (ii) At least one attempt shall be made by phone to the last known number and one by mail to the last known address.
      - (iii) OTIS shall notify the ODHS/OHA Human Resources by copy of any written correspondences sent to an OSH staff.
    - (c) Review all records or evidence relevant and material to the complaint; and
    - (d) Photograph the alleged victim's injuries consistent with trained guidelines, or arrange for the alleged victim to be photographed, to preserve evidence of the condition of the alleged victim at the time of investigation, unless the alleged victim knowingly refuses to be photographed or clinically contraindicated due to health, safety and well-being.
  - (3) All patient and hospital records necessary for the investigation must be available to the investigator for inspection and copying. This may include, but is not limited to statements, event reports, employee training records, visitor logs, diagrams, policies, photographs and videos.
    - (a) Any relevant record used in an investigative interview will be noted in the respective witness statement; and
    - (b) The relevant record will be included in the submitted investigation report.
  - (4) Any variance from the investigative processes in this rule shall be staffed and approved by the OTIS manager. The reason for the variance and the name of the OTIS personnel who approved the variance must be documented clearly in the investigative report.
  - (5) If the investigator believes an allegation meets the conditions to be considered closed without an abuse determination, then OTIS manager approval to close shall be obtained.
    - (a) Investigative efforts and information obtained as described in (2) of this section shall be documented in the written report submitted for management approval to close.
    - (b) OTIS will notify the AP in writing of the date the abuse investigation was determined closed without an abuse determination.
    - (c) A copy of investigative information described in (a) and (b) shall be provided to the ODHS/OHA Human Resources

and OSH Superintendent.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.010, 413.085, 426.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 179.390, 426.385, 430.210, 430.731, 430.735 - 430.765, 430.768

RENUMBER: 407-045-0475 to 419-120-0070

RULE TITLE: Oregon State Hospital Patient Abuse Investigation Rules: Abuse Investigation and Protective Services Report

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) OTIS shall provide a completed abuse investigation and protective services report within 60 calendar days to ODHSOHA Human Resources and OSH Superintendent.
  - (a) In cases where the investigator cannot complete an investigation within 60 calendar days and for good cause, the investigator shall submit a written request for an extension of time to the OTIS manager. The request shall detail the need for an extension.
  - (b) Upon written approval, the investigator shall advise of the new due date to the:
    - (A) AP;
    - (B) ODHSOHA Human Resources; and
    - (C) OSH Superintendent, who will be responsible for guardian notification.
- (2) The completed abuse investigation report shall include:
  - (a) A separate statement of the alleged abuse for each allegation investigated;
  - (b) The assessment of protective services, including those offered or provided and determined as needed to the patient;
  - (c) A list of all witnesses interviewed and a summary of the relevant information provided by each witness;
  - (d) Relevant records obtained;
  - (e) A summary of findings and a conclusion concerning the allegation of abuse;
  - (f) A specific finding of substantiated or not substantiated for each allegation investigated for each victim and each AP except those allegations approved to be closed without abuse determination;
  - (g) A list of any notices made to licensing or certifying agencies;
  - (h) The name and title of the investigator completing the report;
  - (i) The name and title of the manager who reviewed the report; and
  - (j) The date the report is approved to close.
- (3) In accordance to ORS 430.768, the OTIS investigations shall also address in the written report:
  - (a) Whether the AP made a claim of self-defense during the investigation; and
  - (b) A finding whether the AP was acting in self-defense.
  - (c) In making this finding, the investigator shall find the allegation not substantiated when:
    - (A) The AP was acting in self-defense in response to the use or imminent use of physical force;
    - (B) The amount of force used was reasonably necessary to protect the AP from violence or assault; and
    - (C) The AP used the least restrictive procedures necessary under the circumstances in accordance with an approved behavior management plan or other method of response approved by the Authority by rule.
- (4) If applicable, OTIS shall distribute copies of confidential abuse investigation report to:
  - (a) A law enforcement agency, if the findings are substantiated and there is reasonable cause to believe a crime occurred;
  - (b) The public agency that licenses or certifies an AP practicing therein if the findings are substantiated; and
  - (c) To the system described in ORS 192.517.
- (5) OTIS shall prepare the redacted version of the approved abuse investigation report. The redacted report shall not contain any confidential information which is prohibited from disclosure pursuant to state or federal law as described in OAR 407-045-0495.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, 426.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 179.390, 426.385, 430.205 & 430.210, 430.731, 430.735 - 430.765, 430.768

RENUMBER: 407-045-0485 to 419-120-0080

RULE TITLE: Oregon State Hospital Patient Abuse Investigation Rules: Notifications at the Conclusion of an Investigation

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) After an abuse determination is made and the abuse investigation report has been approved to close, OTIS must make and document the notifications described in this rule.

(2) OTIS must notify the AP as provided in this section:

(a) When a report is determined to be not substantiated under these rules, OTIS must provide written notice to the AP.

(b) When a report is determined to be substantiated under these rules, OTIS must send a Notice of Abuse Determination to the AP as provided in this subsection:

(A) The Notice of Abuse Determination with a copy of the redacted abuse investigation report must be sent to the AP by all of the following:

(i) Regular mail.

(ii) Certified mail with return receipt requested.

(iii) Alternative methods such as fax or electronic mail only when the respondent has requested an alternate method.

(B) The Notice of Abuse Determination must include the information described in OAR 137-003-0505(1) and (2)(a) and ORS 183.415.

(3) OTIS shall provide the OSH Superintendent and the ODHSOHA Human Resources with a copy of any written notices sent to the AP as described in (2).

(4) OTIS shall document how the notices were provided and maintain a record of all notices.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 413.085, ORS 409.010, 426.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 179.390, 426.385, 430.210, 430.731, 430.735 - 430.765, 430.768

RENUMBER: 407-045-0495 to 419-120-0090

RULE TITLE: Oregon State Hospital Patient Abuse Investigation Rules: Disclosure of Investigation Report and Related Documents

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) Portions of the abuse investigation report and underlying investigatory documents are confidential and are not available for public inspection.
  - (a) Pursuant to ORS 430.763, names of abuse reporters, witnesses and the alleged victim, as well as photographs of the patient are confidential and shall not be available for public inspection.
  - (b) Investigatory documents, including portions of the abuse investigation report and the protective services assessment contains "individually identifiable health information" as defined under ORS 192.556(6) and 45 CFR 160.103, and are confidential under federal Health Insurance Portability and Accountability Act (HIPAA) privacy rules, 45 CFR Parts 160 and 164, ORS 192.553 through 192.581 and 179.505 to 179.509.
- (2) Notwithstanding section (1) of this rule, the Department's OTIS shall make confidential information available, including any photographs if appropriate, in accordance to ORS 430.763.
- (3) Individuals or entities receiving confidential information pursuant to this rule shall be informed they are to maintain the confidentiality of the information and may not re-disclose the confidential information to unauthorized individuals or entities, as required by state or federal law.
- (4) OTIS shall inform OSH that copies of all received abuse investigation and protective services assessments reports shall be:
  - (a) Maintained by the OSH Superintendent separate from employee personnel files;
  - (b) The alleged victim's patient record shall contain a reference to the report sufficient to enable authorized persons to request a review of the OSH Superintendent's copy of the report or to request a public record copy.
  - (c) For purposes related to the proper administration of the state hospital, such as to respond to personnel actions, the Superintendent may re-disclose their confidential report at the Superintendent's discretion.
- (5) A centralized record of all abuse complaints, investigations and protective services reports shall be maintained by the Department's OTIS, in accordance to ORS 430.757 for all abuse investigations conducted at the state hospitals.
- (6) The Department or the Authority shall provide a redacted version of the written report to the public for inspection upon written request. Public record requests for written reports with substantiated abuse findings may not be released until after a Department Final Order is issued following opportunity for a contested case hearing.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, 426.010, 430.731

STATUTES/OTHER IMPLEMENTED: ORS 179.390, 426.385, 430.205 & 430.210, 430.731, 430.735 - 430.765, 430.768



RENUMBER: 407-045-0605 to 419-050-0000

RULE TITLE: Adult Abuse Investigations: Requesting a Contested Case Hearing of Substantiated Abuse Determination

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419

RULE TEXT:

(1) This rule applies to contested case hearings on substantiated adult abuse findings made by the Department's Office of Training, Investigation and Safety (OTIS) or the Department designees (Community Mental Health Programs or Community Developmental Disabilities Programs) under OAR 407-045-0120 to OAR 407-045-0495.

(2) Contested case proceedings under this rule are conducted in accordance with the Attorney General's model rules in OAR chapter 137, division 003, except to the extent that OAR 407-045-0120 to OAR 407-045-0495 are permitted to and provide for different procedures.

(3) A contested case hearing under this rule is not open to the public and is closed to nonparticipants, except nonparticipants may attend subject to the consent of the parties and the Department, and must adhere to applicable confidentiality laws.

(4) An Accused Person or Accused Provider (AP) who receives a Notice of Abuse Determination under OAR 407-045-0120 to OAR 407-045-0495 on or after March 1, 2019 may challenge that notice by filing a written, timely request for a contested case hearing. The request must be postmarked to the Department of Human Services, Office of Training, Investigations and Safety, 201 High Street, Salem, Oregon within 30 calendar days of the date of the Notice of Abuse Determination.

(5) The Department may dismiss a request for hearing as untimely if the AP's written explanation for missing the hearing request deadline does not meet the criteria in OAR 137-003-0528(2) and (3) for either a hearing on the merits or a limited contested case hearing about the reasons for missing the deadline.

(6) An AP or their legal representative may withdraw a request for hearing at any time before a final order has been issued in the contested case.

(a) The Department or the Office of Administrative Hearings (OAH) will send an order confirming the withdrawal of a hearing request to the last known address of the AP.

(b) The AP or their legal representative may cancel the withdrawal if a written cancellation of the withdrawal is sent to the Department hearing representative and postmarked no later than 10 business days following the date of the order confirming the withdrawal.

(c) A late cancellation of a withdrawal may be considered if the written cancellation of the withdrawal is sent the Department hearing representative and postmarked within the deadline set out in OAR 137-003-0675(1) following the date of the order confirming the withdrawal.

(d) The Department will allow the late cancellation of a withdrawal filed within the deadline set out in OAR 137-003-0675(1) if the deadline to cancel the withdrawal was missed due to circumstances beyond the control of the AP.

(7) The Department will refer to the Office of Administrative Hearings (OAH) the issue of allowing the late cancellation of a withdrawal filed within the deadline set out in OAR 137-003-0675(1) if there is a factual dispute about whether the deadline to cancel the withdrawal was missed due to circumstances beyond the control of the AP.

(8) An order dismissing a hearing request is issued when the neither the claimant or the claimant's representative appear at the time and place specified for the hearing. The Department may reconsider and cancel the dismissal under OAR 137-003-0675 after a timely written request of the claimant on a showing that the claimant was unable to attend the hearing and unable to request a postponement from OAH for reasons beyond claimant's reasonable control. The Department may refer the reconsideration decision to OAH.

(9) When the Department refers a contested case under this rule to the Office of Administrative Hearings (OAH), the Department indicates on the referral whether the Department is authorizing a proposed order, a proposed and final order (OAR 137-003-0645(4)), or a final order.

(a) When the Department authorizes either a proposed order or a proposed and final order, the AP may file written exceptions and written argument to be considered by the Department. The exceptions and argument must be

postmarked or received at the location indicated in the OAH order not later than the 20th calendar day after service of the proposed order or proposed and final order.

(b) When the Department authorizes proposed and final orders, if the AP does not submit timely exceptions or argument following a proposed and final order, the proposed and final order becomes a final order on the 21st calendar day after service of the proposed and final order unless the Department has issued a revised order or has notified the AP and OAH that the Department will issue the final order. When the Department receives timely written exceptions or argument, the Department issues the final order, unless the Department requests that OAH issue the final order under OAR 137-003-0655.

(c) If in a contested case hearing the Office of Administrative Hearings (OAH) is authorized to issue a final order on behalf of the Department, the Department may issue the final order in the case of default.

(10) The Department has adopted the following exceptions to the Attorney General's model rules due to caseload volume and because the model discovery procedures would unduly complicate or interfere with the hearing process:

(a) Upon the request of the party or AP, the Department provides work contact information -- telephone number and address -- for any Department employees expected to testify at the hearing as witnesses, except rebuttal witnesses.

(b) Except as provided in subsection (a) of the section, the Department and any party or AP in the contested case are not required to provide the telephone numbers and addresses of witnesses.

STATUTORY/OTHER AUTHORITY: ORS 183.341, 409.050

STATUTES/OTHER IMPLEMENTED: ORS 183.411 -183.471, 409.010, 430.731, 430.735-430.765, 430.768

RENUMBER: 407-045-0615 to 419-050-0010

RULE TITLE: Adult Abuse Investigations: Lay Representation in Contested Case Hearings

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419

RULE TEXT:

(1) Subject to the approval of the Attorney General, an officer or employee of the Department is authorized to appear on behalf of the Department in a contested case hearing conducted by the Office of Administrative Hearings under OAR 407-045-0605.

(2) A Department officer or employee acting as the Department's representative may not make legal argument on behalf of the Department.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the Department to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the Department in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(3) When an officer or employee appears on behalf of the Department, the administrative law judge shall advise the Department's representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection.

(4) If the administrative law judge determines that statements or objections made by the Department representative appearing under section (1) of this rule involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the Department representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(5) A Department representative appearing under section (1) of this rule must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available at <http://www.doj.state.or.us>.

(6) When a Department officer or employee represents the Department in a contested case hearing under OAR 407-045-0605, requests for admission and written interrogatories are not permitted. The Department adopts this exception to the Attorney General's model rules due to caseload volume and because these matters would unnecessarily complicate the hearing process.

STATUTORY/OTHER AUTHORITY: ORS 183.341, 409.050

STATUTES/OTHER IMPLEMENTED: ORS 183.411-183.471, 409.010, 430.731, 430.735-430.765, 430.768

RENUMBER: 407-045-0645 to 419-105-0000

RULE TITLE: Adult Developmental Disabilities Abuse Rules: Death Reporting Reviews for Adults in Developmental Disabilities Services

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) Effective November 1, 2019, Developmental Disabilities (DD) case management entities for adults enrolled in community developmental disabilities programs or support service brokerages are required to notify their local DD abuse investigator of all the deaths of adults receiving case management services within one business day of being informed of the death per the Department's Office of Developmental Disabilities Services (ODDS) policy and in the format required by the Department.
- (2) Within one business day of being informed of the adult's death, the investigator shall either:
  - (a) Immediately inform the Department's Office of Training, Investigations and Safety (OTIS) for deaths of residents of the Department's Stabilization and Crisis Units (SACU) and provide any relevant documents received related to the death; or
  - (b) Begin a death review and inform the Department in the format provided for these serious incident reviews.
- (3) The investigator shall complete a death review report using the OTIS provided format within 55 calendar days of receiving the report of the adult's death.
  - (a) The investigator may obtain an extension of the due date for good cause by submitting a request in writing to OTIS.
  - (b) "Good cause" has the meaning given that term in OAR 407-045-0260.
- (4) The death review consists of ascertaining if abuse was a factor in the adult's death. This includes but is not limited to:
  - (a) A review of the adult's DD case management records for at least the past year;
  - (b) A review of DD service provider records for the adult if services were provided by an ODDS regulated DD service provider, including a review of facility records if the adult received residential services from a licensed setting within 2 years of death;
  - (c) Any other relevant records; and
  - (d) Any relevant information provided by individuals contacted related to the death review.
- (5) The investigator shall obtain the official cause and manner of death, such as a copy of the adult's death certificate or medical examiner's report.
- (6) Within 5 calendar days of receiving a completed death review, an OTIS manager or coordinator shall review and either
  - (a) Approve the death review report for closure; or
  - (b) Work with the investigator to obtain necessary information or corrections for approval to close.
  - (c) OTIS shall provide ODDS with the final approved death review report.
  - (d) OTIS shall provide written notice that the death review has been approved to close to the DD case management entity that reported the death as described in (1).
- (7) If at any point the investigator ascertains during the death review that abuse was a factor, OTIS is to be notified within one business day and the death review case shall become an assigned abuse investigation per OAR 407-045-0300. Notifications shall occur per OAR 407-045-0291.
- (8) Nothing in this section affects the community program's duties and responsibilities related to case management following the death of an enrolled adult.

STATUTORY/OTHER AUTHORITY: ORS 409.010, ORS 409.050, ORS 430.662, ORS 430.735

STATUTES/OTHER IMPLEMENTED: ORS 430.662

RENUMBER: 407-045-1000 to 419-130-0000

RULE TITLE: Adult Residential Substance Use Disorder Investigation Rules: Purpose and Scope

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) Effective January 1, 2020, OAR 407-045-1000 through 407-045-1110 establishes the Oregon Department of Human Services (ODHS) Office of Training, Investigations and Safety (OTIS) rules for investigating and assessing the provision of protective services related to allegations of abuse of adults receiving residential treatment services for a substance use disorder (SUD) from a facility licensed by the Oregon Health Authority (OHA).
- (2) OTIS shall conduct thorough and unbiased investigations to make abuse findings and assess protective services in coordination with the Oregon Health Authority (OHA) Health Systems Division (HSD) as an evaluation of resident health and safety in SUD residential treatment services.
- (3) These rules also describe the procedures to provide an accused person or provider (AP) with a Department administrative review of a substantiated abuse finding determined upon closure of an investigation opened under these rules, prior to issuing a final order.
- (4) OTIS shall follow the requirements in these rules and ORS 430.735 through 430.765. When state law and code of federal regulations (CFR) conflict related to confidentiality of SUD patient-identifying information records (42 CFR, Part 2, Oct. 1, 2018), the Department and OHA shall defer to federal law. Of note:
  - (a) OTIS may receive and share Part 2 patient-identifying information and records from HSD regulated SUD residential treatment facilities as described in (2) of this rule for evaluating serious events as part of screening for possible abuse investigation;
  - (b) OTIS may not use or re-disclose Part 2 patient-identifying information received during investigations unless a specific written patient release of records is obtained; and
  - (c) OTIS shall securely retain all Part 2 SUD patient-identifying information and records received in (a) and (b) in accordance to the retention schedule established by the Department for abuse investigation reports.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.205 and 430.210 (amended by OL 2019, Chapter 236), 430.256, 430.306, 430.335, 430.338, 430.357, 430.397, 430.399, 430.630, 430.640, 430.735 - 430.765 (amended by OL 2018, Chapter 77, Section 2), 443.400 - 443.455, 42 CFR, Part 2, Oct. 1, 2018

RENUMBER: 407-045-1010 to 419-130-0010

RULE TITLE: Adult Residential Substance Use Disorder Investigation Rules: Definitions

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

In addition to the definitions in ORS 430.735, the following terms are defined as used in these rules, OAR 407-045-1000 through 407-045-1110.

- (1) "Abuse" means as defined in ORS 430.735.
- (2) "Abuse Investigation and Protective Services Report" means a written report completed under these rules.
- (3) "Adult" as used in these rules means an individual who is 18 years of age or older and receiving treatment services for a substance use disorder in a residential treatment facility (RTF), residential treatment home (RTH) or detoxification center licensed by the Oregon Health Authority (OHA).
- (4) "Adult protective services" as defined in ORS 430.735 means the necessary actions taken to prevent abuse or exploitation of an adult, to prevent self-destructive acts, and to safeguard an allegedly abused adult's person, property, or funds, including petitioning for a protective order as defined in ORS 125.005. Any actions taken to protect an adult must be undertaken in a manner that is least intrusive to the adult and provides for the greatest degree of independence.
- (5) "Accused Person" or "Accused Provider" (AP) means the respondent in an abuse investigation conducted under these rules, alleged or determined to have committed abuse and is a:
  - (a) Licensed SUD residential treatment facility (RTF), residential treatment home (RTH) or Detoxification Center; or
  - (b) Staff, contractor or volunteer in an RTF, RTH or Detoxification Center.
- (6) "Alleged victim" (AV) means an adult who is an SUD facility resident who is reported, alleged or determined to be subjected to abuse.
- (7) "Authority" means the Oregon Health Authority (OHA).
- (8) "Caregiver" as defined in ORS 430.735 means an individual, whether paid or unpaid, or a facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.
- (9) "Closed without abuse determination" means after diligent efforts have been made, the investigator is unable to locate the AP, the alleged victim or another individual who might have information critical to the outcome of the investigation; or relevant records or documents are unavailable, so that the investigation cannot be completed.
- (10) "Department" means the Oregon Department of Human Services (ODHS).
- (11) "Health Systems Division" (HSD) means a unit within OHA responsible for regulation of SUD facilities.
- (12) "Investigator" means an OTIS employee who is authorized and receives required training to screen and investigate allegations of abuse under these rules.
- (13) "Law enforcement agency" (LEA) means as defined in ORS 430.735.
- (14) "Not substantiated" means there is less than a preponderance of evidence to show that abuse occurred.
- (15) "Office of Training, Investigations and Safety" (OTIS) means the unit within the Department of Human Services Shared Services.
- (16) "Redacted" means information deemed confidential under state or federal laws that are excluded from public record release.
- (17) "Resident" as used in these rules means an adult receiving care, treatment or services in a SUD facility licensed by the Oregon Health Authority (OHA).
- (18) "Services" as defined in ORS 430.735 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 the adult.
- (19) "Substance Use Disorder" (SUD) means substance use disorder, also commonly called substance abuse or alcohol and drug (A&D).
- (20) "SUD facility" as used in these rules provide residential treatment for adults with alcohol or drug dependence and

means:

(a) A residential treatment facility or a residential treatment home that is licensed under ORS 443.415; or

(b) A Detoxification Center that is licensed as a SUD residential treatment program by OHA HSD.

(21) "Substantiated" means that the preponderance of evidence establishes the abuse occurred.

(22) "Treatment" means as defined in ORS 443.400.

(23) "Unbiased investigation" means an investigation that is conducted that does not have an actual or potential conflict of interest with the outcome.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.205 and 430.210 (amended by OL 2019, Chapter 236), 430.256, 430.306, 430.335, 430.338, 430.357, 430.397, 430.399, 430.630, 430.640, 430.735 - 430.765 (amended by OL 2018, Chapter 77, Section 2), 443.400 – 443.455, 42 CFR, Part 2, Oct. 1, 2018

RENUMBER: 407-045-1020 to 419-130-0020

RULE TITLE: Adult Residential Substance Use Disorder Investigation Rules: Training for OTIS Investigators and Abuse Reviewers

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) OTIS shall provide sufficient and timely training and consultation to ensure that OTIS investigators and abuse reviewers are able to conduct a thorough and unbiased investigation to make a determination about the alleged abuse under OAR 407-045-1000 to 407-045-1110.
- (2) Training shall include initial and continuing education to address initial action on complaints, screening and conducting abuse investigations.
- (3) The training shall address the cultural and social diversity of Oregon, focus on the vulnerable populations served and those who provide services, and include trauma-informed practices.
- (4) Training for OTIS investigators and abuse reviewers under these rules (OAR 407-045-1000 to 407-045-1110) will also include specific information related to operations of substance use disorder facilities and confidentiality of alcohol & drug services and records under 42 CFR Part 2.
- (5) OTIS employees conducting investigations or abuse reviews under OAR 407-045-1000 to 407-045-1110 shall participate in the core competency training and quarterly meetings provided to mental health investigators and demonstrate an understanding of investigative core competencies. Core competencies in the areas of:
  - (a) Interviewing;
  - (b) Gathering relevant information through records and site visits;
  - (c) Weighing the evidence; and
  - (d) Making abuse determinations.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.205 and 430.210 (amended by OL 2019, Chapter 236), 430.256, 430.306, 430.335, 430.338, 430.357, 430.397, 430.399, 430.630, 430.640, 430.735 - 430.765 (amended by OL 2018, Chapter 77, Section 2), 443.400 – 443.455, 42 CFR, Part 2, Oct. 1, 2018



RENUMBER: 407-045-1030 to 419-130-0030

RULE TITLE: Adult Residential Substance Use Disorder Investigation Rules: Initial Action on Complaints of Alleged Abuse

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) Upon receipt of a complaint alleging abuse, OTIS shall document the reported information as required by ORS 430.743 and any additional information reported.
  - (a) OTIS shall attempt to elicit the following information from the reporter:
    - (A) The age and present location of the allegedly abused adult.
    - (B) The adult's name, if releasable by:
      - (i) A Part 2 SUD program when related to serious event reporting at the SUD facility;
      - (ii) A release of information to OTIS signed by the adult or their legal representative/guardian (if applicable) and request a copy; or
      - (iii) If the reporter is not subject to Part 2 confidentiality regulations, such as the SUD resident, then names may be documented as part of initial reporting.
    - (C) The names and addresses of the persons responsible for the adult's care.
    - (D) The nature and extent of the alleged abuse, including any evidence of previous abuse.
    - (E) Any information that led the reporter to suspect abuse occurred.
    - (F) Any other information that the reporter believes might be helpful in establishing the cause of the abuse and the identity of the AP. And,
    - (G) The date of the incident.
  - (b) OTIS shall ask if a report to law enforcement report was made.
- (2) Upon receipt of a complaint of alleged abuse, OTIS shall immediately contact the HSD specialist to coordinate:
  - (a) Reviewing the initial complaint and need for review of SUD facility records, including any relevant incident reports completed by the facility;
  - (b) Contacting the alleged victim for a health and safety check to determine whether the alleged victim sustained any serious injury and assess the need for protective services per OAR 407-045-1050; and
  - (c) Obtaining signed releases of 42 CFR Part 2 information and records for investigation purposes to OTIS, including locating a forwarding address if the alleged victim is no longer a resident in the SUD treatment facility.
- (3) OTIS may consult with the HSD specialist to assess whether an abuse investigation is required under these rules.
- (4) If there is reasonable cause to believe a crime occurred and an immediate report to law enforcement is required per ORS 430.743(2), OTIS cross-reports to law enforcement shall not include any 42 CFR Part 2 protected SUD information (name or records) unless the SUD resident or their legal representative has provided written consent authorizing this disclosure to law enforcement.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.205 and 430.210 (amended by OL 2019, Chapter 236), 430.256, 430.306, 430.335, 430.338, 430.357, 430.397, 430.399, 430.630, 430.640, 430.735 - 430.765 (amended by OL 2018, Chapter 77, Section 2), 443.400 – 443.455, 42 CFR, Part 2, Oct. 1, 2018

RENUMBER: 407-045-1040 to 419-130-0040

RULE TITLE: Adult Residential Substance Use Disorder Investigation Rules: Screening Activities and Initial Notice

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) Screening is the process used to gather and assess information to determine the responses and whether the conduct described in the complaint meets the definition of abuse and there is reasonable cause to believe the alleged abuse requires investigation as stated in these rules.

(a) OTIS shall document screening activities completed and the information supporting the decision to either assign an abuse investigation or close the complaint at screening.

(b) OTIS shall provide written notifications to HSD Licensing on any abuse allegations received and assigned for investigation.

(2) OTIS shall have a specific SUD confidential protocol to:

(a) Track the outcome of every complaint received and screened to ensure completion;

(b) Record how and when notifications were provided; and

(c) Maintain records of actions taken by OTIS.

(3) A screening determination shall be made with consultation, as needed with HSD.

(4) The OTIS director or OHA behavioral health director may be consulted when OTIS is unable to make a screening determination because critical information to make a decision is needed. Consultation shall resolve whether to:

(a) Close complaint as unable to determine; or

(b) Seek a Part 2 Court Order and subpoena to authorize a SUD facility to release records protected under 42 CFR, Part 2 when no written release of information is able to be attained.

(5) When a law enforcement agency is conducting an investigation of the alleged abuse, OTIS is not required to conduct an investigation of the same incident.

(a) OTIS may perform its own investigation as long as it does not interfere with the law enforcement agency investigation.

(b) Circumstances that indicate a need for OTIS to conduct the investigation:

(A) There is potential for action by a licensing or certifying agency;

(B) Timely investigation by law enforcement is not probable; or

(C) The law enforcement agency does not complete a criminal investigation.

(6) If OTIS determines the complaint is not within the definitions of abuse requiring investigation under these rules, OTIS shall:

(a) Close the complaint as does not meet the conditions for an abuse investigation under these rules;

(b) Document the information gathered and assessed to support the decision and;

(c) Provide HSD Licensing a copy of (b).

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.205 and 430.210 (amended by OL 2019, Chapter 236), 430.256, 430.306, 430.335, 430.338, 430.357, 430.397, 430.399, 430.630, 430.640, 430.735 - 430.765 (amended by OL 2018, Chapter 77, Section 2), 443.400 – 443.455, 42 CFR, Part 2, Oct. 1, 2018

RENUMBER: 407-045-1050 to 419-130-0050

RULE TITLE: Adult Residential Substance Use Disorder Investigation Rules: Assessment for and Provision of Protective Services for Residents

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) Upon the initial receipt of a complaint or report of alleged abuse, OTIS shall contact the assigned HSD specialist to begin assessing needed or provided protective services, and any needed collaboration with the SUD facility.
- (2) An attempt at direct contact with the alleged victims who are SUD residents shall be determined between OTIS or HSD Licensing as part of assessing protective service needs, determining if the alleged victim is in danger or in need of immediate protective services.
  - (a) OTIS or HSD Licensing may decide not to attempt direct contact if the resident's clinician states a health, safety or well-being concern exists.
  - (b) Direct contact is not required if the alleged victim is no longer a resident of the facility.
- (3) Assessment for the provision of protective services may include:
  - (a) Arranging for the immediate protection of the alleged victim;
  - (b) Assessing the adult's ability to protect their own interest or give informed consent;
  - (c) Determining the alleged victim's ability to understand the nature of the protective service and their willingness to accept services;
  - (d) Coordinating evaluations to determine or verify the alleged victim's physical and mental status, if necessary;
  - (e) Assisting in and arranging for appropriate services and alternative living arrangements;
  - (f) Assisting in or arranging the medical, legal, financial, or other necessary services to prevent further abuse;
  - (g) Providing advocacy to assure the alleged victim's rights and entitlements are protected; and
  - (h) Consulting with the guardian or others as appropriate in developing recommendations or requirements to prevent further abuse.
- (4) In coordinating the assessment and assurance of protective services for the alleged victim, OTIS and HSD Licensing may share confidential information appropriate or necessary for evaluation of the health, safety and best interests of the alleged victim in need of protection.
- (5) OTIS shall document the protective services assessment and provisions provided, including those needed, offered and declined. The assessment is considered confidential SUD information.

STATUTORY/OTHER AUTHORITY: ORS 430.731, ORS 409.010, 409.050, 413.085

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.205 and 430.210 (amended by OL 2019, Chapter 236), 430.256, 430.306, 430.335, 430.338, 430.357, 430.397, 430.399, 430.630, 430.640, 430.735 - 430.765 (amended by OL 2018, Chapter 77, Section 2), 443.400 – 443.455, 42 CFR, Part 2, Oct. 1, 2018

RENUMBER: 407-045-1060 to 419-130-0060

RULE TITLE: Adult Residential Substance Use Disorder Investigation Rules: Investigation

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) Investigation of abuse allegations shall be thorough, unbiased and conducted by a trained OTIS investigator.
  - (a) Community programs and SUD facilities must provide the investigator access to employees and the premises for investigation purposes.
  - (b) Access to SUD residents or their identifying information (name and records) shall be upon receipt of a signed release authorizing disclosure of this Part 2 information to OTIS.
- (2) In conducting the abuse investigation, the investigator shall attempt and, when possible, complete the following:
  - (a) Make in-person contact with the alleged victim.
  - (b) Interview the alleged victim, witnesses, the AP and others who may have knowledge of the facts of the abuse allegation or related circumstances.
    - (A) Interviews shall be conducted in-person where practicable.
    - (B) Any person interviewed who needs an accommodation, such as language translation or other accommodation, the investigator shall note the information in the investigation report.
    - (C) The investigator shall ask the date of birth for each individual interviewed, except from SUD residents when there is no signed release of information, and shall obtain the date of birth of any AP.
    - (D) The investigator shall ask if the AP is a Department or Authority employee or volunteer and document the response as part of the investigation information. If affirmed:
      - (i) The investigator shall give the AP the Department form letter that outlines the required obligation to notify ODHSOHA Human Resource.
      - (ii) OTIS shall ensure the outcome of the investigation is provided to the ODHSOHA Human Resources for follow-up.
    - (E) The investigator shall document any relevant investigative interviews that did not occur, efforts made and the reasoning.
      - (i) The investigator shall make at least three attempts to contact the AP for an investigative interview when no response to an interview request occurs.
      - (ii) At least one attempt shall be made by phone to the last known number and one by mail to the last known address.
    - (c) Review all records or evidence relevant and material to the allegation with SUD resident records only upon a signed release of information; and
    - (d) Photograph the alleged victim's injuries consistent with trained guidelines or arrange for the alleged victim to be photographed to preserve evidence of the condition of the alleged victim at the time of investigation except when:
      - (A) The alleged victim knowingly refuses to be photographed; or
      - (B) It is clinically contraindicated due to health, safety and well-being.
  - (3) All facility records necessary for the investigation must be available to the investigator for inspection and copying. Facility records may include, but is not limited to statements, event reports, employee training records, visitor logs, diagrams, policies, photographs and videos.
  - (4) Any relevant record used in an investigative interview will be noted in the respective witness statement and included in the submitted investigation report.
  - (5) Any variance from the investigative processes in this rule shall be discussed with and approved by the OTIS manager. The reason for the variance and the name of the OTIS manager who approved the variance must be documented clearly in the investigative report.
  - (6) If the investigator believes an allegation assigned for investigation meets the conditions to be considered closed without an abuse determination, then OTIS manager approval to close shall be obtained.
    - (a) Investigative efforts and information obtained as described in (2) of this rule section shall be documented in the written report submitted for management approval to close.

(b) OTIS shall notify HSD Licensing, who will notify the SUD facility.

(c) OTIS shall notify the AP, if the AP has been notified of the investigation being opened.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.205 and 430.210 (amended by OL 2019, Chapter 236), 430.256, 430.306, 430.335, 430.338, 430.357, 430.397, 430.399, 430.630, 430.640, 430.735 - 430.765 (amended by OL 2018, Chapter 77, Section 2), 443.400 – 443.455, 42 CFR, Part 2, Oct. 1, 2018

RENUMBER: 407-045-1070 to 419-130-0070

RULE TITLE: Adult Residential Substance Use Disorder Investigation Rules: Abuse Investigation and Protective Services Report

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) OTIS shall provide HSD Licensing with a completed abuse investigation and protective services assessment report within 60 calendar days of receiving the complaint alleging abuse.
- (2) In cases where the investigator cannot complete an investigation within 60 calendar days and for good cause, the investigator shall submit a written request for an extension of time to the OTIS manager.
  - (a) "Good cause" for an extension means:
    - (A) When law enforcement is conducting an investigation or in process of prosecution;
    - (B) A material party or witness is temporarily unavailable; or
    - (C) New evidence is discovered that leads to additional allegations.
  - (b) The request shall detail the need for an extension and the length of the extension.
    - (A) OTIS shall copy HSD Licensing on the OTIS manager approval; and
    - (B) OTIS shall instruct HSD Licensing to notify the SUD facility licensee of the approved extension and due date.
- (3) The completed abuse investigation report shall include:
  - (a) A statement of the allegation being investigated for each alleged victim and AP;
  - (b) A list of all witnesses interviewed, and a summary of the relevant information provided by each witness with SUD resident names deidentified;
  - (c) A summary of findings and a conclusion concerning the allegation of abuse;
  - (d) A specific finding of substantiated or not substantiated for each allegation investigated except those allegations approved to be closed without abuse determination;
  - (e) The name and title of the investigator completing the report; and
  - (f) The name and title of the manager who reviewed the report.
- (4) OTIS may review and consult with HSD Licensing when necessary on the abuse finding, prior to closure.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.205 and 430.210 (amended by OL 2019, Chapter 236), 430.256, 430.306, 430.335, 430.338, 430.357, 430.397, 430.399, 430.630, 430.640, 430.735 - 430.765 (amended by OL 2018, Chapter 77, Section 2), 443.400 – 443.455, 42 CFR, Part 2, Oct. 1, 2018

RENUMBER: 407-045-1080 to 419-130-0080

RULE TITLE: Adult Residential Substance Use Disorder Investigation Rules: Notifications at the Conclusion of an Investigation

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) After an abuse determination is made and the investigation report has been approved to close, OTIS shall make and document the notifications described in this rule.
- (2) When an allegation is determined to be not substantiated under these rules, OTIS shall provide written notice of the outcome to the AP. A copy of this notification will be provided to:
  - (a) The OHA HSD specialist; and
  - (b) The SUD facility.
- (3) When an allegation is determined to be substantiated under these rules, OTIS shall send to the AP a Notice of Substantiated Abuse and include a redacted copy of the abuse investigation report. The notice shall include:
  - (a) The allegation investigated and legal authority relied upon.
  - (b) The abuse finding and standard of proof used.
  - (c) An explanation of AP's right to ask for an OTIS administrative review of the abuse finding, including information on how an abuse finding may affect employment.
  - (d) How to request an administrative review in writing, including the address to send the request; and state if assistance is needed in understanding the information, the AP may call OTIS with a phone number provided in the notice.
  - (e) A request the AP provide information as part of their written request for an OTIS administrative review.
    - (A) Information requested should include:
      - (i) Date the request for review is written;
      - (ii) Case number found on the notice and the redacted report;
      - (iii) Full name and date of birth of the AP; and current name if changed since the investigation began;
      - (iv) For each allegation, an explanation, responsive to the information provided in the report, stating why it is believed the substantiated abuse finding should be changed to not substantiated with any additional information or documents provided to be considered during the review;
      - (v) State whether they wish or do not wish to be contacted during the OTIS review for a telephone interview with current phone information provided if contact wanted;
      - (vi) Current mailing address and other contact information, such as email if preferred; and
      - (vii) A signature.
    - (B) Requests for reviews that do not contain all requested information outlined in (A) shall be afforded an OTIS review based on the information that is provided.
  - (f) Only the AP may request a review. When a SUD facility is named, then the licensee or legal representative, such as the executive director or board chair may request the review.
  - (g) A statement that the request shall be received by OTIS no later than 30 calendar days from the date of the Notice of Substantiated Abuse, including if the AP's request for review is mailed, the date the letter is postmarked shall be considered the date of delivery to OTIS.
  - (h) A statement that if no request for review is received within 30 calendar days from the date of the Notice of Substantiated Abuse, OTIS shall issue a Final Order. This order advises the AP of the right to petition for judicial review under ORS 183.484, as an order in an "other than contested case" within 60 days of service of the final order. Petitions for review shall be filed in Marion County Circuit Court or the circuit court of the county where the AP resides or has a principal business office.
- (4) OTIS shall send the notices described in (2) or (3) to the AP by all of the following:
  - (a) Regular mail.
  - (b) Certified mail with return receipt requested if an allegation is substantiated.

- (c) Alternative methods such as fax or electronic mail only when the respondent has requested an alternate method.
- (5) OTIS shall provide the OHA HSD specialist with a copy of any written notices sent to the AP as described in (3).
- (6) OTIS shall document how the notices were provided and maintain a record of all notices.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.205 and 430.210 (amended by OL 2019, Chapter 236), 430.256, 430.306, 430.335, 430.338, 430.357, 430.397, 430.399, 430.630, 430.640, 430.735 - 430.765 (amended by OL 2018, Chapter 77, Section 2), 443.400 – 443.455, 42 CFR, Part 2, Oct. 1, 2018, ORS 183.480 and 183.484



RENUMBER: 407-045-1090 to 419-130-0090

RULE TITLE: Adult Residential Substance Use Disorder Investigation Rules: Administrative Review Process for Substantiated Findings

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) The OTIS reviewer shall review the completed abuse investigation report; and records collected as part of the investigation.

(2) The OTIS reviewer shall interview the AP if requested and the AP may have legal representation or other person present during the interview. The OTIS reviewer shall consider any verbal or written information offered by the AP.

(3) The OTIS reviewer may not re-open the investigation by interviewing the alleged victim, witnesses or others mentioned in the investigation, or gather additional records or evidence to conduct a further investigation of the allegation of abuse.

(4) The OTIS reviewer shall recommend to the OTIS director, whether to change or maintain the substantiated abuse finding based upon their review of the evidence described in sections (1) and (2).

(5) The OTIS reviewer shall prepare a written summary of information gathered as described in sections (1) and (2) upon which the recommendation was based within 30 calendar days of OTIS's receipt of the AP's request for review.

(6) After reviewing the written information from the designated OTIS reviewer, the OTIS director shall make a final determination on the abuse finding within 15 calendar days and a Final Order shall be issued.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.735 - 430.765 (amended by OL 2018, Chapter 77, Section 2), 42 CFR, Part 2, Oct. 1, 2018, ORS 183.480 and 183.484

RENUMBER: 407-045-1100 to 419-130-0100

RULE TITLE: Adult Residential Substance Use Disorder Investigation Rules: Issuing Final Orders

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

- (1) OTIS shall issue written Final Orders to the AP for all substantiated allegations of abuse investigated under ORS 430.735 to 430.765.
- (2) All Final Orders shall be signed by the OTIS director as authorized by the Department Director.
- (3) The Final Order shall be issued when:
  - (a) When no request for a review is received after 30 calendar days from the date of the Notice of Substantiated Abuse; or
  - (b) Upon completion of the administrative review process detailed in OAR 407-045-1090.
- (4) Final Orders shall be mailed by OTIS within 7 calendar days to the AP.
  - (a) Copies of this Final Order shall be electronically sent to:
    - (A) OHA HSD; and
    - (B) The SUD facility.
  - (b) If applicable, OTIS will provide a copy of this Final Order to the ODHS/OHA Human Resources for cases involving ODHS or OHA employees or volunteers.
- (5) OTIS shall notify regulatory agencies who license or certify an AP practicing therein of Final Orders issued for substantiated abuse findings. The written notification will not re-disclose any 42 CFR Part 2 information and a copy will be provided to OHA HSD.
- (6) The Final Order is considered part of the investigation case records.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.205 and 430.210 (amended by OL 2019, Chapter 236), 430.256, 430.306, 430.335, 430.338, 430.357, 430.397, 430.399, 430.630, 430.640, 430.735 - 430.765 (amended by OL 2018, Chapter 77, Section 2), 443.400 – 443.455, 42 CFR, Part 2, Oct. 1, 2018, ORS 183.480 and 183.484

RENUMBER: 407-045-1110 to 419-130-0110

RULE TITLE: Adult Residential Substance Use Disorder Investigation Rules: Disclosure of Investigation Report and Related Documents

RULE SUMMARY: Renumbering of OTIS Adult Rules to OAR Chapter 419.

RULE TEXT:

(1) The abuse investigation report and underlying investigatory documents are confidential and are not available for public inspection.

(2) OTIS shall inform HSD Licensing of notifications to other health care professional boards for an AP with a Final Order of substantiated abuse and whose treatment practice is regulated by another professional licensing or certification board.

(3) Individuals or entities receiving confidential information pursuant to this rule shall be informed they are to maintain the confidentiality of the information and shall not re-disclose the confidential information to unauthorized individuals or entities, as required by state or federal law.

(4) A centralized record of all abuse investigation reports without Part 2 records and information shall be maintained by OTIS and HSD for abuse investigations conducted by OTIS under ORS 430.735.

STATUTORY/OTHER AUTHORITY: ORS 409.010, 409.050, 413.085, ORS 430.731

STATUTES/OTHER IMPLEMENTED: ORS 430.731, 430.205 and 430.210 (amended by OL 2019, Chapter 236), 430.256, 430.306, 430.335, 430.338, 430.357, 430.397, 430.399, 430.630, 430.640, 430.735 - 430.765 (amended by OL 2018, Chapter 77, Section 2), 443.400 – 443.455, 42 CFR, Part 2, Oct. 1, 2018