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POLICY TRANSMITTAL NO. 11-37	DATE: NOVEMBER 2, 2011
FAMILY SUPPORT SERVICES DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF INTERGOVERNMENTAL RELATIONS AND POLICY

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TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:5-1-5; 5-3-4 through 5-3-6; and 5-5-2 through 5-5-4.

EXPLANATION:

OAC 340:5-1-5 Instructions to Staff are amended to add that pre-formatted letters may be used as a summary of the investigation.

OAC 340:5-3-4 Instructions to Staff are amended to: (1) clarify language for reporting to Office of Client Advocacy; and (2) add that the elements of an investigation continue upon the death of an alleged victim if an initial face-to-face interview was conducted with the alleged victim.

OAC 340:5-3-5 Instructions to Staff are amended for language clarification.

OAC 340:5-3-6 Instructions to Staff are amended to: (1) clarify language for screening reports when potential conflict of interest exists; (2) add reference to OKDHS:115-3-2(e)(5); and (3) completion of Form 08AD042E.

OAC 340:5-5-2 Instructions to Staff are amended to: (1) clarify language; and (2) explain documentation requirements.

OAC 340:5-5-3 Instructions to Staff are amended to explain documentation requirements.

OAC 340:5-5-4 Instructions to Staff are amended for language clarification.

Original signed on 11-1-11

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Mary Stalnaker, Director  
Family Support Services Division

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Sandra Harrison, Coordinator  
Office of Intergovernmental Relations and  
Policy

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WF # 11-Z (NAP)

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## **INSTRUCTIONS FOR FILING MANUAL MATERIAL**

OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following an "OKDHS" number, such as personnel policy at OKDHS:2-1 and personnel rules at OAC 340:2-1. The "340" is the Title number that designates OKDHS as the rulemaking agency; the "2" specifies the Chapter number; and the "1" specifies the Subchapter number.

The chronological order for filing manual material is: (1) OAC 340 by designated Chapter and Subchapter number; (2) if applicable, OKDHS numbered text for the designated Chapter and Subchapter; and (3) all OAC Appendices with the designated Chapter number. For example, the order for filing personnel policy is OAC 340:2-1, OKDHS:2-1, and OAC 340:2 Appendices behind all Chapter 2 manual material. Any questions or assistance with filing manual material will be addressed by contacting Policy Management Unit staff at 405-521-4326.

### **REMOVE**

340:5-1-5

340:5-3-4

340:5-3-5

340:5-3-6

340:5-5-2

340:5-5-3

340:5-5-4

### **INSERT**

340:5-1-5, pages 1-3, revised 11-1-11

340:5-3-4, pages 1-2, revised 11-1-11

340:5-3-5, pages 1-2, revised 11-1-11

340:5-3-6, pages 1-5, revised 11-1-11

340:5-5-2, pages 1-8, revised 11-1-11

340:5-5-3, pages 1-13, revised 11-1-11

340:5-5-4, pages 1-11, revised 11-1-11

**340:5-1-5. Confidentiality**

Revised 11-3-10

(a) All records, working papers, and reports related to an Adult Protective Services (APS) investigation are confidential under Sections 10-110 and 10-110.1 of Title 43A of the Oklahoma Statutes (43A O.S. §§ 10-110 and 10-110.1) and may be disclosed only by order of the court except under the circumstances described in (b) through (g) of this Section. Representatives of the general public, news media, or agencies not meeting one of the exceptions in (c) of this Section who request details on a specific case may be referred to the county director, area director, Family Support Services Division (FSSD) APS Unit staff, or the Oklahoma Department of Human Services (OKDHS) Office of Communications for a detailed explanation of OKDHS confidentiality rules.

■ 1

(b) When consulting persons knowledgeable of the circumstances of an alleged victim of abuse, neglect, or exploitation, or when making other contacts as part of the investigation or service planning process, the APS specialist may disclose information necessary to ensure that the vulnerable adult is protected and the vulnerable adult's needs are met.

(c) Certain persons acting in an official capacity with regard to the vulnerable adult may review or receive information from the entire case record, including:

- (1) a district attorney or employees of the district attorney's office;
- (2) the attorney representing the person who is the subject of an involuntary services action;
- (3) the attorney for the Oklahoma Disability Law Center, when involved in representing the vulnerable adult;
- (4) staff of:
  - (A) an Oklahoma law enforcement agency;
  - (B) a law enforcement agency of another state;
  - (C) a state or local Medical Examiner's Office;
  - (D) a law enforcement agency of a federally recognized tribe in Oklahoma; or

- (E) a federal law enforcement agency;
- (5) staff of another state's APS program;
- (6) physical or mental health care professionals involved in the evaluation or treatment of the vulnerable adult; and
- (7) OKDHS staff who use the information in carrying out their own responsibilities. ■ 2
- (d) Any agency or person authorized by OKDHS to provide services to a vulnerable adult may receive a summary of information necessary to secure or provide appropriate care for the vulnerable adult.
- (e) The vulnerable adult's caretaker, legal guardian, and next of kin may receive summaries of information from an APS case record. ■ 3
- (f) Some information from APS records may be released to employees or contractors of the State for research purposes, upon application to and approval by the FSSD APS Unit. While local OKDHS offices may release statistical information, no specific case information is released for research purposes unless approval is received from the FSSD APS Unit.
- (g) In accordance with 43A O.S. § 10-110.1, when the person responsible for the care of a vulnerable adult has been charged by information or indicted with committing a crime resulting in the death or near death of a vulnerable adult, there is a presumption that it is in the best interest of the public to disclose certain information. ■ 4
- (h) If federal law specifically prohibits the disclosure of any of the information required by this subsection, that information may be excluded from the disclosed health information. ■ 5

## **INSTRUCTIONS TO STAFF 340:5-1-5**

### **Revised 11-1-11**

- 1. To maintain the highest degree of confidentiality, Adult Protective Services (APS) records are kept in a secured area at local and state office levels.**
- 2. Oklahoma Department of Human Services staff granted access to APS records include Field Operations Division, Division of Children and Family Services, Developmental Disabilities Services Division, Office of Inspector General,**

Office of Client Advocacy, and others who request records to evaluate eligibility or complete an investigation.

- 3. Pre-formatted letters available in the APS Computer System may be downloaded and used as the summary.**
- 4. (a) When an APS specialist has a case in which a person responsible for the care of a vulnerable adult has been charged with committing a crime resulting in the death or near-death of a vulnerable adult, the APS specialist immediately notifies the Family Support Services Division (FSSD) APS Unit.**

**(b) The FSSD APS Unit and Office of General Counsel determine the information to be released.**
- 5. An example is disclosing medical information prohibited by the Health Insurance Portability and Accountability Act (HIPPA) of 1996 as it relates to the human immunodeficiency virus (HIV) that causes acquired immunodeficiency syndrome (AIDS). The court must order the release of such information.**



**340:5-3-4. Reports under the jurisdiction of agencies other than local APS**

Revised 6-7-04

Some reports of alleged maltreatment of vulnerable adults are not investigated by local Adult Protective Services (APS) staff.

**(1) Reports of alleged victims who are residents of Northern Oklahoma Resource Center of Enid (NORCE), Greer Center, or Southern Oklahoma Resource Center (SORC) of Pauls Valley, or former residents of Hissom Memorial Center.** Reports which allege a resident of NORCE, Greer Center, or SORC has suffered maltreatment by an employee of the facility, as well as reports which allege maltreatment of a former resident of Hissom Memorial Center by a current caretaker, are referred to the Oklahoma Department of Human Services (OKDHS) Office of Client Advocacy (OCA). ■ 1

**(2) Alleged victims of maltreatment in hospital settings.** Reports of alleged maltreatment of vulnerable adults who are receiving services in medical hospitals, rehabilitation facilities, or private psychiatric hospitals by staff of the facility are referred to the Oklahoma State Department of Health, Protective Health Services, Medical Facilities Service. ■ 2

**(3) Alleged victims of maltreatment by staff of the Oklahoma Department of Mental Health and Substance Abuse Services (DMHSAS) and its contracted providers.** Reports of alleged maltreatment of a vulnerable adult by staff of a public or private community mental health agency are referred to the Advocacy Division of DMHSAS. If DMHSAS declines to conduct an investigation, the report may be referred back to the local APS office. ■ 3

**(4) Reports alleging maltreatment of residents by staff of nursing facilities.** Reports of alleged maltreatment of nursing facility residents are sent to the Family Support Services Division, APS Unit, Long Term Care Investigations Section. These reports are also sent to the Oklahoma State Department of Health, Protective Health Services. ■ 4

**(5) Reports involving local, state, or federal correctional facilities.** Reports of abuse, neglect, or exploitation of residents by staff of state or federal public hospitals, jails, prisons, or similar facilities are referred to the facility's regulatory department for investigation and to the local district attorney.

**(6) Reports involving deceased alleged victims.** Reports of maltreatment of persons who are already deceased at the time the report is made are not accepted

by APS. Reporters are referred to the state or local Office of the Medical Examiner, local law enforcement, or, if the death occurred in a nursing facility, to the Medicaid Fraud Control Unit in the Office of the Attorney General. ■ 5

## **INSTRUCTIONS TO STAFF 340:5-3-4**

Revised 11-1-11

- 1. When the Adult Protective Services (APS) specialist receives a report regarding current residents of Northern Oklahoma Resource Center of Enid (NORCE), 580-213-2700, the Greer Center, 580-213-2700, Southern Oklahoma Resource Center (SORC), 405-238-6400, or a former resident of Hissom, he or she enters all pertinent information in the Intake Section of the APS computer system and immediately refers the report to the Office of Client Advocacy (OCA), by fax 405-525-4855 or email \*oca.intake@OKDHS.org. If the APS specialist receives a report after regular business hours, he or she refers the complaint to the OCA on-call ombudsman, 405-203-6056. The APS specialist sends a copy of the report to Developmental Disabilities Services Division. In some instances of self-neglect involving Hissom class members, the OCA may return the complaint to the local APS staff for the human services center (HSC) where the alleged victim resides.**
- 2. Hospital reports are telephoned to Oklahoma State Department of Health (OSDH), Protective Health Services, Medical Facilities Service, 405-271-6576.**
- 3. Reports involving Oklahoma Department of Mental Health and Substance Abuse Services (DMHSAS) operated or contracted facilities or providers are telephoned to the DMHSAS Advocacy Division at 405-573-6605 or toll free, 1-866-699-6605.**
- 4. Nursing facility reports are submitted by completing the Intake Section on the APS Computer System and marking it as a facility investigation. The report is automatically submitted by the computer to the Long Term Care Investigations (LTCI) Unit for screening. The LTCI telephone number is 405-521-3440; fax 405-522-3463.**
- 5. If the alleged victim (AV) dies during the investigation and a face-to-face interview was conducted with the AV, the APS specialist continues with the elements of the investigation to complete the investigation.**

**340:5-3-5. Multiple jurisdictions**

Revised 6-1-10

Some reports which are appropriate for Adult Protective Services (APS) intervention are also required to be sent to other agencies.

**(1) Reports which are sent to Oklahoma State Department of Health (OSDH).** Reports alleging maltreatment of vulnerable adults are accepted and screened by APS but are also sent to OSDH, Protective Health Services, for residents of:

(A) residential care facilities;

(B) assisted living facilities; and

(C) nursing facilities when the report is of self-neglect or maltreatment by a person not employed by the facility. ■ 1

**(2) Reports which are sent to law enforcement.** Reports alleging illegal activity or situations which may be dangerous for an APS specialist are referred to local law enforcement. A report of this type does not relieve APS of responsibility for assessing the need for protective services in such situations. ■ 2

**(3) Reports involving substance abusers and persons with a mental illness.** Oklahoma law gives the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) primary responsibility for the mentally ill and substance abusers. ODMHSAS actively treats seriously mentally ill persons on a voluntary basis. Community mental health centers administered by or under contract to ODMHSAS provide recommended aftercare services to patients who are discharged from state mental hospitals and voluntarily request and accept mental health services. ■ 3

(A) The APS specialist may assist law enforcement officers when requested by providing behavioral assessments necessary to obtain involuntary mental health treatment, such as third party affidavits.

(B) When reports are received regarding persons who are alleged to have a mental illness or a substance abuse problem, they are screened by the APS specialist IV to determine whether it is appropriate for APS investigation.

(C) If, after investigation, the vulnerable adult's primary problem is determined to be substance abuse dependency or mental illness, the APS specialist directs the

vulnerable adult to the nearest ODMHSAS contract facility for outpatient service. The APS specialist calls law enforcement for securing emergency detention if the person is a danger to self or others.

## **INSTRUCTIONS TO STAFF 340:5-3-5**

Revised 11-1-11

1. (a) When a report is received in the human services center (HSC) alleging a resident of a residential care or assisted living facility, licensed or unlicensed, is suffering maltreatment, or a resident of a nursing facility is suffering maltreatment from anyone not on the facility's staff or self-neglect, the person accepting the report enters all pertinent information in the Intake Section of the Adult Protective Services (APS) Computer System and submits it through automated processes. In addition, the person accepting the report also telephones, faxes, or emails a summary of the referral to Oklahoma State Department of Health (OSDH), Protective Health Services. The telephone number is 405-271-6868, toll free 1-800-747-8419; fax 405-271-4172; toll free fax 1-866-239-7553, and email address is LTCComplaints@health.ok.gov.  
  
(b) In addition to the report, the APS specialist IV sends the final investigative findings in summary form to OSDH, Protective Health Services.
2. When reports contain allegations of illegal drug manufacture or sale, dangerous animals, guns, or other situations that present a potentially serious danger to an APS specialist, the APS specialist notifies local law enforcement of the allegations.
3. In order to appropriately utilize available services for the vulnerable adult, APS specialists must be knowledgeable about:
  - (1) current state mental health laws;
  - (2) local law enforcement policies regarding voluntary and involuntary treatment for persons with mental illness and persons abusing substances;
  - (3) mental health professionals; and
  - (4) resources available in their communities.

**340:5-3-6. Screening APS reports**

Revised 6-1-10

(a) **Time frame for screening Adult Protective Services (APS) reports.** APS specialist IVs are responsible for screening new reports on the APS Computer System on a regular basis throughout the day to identify emergency situations and to ensure assignment to the correct human services center (HSC).

(b) **Responsibility for screening reports.** APS specialist IVs are responsible for screening reports and either accepting them as APS referrals or classifying them as Information and Referral. When a request is accepted as an APS referral, the APS specialist IV determines whether an emergency response is indicated, whether the referral is employee related, and which APS specialist is assigned the referral. APS specialist IVs complete screening in a manner to facilitate the timely initiation of the investigation as defined in OAC 340:5-5-2. ■ 1

(c) **Reports involving domestic violence.** APS situations are often forms of domestic violence. Reports received alleging maltreatment of an adult by a spouse or other family or household member are considered protective services requests if the alleged victim is vulnerable as defined in OAC 340:5-1-6. ■ 2

(d) **Reports involving OKDHS employees or their families.** Specific procedures are followed when a report of maltreatment is received which involves an employee of the Oklahoma Department of Human Services (OKDHS). ■ 3

**INSTRUCTIONS TO STAFF 340:5-3-6**Revised 11-1-11

1. (a) **The Adult Protective Services (APS) specialist IV uses the items in (1) through (6) of this Instruction as screening criteria for reports.**

(1) **Is the alleged victim (AV) of maltreatment reported to be a vulnerable adult?**

(2) **Does the situation described potentially fall into one of the categories of abandonment, abuse, financial neglect, neglect, self-neglect, exploitation, sexual abuse, sexual exploitation, or verbal abuse?**

(3) **Does the setting where the maltreatment is alleged to have occurred fall into the jurisdiction of the community APS program?**

**(4) Does the situation as reported appear to potentially require emergency intervention?**

**(5) The APS specialist IV determines whether the situation presents a potential, immediate threat to the APS specialist or vulnerable adult. If a potential threat exists, the APS specialist IV or APS specialist contacts emergency personnel. Emergency personnel may precede or accompany the APS specialist to the home. APS specialists are not first responders and do not knowingly insert themselves into dangerous situations. APS specialists may receive additional information from emergency personnel or discover situations requiring emergency personnel at the initial home visit and may facilitate the provision of needed services as appropriate.**

**(6) When a report is not accepted for APS investigation, the APS specialist refers the reporter to other agencies that may provide assistance. The APS specialist documents the contact as an Information and Referral (I & R) in the APS Computer System I & R Notes Section and states reasons the report did not meet the criteria for investigation.**

**(b) If there is insufficient information in the report to immediately determine the AV meets the definition of vulnerable adult, the APS specialist IV attempts to determine vulnerability.**

**(1) Information on the Oklahoma Department of Human Services (OKDHS) computer system may be viewed, and the APS specialist IV may contact the reporter for additional information, to assist in this determination. APS specialist IVs must be familiar with the definition of vulnerable adult, and remember that it is not necessary to have a formal determination of disability to consider an adult vulnerable.**

**(2) Unless it is clear that the AV is not a vulnerable adult, the report may not be screened to I & R solely based on lack of vulnerability.**

**(c) The APS specialist IV considers the definitions of the types of maltreatment. If the alleged situation fits at least one of the definitions of maltreatment, it is accepted for investigation. If the situation does not fit one of the definitions, the report is screened as I & R, the APS specialist IV documents in the Notes Section why the report was screened as I & R, and the reporter, if known, is contacted to discuss other alternatives for handling the issue.**

(d) If a report contains allegations of serious problems that could result in death or serious physical harm to the AV, the report is screened as requiring immediate action, and is immediately communicated to the assigned APS specialist. In case of these emergencies, APS specialists are required to carry agency issued cell phones at all times.

(e) If the setting is not in a jurisdiction APS investigates, as described in OAC 340:5-3-4, the APS specialist advises the reporter, when known, of the name of the agency to which APS will forward the report.

2. APS specialists are familiar with the provisions of the Protection from Domestic Abuse Act, Sections 60 through 60.18 of Title 22 of the Oklahoma Statutes (22 O.S. § 60 - 60.18), the Domestic Abuse Reporting Act, 22 O.S. § 40.5 through 40.7, and 74 O.S. § 150.12.B.

(1) In cases where the AV does not meet the APS definition of vulnerable adult, the APS specialist refers the AV to the local court clerk or other appropriate service provider for assistance in obtaining legal advice, action, or both, and services.

(2) If the report includes an allegation of abuse or neglect of a person younger than 18 years of age, the APS specialist immediately makes a referral to Child Protective Services (CPS), and coordinates the investigation with the Children and Family Services Division (CFSD) worker.

3. (a) Additional screening criteria apply upon receipt of a report involving OKDHS employees or their immediate or extended family members to help determine if the potential for conflict of interest exists with the AV or alleged perpetrator (AP). It is never appropriate for anyone to discuss the report with the involved employee outside of the investigative process. Notifying an employee of a pending investigation is a violation of the confidentiality provisions of 43A O.S. § 10-110. In addition to the basic screening criteria, the APS specialist IV determines:

(1) the relationship of the AV to the OKDHS employee;

(2) whether the employee is the AP; and

(3) the extent of any involvement between the employee and local APS specialists, including the APS specialist IV.

**(b) After thoroughly analyzing the additional screening criteria, the APS specialist IV, county director, and area APS program field representative (PFR), determine whether the potential for conflict of interest or the appearance thereof may exist if the report is assigned for investigation to local staff.**

**(1) The potential for conflict of interest may be determined to exist if, through acquaintance with the employee, the APS specialist or APS specialist IV could possibly be accused of favoring the employee's wishes or benefiting the employee in any way through the investigation.**

**(2) In some cases in which the employee is a family member, but not an AP or actively involved in the care of the AV, there may be no question of conflict of interest and the referral may be investigated without being transferred.**

**(c) If the potential for conflict of interest exists, the APS PFR coordinates with the county director to assign the referral to a different APS specialist IV group. If an out-of-area assignment of the report is necessary, the area director or designee coordinates the action with the other involved area director or designee as well as county directors of the sending and receiving human services centers (HSCs). The Family Support Services Division (FSSD) APS Unit, may be consulted at any time in determining the appropriate disposition of a report involving an OKDHS employee. After a decision is reached regarding assignment of the report, the involved county directors are notified, as well as the APS specialist IV for the receiving HSC.**

**(1) Out-of-group assignment is appropriate when the local employee who is involved in the report is not well known to other APS staff in the area.**

**(2) Out-of-area assignment is appropriate when the local employee involved in the report is well known over a large portion of the area, and APS staff in the area could not investigate without the potential appearance of conflict of interest.**

**(d) If the allegation involves possible violations of the employee's professional position, a recommendation is made to refer the report to the Office of Inspector General (OIG) of OKDHS on Form 19MP001E, Referral Form, or the electronic equivalent. If accepted by OIG, local staff cooperate as requested. If OIG declines, the area director or designee follows the procedure for assigning a complaint that involves an employee.**

(e) Per OAC 340:5-3-2(c) Instructions to staff (ITS) # 1, in an emergency situation requiring an immediate response, HSC staff from the office where the alleged victim resides resolves the emergency and then follows the procedure to have the case reassigned to staff in a different HSC if necessary.

(f) The APS specialist IV notifies the area director immediately of substantiated referrals in which the employee is named as perpetrator, and also notifies FSSD, APS Unit, of any training issues that are identified as a result of the findings.

(g) Refer to OKDHS:115-3-2(e)(5) for rules regarding the county director's responsibility as the custodian of records for the human services center (HSC) and when the employee and county director must complete Form 08AD042E, Securing and Assigning Sensitive Case Records.

(1) Paper case records on APS investigations involving OKDHS employees are maintained in the locked executive files section of the local office.

(2) Electronic records are appropriately coded for confidentiality by the APS specialist IV during the screening process in the APS Computer System to restrict who has access to these records.



**340:5-5-2. Initiating investigations**

Revised 6-1-10

An Adult Protective Services (APS) specialist initiates an investigation by a visit to the vulnerable adult who is the alleged victim (AV) at the adult's home or other place of residence. ■ 1

**(1) Time frame for initiating investigations.**

(A) The APS specialist initiates the investigation of referrals of maltreatment as soon as possible within three working days, not to exceed 72 hours from the time of the receipt of the report in the Oklahoma Department of Human Services (OKDHS), excluding weekends and official OKDHS holidays. ■ 2

(B) In the case of an emergency situation when immediate action may be required, the APS specialist initiates the investigation as soon as possible within four hours of receipt. ■ 3

(2) **Denial of access to the AV.** If the APS specialist is denied entry into the residence of the AV, or is denied a private interview with the AV, OKDHS staff may petition the court for an order allowing entry or access. ■ 4

**INSTRUCTIONS TO STAFF 340:5-5-2**Revised 11-1-11

1. (a) **Prior to the Adult Protective Services (APS) specialist making the initial visit to the alleged victim (AV), the APS specialist IV discusses with the APS specialist any safety issues identified in the acceptance and screening of the report, and together they make arrangements for safety concerns to be addressed both before and during the visit. The APS specialist:**

**(1) and the APS specialist IV staffs the report and case record information to determine whether there are any risk factors associated with the family, the home, or the neighborhood. When the APS specialist believes the home visit cannot be made safely, he or she consults with the APS specialist IV to determine how a safe home visit can be made. When necessary, the APS specialist contacts law enforcement for assistance;**

(2) prior to petitioning the court for an order of entry, staffs the situation with the APS specialist IV and documents the situation in the Notes Section of the APS Computer System;

(3) provides documentation of planned field contact per local human service center (HSC) procedures. If there are major changes in the schedule, the APS specialist informs the HSC staff or the APS specialist IV of the changes;

(4) arranges the work schedule in order to make new or questionable visits early in the day;

(5) notifies HSC staff when he or she leaves and returns. If the APS specialist plans to go home after the last field visit, he or she notifies the APS specialist IV after the last visit is finished even if it is an after hours visit; and

(6) is aware of the areas in the neighborhood where help may be obtained when an emergency occurs.

(b) HSCs keep supplies of basic safety equipment items for the APS specialist to keep in the car when making home visits.

(1) The APS specialist carries:

(A) a cellular phone, whenever possible;

(B) one change of clothing;

(C) clean towels for clean-up or decontamination;

(D) surgical gloves for handling adults that may be injured or exposed to methamphetamine;

(E) disinfectant hand wipes;

(F) plastic trash bags for covering car seats and floorboards, and carrying clothes that may need decontamination; and

(G) dust masks to limit breathing of chemical or other fumes.

**(2) When preparing to park and leave the vehicle used for making the home visit, the APS specialist:**

**(A) parks in an open area and near a light source that offers the safest walking route to the home;**

**(B) locates the AV's building before exiting the car when the AV's residence is in an apartment complex, whenever possible;**

**(C) parks on the street rather than in a driveway, and in the direction in which the APS specialist plans to leave; and**

**(D) takes only the items necessary to complete the home visit. Purses or wallets are concealed if left in a parked and locked car.**

**(3) When approaching the residence, the APS specialist:**

**(A) looks and listens for signs of someone in the residence and assesses whether there is any indication of danger involving the occupants of the residence;**

**(B) is aware of any smells associated with substance abuse;**

**(C) observes the outside of the residence, the surrounding homes, any animals or suspicious vehicles; and**

**(D) if carrying a cellular phone, programs the phone so that a 911 call can be easily made.**

**(4) In order to make a safe entrance into the residence, the APS specialist:**

**(A) goes only to the door that is in plain sight of the street and stands to the side of the door when knocking;**

**(B) as the door is opened, looks quickly inside to determine if there are any threats to safety;**

**(C) does not enter the home if an unseen person calls for the APS specialist to come in;**

- (D) quickly evaluates the AV's attitude and demeanor to determine if there are warning signs of aggression, violence, substance use, or suspicious behavior;**
- (E) secures an entry order from the court if needed to obtain permission for law enforcement to enter the home;**
- (F) does not enter the home when law enforcement accompanies the APS specialist for the home visit. If law enforcement:**
- (i) makes the decision to enter, the APS specialist remains outside the residence in order to ensure the APS specialist's physical safety; or**
  - (ii) requests the assistance of the APS specialist in the residence due to an emergency with the adult, the APS specialist does not enter the residence until it has been secured by law enforcement and is determined safe to enter;**
- (G) does not attempt to aggressively persuade the AV if he or she refuses to allow access to the home. If denied, the APS specialist leaves the residence and consults with an APS specialist IV; and**
- (H) leaves the residence if the APS specialist does not feel safe entering the home, and consults with an APS specialist IV.**
- (5) When in the AV's residence, the APS specialist is particularly aware of any signs of risk to safety. The APS specialist once inside the AV's residence:**
- (A) stays near an exit and remains alert and observant;**
  - (B) pays attention to any unusual sights or smells, particularly those associated with the manufacture or use of drugs;**
  - (C) remains aware of the possibility of any other persons in the residence and inquires about anyone that may appear to be in another room; and**
  - (D) leaves immediately if there is risk to safety.**

**(6) When leaving the AV's residence, the APS specialist remains alert to safety risks by:**

**(A) observing any activity or persons near the residence or in the neighborhood;**

**(B) having car keys in hand when walking to the parked car; and**

**(C) not lingering to make phone calls or notes, but instead leaves the neighborhood immediately.**

**(7) If an APS specialist has an ongoing APS case where there have been or are new allegations of methamphetamine use or manufacture, the same precautions are taken as in an investigation.**

**(c) APS staff maintain regular contact with law enforcement to stay informed about the most current indicators of methamphetamine production. The Oklahoma Bureau of Narcotics and Dangerous Drugs Control (OBNDCC) information flyers are kept in supply in each HSC.**

**(1) Outbuildings, hotel and motel rooms, apartments, storage sheds, garages, and vacant buildings are all common places where methamphetamine is produced. Some of the indicators of methamphetamine use and production identified by the OBNDCC are:**

**(A) strong odor that resembles urine or unusual chemicals such as ether, ammonia, or acetone;**

**(B) little or no traffic around the home during the day, but significant activity during very late hours;**

**(C) extra efforts made to cover windows or to reinforce doors;**

**(D) trash not put out for collection;**

**(E) significant accumulation of items such as cooking dishes, coffee filters, or bottles that do not appear to be for regular household use;**

**(F) presence of unusual quantities of chemicals; and**

**(G) vehicles loaded with laboratory materials or chemicals.**

**(2) The APS specialist, in initiating an investigation alleging use or production of methamphetamine:**

**(A) requests law enforcement to accompany him or her;**

**(B) remains in the car until law enforcement has determined that the residence is safe to enter; and**

**(C) does not enter the residence under any circumstances when there is evidence of a methamphetamine laboratory.**

**(3) When evidence of a methamphetamine laboratory either outside or inside the residence is encountered, the APS specialist:**

**(A) does not enter any residence where there is any evidence of methamphetamine laboratory materials or chemicals on the property;**

**(B) discreetly, but immediately leaves the residence if he or she unknowingly enters a home in which there is evidence of a methamphetamine laboratory, and drives to a safe location to contact law enforcement; and**

**(C) follows decontamination procedures as described in paragraph (4) of this Instruction.**

**(4) If there is any exposure to a methamphetamine laboratory, decontamination procedures are followed. The APS specialist:**

**(A) covers car seats and floorboards with plastic covering and wipes hands with disinfectant wipes before touching the steering wheel;**

**(B) goes to a safe location to change clothes and place the dirty clothes in a plastic trash sack. All exposed skin surfaces are cleaned with disinfectant wipes. Wash any items carried into the home with soap and water; and**

**(C) makes every effort not to touch any surface until the skin has been wiped with disinfectant wipes or items washed with soap and water.**

(d) The APS specialist coordinates with law enforcement to handle decontamination procedures and ensure the safety of any vulnerable adult who has likely been exposed to a methamphetamine laboratory.

(1) Transportation of the vulnerable adult is arranged by the APS specialist in cooperation and coordination with law enforcement.

(2) Whenever possible, the vulnerable adult is taken immediately for a medical examination. If it is not possible to obtain a medical examination the same day, arrangements for a medical examination are made as soon as possible.

(e) If the vulnerable adult is in the hospital or other temporary residence at the time of the referral, the initial visit is made to that location.

(f) The initial home visit is not preceded by a telephone call or appointment and is made unannounced.

(g) If the AV cannot be located, the APS specialist documents efforts to locate the AV in the Interview Section of the APS Computer System by checking the "Initial Visit" on the APS Computer System, marking the "attempted face-to-face" on the drop down box, and documenting the specifics in the Interview tab.

2. If the APS specialist does not receive the referral timely, the APS specialist is responsible for making the face-to-face visit as soon as possible and documents the reason for delay in the Notes Section of the APS computer system.

3. (a) An emergency situation is determined by the APS specialist IV at the time of screening and immediately communicated to the assigned APS specialist.

(b) If an investigation is not initiated in a timely manner, reasons for the lack of timeliness are documented in the Notes Section of the APS Computer System.

4. (a) If the APS specialist is denied access to the AV, the APS specialist notifies the AV or the AV's caretaker that an investigation must be completed. If the AV continues to deny entrance or the caretaker continues to deny access to the AV, the APS specialist, in consultation with the APS specialist IV, makes a decision to:

- (1) contact law enforcement to assist in gaining access to the AV;**
- (2) contact other persons who may be able to assist in gaining access to the AV; or**
- (3) petition the court for an entry order.**

**(b) To petition the court for an entry order, the APS specialist contacts the local district attorney or OKDHS Office of General Counsel for assistance.**

**(1) When the court grants the entry order, the APS specialist notifies law enforcement to enforce the entry order. Law enforcement is responsible for gaining access to the AV. The APS specialist requests law enforcement to remain with the APS specialist for the duration of the interview and home assessment.**

**(2) When the court denies the entry order, the APS specialist consults with the APS specialist IV to develop a plan to complete the investigation. The APS specialist IV may consult with the area program field representative (PFR) and Family Support Service Division (FSSD) APS Unit as needed.**

**(c) The APS specialist documents all activities in the Interview tab of the APS Computer System and scans copies of any court orders in the W drive.**

**340:5-5-3. Elements of an investigation**

Revised 6-1-10

Although the investigation process may vary depending on the initial allegations and other factors, all Adult Protective Services (APS) investigations include paragraphs (1) through (10).

(1) **Notification of local law enforcement.** Local law enforcement is provided notification of all APS referrals assigned for investigation. ■ 1

(2) **Efforts to locate and notify others.** APS specialists must make every reasonable effort to locate and notify the alleged victim's (AV's) caretaker, guardian, and next of kin. ■ 2

(3) **Visits to and interviews with the vulnerable adult.** As mandated by Section 10-105(C)(1)(a) of Title 43A of the Oklahoma Statutes (43A O.S. § 10-105(C)(1)(a)) each APS investigation includes at least one visit and private interview with the vulnerable adult, and may include as many as are necessary to reach a conclusion and determine what, if any, protective services are needed. ■ 3

(4) **Consultation with others.** The APS specialist interviews other people who have or can reasonably be expected to have pertinent knowledge about the AV's circumstances during the investigation, including any alleged perpetrator (AP) of maltreatment. ■ 4

(A) Consultation includes medical, psychiatric, or other evaluations as necessary to assist in the determination of a vulnerable adult's decision-making capacity and need for services.

(B) The AV's permission is not required for these contacts.

(5) **Photographs.** The APS specialist may take still photographs or video recordings to document injuries to the vulnerable adult, or conditions in the adult's residential environment which have resulted or may result in an injury or serious harm to the adult.

(6) **Other relevant data.** The APS specialist collects any data relevant to the situation being investigated; including records, to arrive at a finding on the referral. If the APS specialist is denied access to pertinent records, documentation, or other information relevant to the investigation, the Oklahoma Department of Human Services (OKDHS) may petition the court for an order allowing access.

(7) **Determining the adult's decision-making capacity.** OKDHS is mandated by 43A O.S. § 10-106(C) to determine a vulnerable adult's risk and needs along with the vulnerable adult's capacity to consent to receive services, especially with regard to the need for involuntary services. Each investigation includes an evaluation of the vulnerable adult's decision-making capacity.

(A) Information is obtained from medical or psychiatric sources, if available, to assist in the determination. In making this determination, the APS specialist assesses and considers:

- (i) the vulnerable adult's short and long term memory;
- (ii) the vulnerable adult's executive functioning by their ability to plan and execute a plan;
- (iii) the vulnerable adult's ability to recognize risk factors;
- (iv) denial of problems by the vulnerable adult or caretaker;
- (v) the vulnerable adult's executive functioning by his or her ability to understand and follow directions;
- (vi) indicators of affective disorders such as depression or bipolar disorder; and
- (vii) indicators of substance abuse, dementia, delirium, psychosis, traumatic brain injury, uncharacteristic socially inappropriate behaviors, impaired decision-making, and other factors.

(B) The APS specialist's assessment of a vulnerable adult's mental capacity to consent to protective services takes into account the vulnerable adult's awareness of:

- (i) the limitations and deficiencies in the physical environment;
- (ii) the vulnerable adult's own physical or mental limitations;
- (iii) resources available to assist in meeting the vulnerable adult's needs; and
- (iv) the consequences to the vulnerable adult if nothing is done to improve the situation.

(C) If a vulnerable adult is deficient in all or most of the areas in (B) of this paragraph, he or she may lack the capacity to consent to protective services and it may be appropriate to petition the district court for an order authorizing the provision of needed services.

(D) If a vulnerable adult expresses awareness of all four areas in (B) of this paragraph, it is likely that the present circumstances are the vulnerable adult's choice, though in some cases a vulnerable adult might express awareness in these areas and still lack the capacity to consent to provision of services.

(E) If a vulnerable adult appears unaware of the consequences of the present situation, and an emergency exists, legal intervention is appropriate.

**(8) Evaluation to determine the need for protective services.** The evaluation consists of the APS specialist's analysis and consultation with the APS specialist IV of all evidence gathered during the initial phases of the investigation. The evaluation includes consideration of whether:

(A) the vulnerable adult needs protective services. If so, the need for protective services is documented to include the least restrictive services that will meet the person's needs;

(B) services that are identified as needed are available through OKDHS or in the community, and the sources and manner in which they can be provided. Options are explored with the vulnerable adult;

(C) the vulnerable adult is capable and willing to obtain services for himself or herself;

(D) the vulnerable adult can pay for needed services or is eligible for public assistance programs;

(E) a caretaker or guardian is willing to provide or agree to the provision of needed services; and

(F) the vulnerable adult desires the services. ■ 5

**(9) Completion of investigative report.** From the date an APS referral is received, the APS specialist completes the investigative report within 30 calendar days for self neglect referrals and 60 calendar days for referrals involving an AP. The APS specialist IV may extend the time frame for completion of an investigation for an

additional 30 calendar day period when it is in the vulnerable adult's best interest to do so. ■ 6 To complete the investigation, the APS specialist:

- (A) completes necessary interviews and assessments including identification of any immediate service needs;
- (B) completes all final documentation;
- (C) submits a report to the local district attorney; and
- (D) makes a determination of substantiated or unsubstantiated based on the definitions of terms in OAC 340:5-1-6. ■ 7

(10) **Findings.** The APS specialist, in conjunction with the APS specialist IV, makes a final determination of the investigative process on each allegation contained in the APS referral. Each allegation is determined to be substantiated or unsubstantiated and the investigation documented in accordance with OAC 340:5-5-5. The APS specialist IV notifies the appropriate area director immediately of substantiated referrals in which an OKDHS employee is named as perpetrator.

(11) **Follow-up.** The APS specialist, in consultation with the APS specialist IV, is responsible for determining what follow-up is needed in each case investigated.

- (A) On cases not requiring court-ordered involuntary services, follow-up needs are determined on a case-by-case basis. ■ 8
- (B) For referrals that resulted in a vulnerable adult receiving involuntary services, OKDHS is responsible for ensuring basic needs for safety and security are met as required by the court. The APS specialist monitors the delivery of court-ordered protective services and continues to assess the need for additional services determined by the changing needs of the vulnerable adult. At least one follow-up visit is made at 30 days regardless of whether OKDHS continues to hold temporary guardianship.
  - (i) If the vulnerable adult's situation is stable or improving after 30 days and OKDHS no longer holds guardianship, the case is closed.
  - (ii) If OKDHS continues to hold guardianship after 30 days, a follow-up visit to the vulnerable adult is required at least once each 30 days for the duration of the temporary guardianship.

(iii) If the vulnerable adult's situation is deteriorating at any time during the follow-up period, the service plan is reassessed and changed as needed with the concurrence of the court.

(iv) Follow-up visits to vulnerable adults receiving involuntary services are made at least every 30 days, but may be made as often as needed to comply with APS specialist guardianship responsibilities and to monitor the vulnerable adult's situation.

(v) If an out-of-home placement is used as a temporary or long term solution to identified needs, the APS specialist has regular contact with the vulnerable adult for the duration of the court ordered temporary guardianship. The frequency of this contact is determined by the APS specialist and APS specialist IV's determination of the specific situation and the availability of an independent objective third party to provide follow-up and notification to the APS specialist. The APS specialist visits the vulnerable adult at least once every 30 calendar days while the vulnerable adult is under APS guardianship. The APS specialist documents information from follow-up visits in the APS Computer System and makes it available to the court on review of the guardianship. Follow-up visits may be made as frequently as the APS specialist and specialist IV determine they are needed, based on an individual vulnerable adult's situation. ■ 8 For vulnerable adults placed:

(I) in medical facilities such as geriatric psychiatric units or medical hospital for care, the worker follows-up with the vulnerable adult's assigned social worker;

(II) in group homes, residential care facilities, and assisted living centers, the APS specialist may contact other professionals not associated with the facility who provide treatment or services to the vulnerable adult for follow-up information every 30 calendar days or more often as indicated;

(III) at any facility owned or operated by OKDHS, the APS specialist makes face-to-face visits every 30 calendar days with interim contacts with the social work staff or more often as indicated; and

(IV) at any type of nursing home, the APS specialist visits the vulnerable adult, at least once every two weeks during the first month of placement to check for changes in the vulnerable adult's condition, such as injuries, signs of over-medication, and cognitive state. The APS specialist discusses concerns with the nursing home administrator or director of nursing, and the APS specialist IV. After the first month, the APS

specialist visits the vulnerable adult at least once every 30 calendar days, reviews the nursing home charts and incident reports, and discusses care needs with the staff and vulnerable adult's family, if available.

(C) The APS specialist may determine as a result of follow-up contacts that further placement options need exploring. This may be the result of inappropriate action on the part of the provider, current information about the facility's ability to provide care for the vulnerable adult, or the facility's request to relocate the vulnerable adult.

(i) Placement alternatives are determined in accordance with this Section and approved by the specialist IV, county director, and the area APS program field representative (PFR).

(ii) The court appointed attorney for the vulnerable adult and the family is notified of the problems and alternatives that have been developed.

(iii) The APS specialist submits a written report of the change of placement to the court, with a copy of the motion to the vulnerable adult's family and attorney of record.

(D) The APS specialist makes frequent contact with vulnerable adults remaining at home in temporary guardianship at a minimum of every 30 calendar days to assure that the vulnerable adult's safety and needs are being met by the established service plan. The APS specialist:

(i) makes modifications as needed to the service plan as well as provision of services by providers;

(ii) evaluates the quality of care and the method of contact on a case-by-case basis depending on the individual needs of the specific vulnerable adult including a face-to-face visit every 30 calendar days; and

(iii) submits reports at the request of the court or a minimum of every 30 calendar days.

(E) In the event the vulnerable adult is placed in a facility out-of-county, the APS specialist IV immediately contacts the APS specialist IV in the county of placement to notify the receiving county of the placement and that follow-up activities pursuant to this paragraph must be provided by the receiving county.

(i) The APS specialist in the county where the vulnerable adult is residing is the worker designated to provide follow-up services for temporary guardianship cases. ■ 9

(ii) The resident county APS specialist is responsible for all issues that require written consent and other problems or concerns and acts in coordination with the APS specialist in the county of court jurisdiction for reporting to the court as required by the court order with a minimum of every 30 calendar days. ■ 9

(iii) The APS specialists and specialist IVs from both counties discuss and determine the best course of action for renewals of temporary guardianships.

(I) The decision takes into account the vulnerable adult's specific situation, the family and their desires, the availability of the courts in the two counties, and the advice of the vulnerable adult's court appointed attorney, and the attorney(s) representing OKDHS in the matter.

(II) The area APS PFR, FSSD APS Unit, and attorneys for the OKDHS Office of General Counsel are consulted as needed for assistance in determining the best course of action.

## **INSTRUCTIONS TO STAFF 340:5-5-3**

Revised 11-1-11

- 1. Each Adult Protective Services (APS) specialist IV is responsible for determining, in conjunction with each county director and local law enforcement agencies, the method and frequency of notifying the law enforcement agencies of APS referrals within their jurisdictions.**
- 2. (a) To accomplish this mandate, existing Oklahoma Department of Human Services (OKDHS) records are reviewed by the APS specialist. The reporter, if known, other professionals involved with the vulnerable adult, and involved friends, neighbors, or service providers may provide information to identify the vulnerable adult's caretaker, guardian, and next of kin. For purposes of this requirement:**

**(1) "caretaker" is the vulnerable adult's primary caretaker;**

**(2) "guardian" is a guardian, limited guardian, or conservator appointed under Title 30 of the Oklahoma Statutes. Persons holding power of**

attorney or similar surrogate decision-making documents are not guardians; and

(3) "next of kin" of the vulnerable adult is the adult's spouse, closest adult child, closest sibling, or closest adult grandchild, or, in the case of younger vulnerable adults, the adult's parent.

(b) If the vulnerable adult retains the capacity to consent to voluntary services, and does not wish for a caretaker or next of kin to receive notification of the investigation, OKDHS abides by the wishes of the vulnerable adult.

(c) When the caretaker, guardian, and next of kin are identified, a copy of OKDHS Publication No, 99-07, "APS Questions and Answers," is provided to each of them and to the vulnerable adult.

3. (a) All contacts are documented in the Interview Section of the APS Computer System.

(b) When there are two or more counties involved, refer to procedures in OAC 340:5-5-4(b).

(c) When the APS specialist is unable to locate the alleged victim (AV) for the initial interview per OAC 340:5-5-2, he or she makes at least three attempts to locate the AV as detailed in (1) through (3) of this Instruction.

(1) If, at the first attempt, the AV does not answer the door, the APS specialist follows the protocol in (A) through (D) prior to leaving the residence.

(A) The APS specialist attempts to contact the AV via cell phone.

(B) If no one answers the telephone, the APS specialist calls the reporter to verify correct information.

(C) If the reporter does not have additional information regarding the whereabouts of the AV, the APS specialist contacts collaterals such as neighbors, doctors, and family to attempt to locate the AV.

(D) If attempts to locate the AV are unsuccessful, the APS specialist does not leave a business card or OKDHS Publication No. 99-07, "APS Questions and Answers."

(2) If the first attempt was unsuccessful, the APS specialist makes a second attempt to contact the AV within three working days at a different time of the day. If the AV does not answer the door, the APS specialist follows the protocol in (A) through (C) of this Instruction prior to leaving the residence.

(A) The APS specialist attempts to contact the AV via cell phone.

(B) If no one answers the telephone, the APS specialist calls the reporter to verify correct information.

(C) If attempts to locate the AV are unsuccessful, the APS specialist leaves a business card or OKDHS Publication No. 99-07, "APS Questions and Answers," at the residence requesting contact.

(3) If the AV does not contact the APS specialist, he or she attempts a third visit within three working days of the second attempt. If the AV does not answer the door, the APS specialist follows the protocol in (A) through (D) of this Instruction.

(A) The APS specialist mails a contact letter on OKDHS letterhead to the last known address requesting the AV contact the APS specialist within seven calendar days.

(B) If the letter is returned undeliverable or there is no response within seven calendar days, the APS specialist staffs the referral with the APS specialist IV regarding further options and documents in the Notes Section, what further action, if any, is planned.

(C) When the APS specialist and the APS specialist IV decide that all reasonable efforts to locate the AV have been made, the APS specialist documents the referral as unsubstantiated based on "unable to locate."

(D) When the reporter is from a law enforcement agency and the APS specialist is unable to locate the AV, the APS specialist contacts and notifies the reporter. When the reporter is from another state or local agency and the APS specialist is unable to locate the AV, the APS specialist notifies that agency and local law enforcement.

4. Interviews with collateral contacts are extremely important in helping the APS specialist determine the AV's current circumstances, expressed desires,

habitual practices, and recent changes. The APS specialist documents all interviews with collaterals, alleged perpetrators (APs), family members, next of kin, caretakers, legal guardians, or service providers in the Interview Section of the APS Computer System.

- (1) The AV's caretaker, guardian, next of kin, and the reporter are considered collateral contacts if they are identified.
  - (2) Any collateral contacts about which the APS specialist is unsure are staffed with the APS specialist IV before the APS specialist interviews the collateral contact.
  - (3) The AP is interviewed in all referrals in which a perpetrator is identified. The AP is interviewed after other contacts have been interviewed.
  - (4) The APS specialist coordinates with appropriate law enforcement officials regarding interviewing APs who are also or may be the subject of a criminal investigation.
  - (5) An investigation is considered complete when a finding is reached, the Form 08AP002E, Adult Protective Services Report of Investigation, is submitted to the district attorney (DA), and the computer documentation of the finding is done.
  - (6) At any time it appears that criminal wrongdoing may have occurred, the APS specialist discusses the case with local law enforcement, the DA, or both before interviewing the AP.
  - (7) The APS specialist documents all collateral contacts and attempts at contact in the Interview Section of the APS Computer System.
5. APS specialists in each human services center (HSC) develop a coordinated working relationship with the local Oklahoma State Department of Health, mental health facilities, DA's office, law enforcement agencies, and other public or private agencies that may be helpful facilitating the investigation process or providing needed services to vulnerable adults.
  6. (a) It may be in the best interest of the vulnerable adult to delay finalizing the report in order to allow the APS specialist more time to visit with the vulnerable adult to establish rapport before the vulnerable adult makes a decision about accepting available services.

**(b) When the APS specialist IV, county director, or area director grants an extension, the completion of the referral is not considered delinquent for management reports.**

**(c) The APS specialist IV may extend the time frame for completion of the investigation for a specified time not to exceed an additional 30 calendar days when it is in the best interest of the vulnerable adult. When the APS specialist IV approves the extension request, he or she documents the approval and the reasons why the 30-day extension was granted in the Extension Request and Notes Sections of APS Computer System.**

**(d) The county director must decide whether to approve the second extension request when the investigation cannot be completed within the additional 30-day time frame and documents in the Extension tab whether to extend the request based on:**

**(1) total number of referrals received during the previous 60 calendar day period;**

**(2) staff available to conduct investigations and assessments;**

**(3) excessive work loads. Examples of excessive work load situations include, but are not limited to:**

**(A) an APS specialist IV vacancy of more than one month;**

**(B) an APS specialist vacancy in a one worker HSC;**

**(C) an APS specialist vacancy of more than two months in any HSC;**

**(D) an increase in temporary guardianships that require intensive and immediate attention;**

**(E) an increase in investigations which are complicated and complex;**

**(F) any special duty investigations requiring staff to work in other locations; or**

**(G) any combination of (A) through (F); and**

- (4) any additional circumstances that led to the difficulty in meeting policy requirements and time frames.
- (e) The area director must decide whether to approve the third and any subsequent extension requests when the investigation cannot be completed within the third or subsequent 30-day time frame. The area director makes the decision and documents whether to extend the request based on information provided by the county director in the Extension tab.
7. (a) This evaluation is the basis for determining a referral substantiated or unsubstantiated, and for developing an individualized service plan for the vulnerable adult.
- (1) The APS specialist reviews all evidence gathered during the investigation, including all collateral contacts made and all records reviewed to assess their usefulness in making a finding on the referral.
- (2) If more than half of the evidence indicates maltreatment is likely to have occurred and that the alleged victim is a vulnerable adult, a finding of substantiated is entered in the Findings Section of the APS Computer System.
- (3) If less than half of the evidence indicates maltreatment is likely to have occurred, a finding of unsubstantiated is entered in the Findings Section of the APS Computer System.
- (4) Although intuition and instinct play a large part in the investigative process, they play no part in the case finding. Even a very strong feeling that maltreatment occurred, if not supported by sufficient evidence, must result in a finding of unsubstantiated.
- (5) A service plan is developed with the vulnerable adult and involved family and caretakers in all cases where service needs are indicated.
- (b) The county director is responsible for monitoring timely completion of APS investigations within 60 calendar days and regularly discussing with the APS specialist IV referrals with investigations pending over 90 calendar days.
- (c) Service provision and follow-up activities often extend beyond the 60 calendar days based on the individual vulnerable adult's needs and service plan. These ongoing activities are not considered in determining whether the

investigation was timely, as long as a substantiation decision was reached and Form 08AP002E was submitted to the DA's office within 10 calendar days of completing the investigation.

8. The APS specialist documents follow-up activities in the APS Computer System by completing a new risk assessment in the Risk Assessment Section, entering the date and time of the contact and information about the visit in the Service Plan Monitoring Notes Section.

(1) If the APS specialist IV and APS specialist determine no follow-up is necessary, that decision and the reasons for it are documented, where appropriate, in the Service Plan Notes or the Service Plan Monitoring Notes Section of the APS Computer System.

(2) If the APS specialist IV and APS specialist determine follow-up is necessary, the APS specialist documents why follow-up is necessary and the plan for completing follow-up in the Service Plan Monitoring Notes Section of the APS Computer System.

(3) The APS specialist may complete a follow-up contact by telephone rather than face-to-face with someone other than the vulnerable adult or the AP after receiving APS specialist IV approval. The APS specialist documents in the Service Plan Monitoring Notes Section:

(A) the means of contact;

(B) why the contact was made by phone rather than face-to-face; and

(C) what information was obtained.

9. In the event the vulnerable adult is placed in a facility out-of-county, the APS specialist in the placement county is added to the APS Computer System as a back-up worker by the APS specialist IV and documents all contacts, interviews, and risk assessments on the APS Computer System as soon as the contacts are made. All actions are discussed with the APS specialist in the county of jurisdiction and documented in the Notes Section of the APS Computer System.



**340:5-5-4. Special considerations during investigations**

Revised 6-1-10

(a) **Referrals regarding members of Indian tribes.** Referrals are accepted for an alleged victim (AV) who is a tribal member according to the Protective Services for Vulnerable Adults Act as set forth in Sections 10-101 through 10-110 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-101 through 10-111). The Adult Protective Services (APS) specialist provides or arranges voluntary or involuntary services as indicated for a vulnerable adult regardless of whether the adult resides on tribal land. ■ 1

(b) **Referrals involving two or more counties.** If a referral involves two or more counties, as when the AV lives in one county and the alleged perpetrator (AP) in another or when the AV moves either temporarily or permanently to another county before the investigation has been completed, local APS staff from both human services centers (HSCs) are involved in the investigation. ■ 2

(c) **Referrals involving Soonercare (Medicaid) fraud.** When an APS investigation indicates fraud by a provider receiving Medicaid funds, APS staff immediately notifies the Medicaid Fraud Control Unit (MFCU) in the Office of the Oklahoma Attorney General. APS cooperates with any investigation by MFCU. If MFCU declines to investigate, APS staff completes the investigation and sends a summary report to MFCU upon completion of the investigation.

(d) **Referrals involving persons and provider agency employees.** APS investigations of maltreatment of vulnerable adults may include all persons in a relationship of caretaker, regardless of organizational affiliation, except those noted in Subchapter 3 of this Chapter. Care providers who may be subject to APS investigation include, but are not limited to, home health providers, community services workers for persons with developmental disabilities, personal care assistants, adult foster homes, adult day care centers, independent living centers, residential care facilities, and assisted living centers.

(1) These agency investigations include all the elements of an APS investigation, with special emphasis placed on:

- (A) interviewing agency staff and other residents or participants who may have knowledge of the reported incident;
- (B) obtaining copies of applicable charts and records;
- (C) reviewing medication lists and schedules;

- (D) taking photographs;
- (E) examining habilitation or other care plans;
- (F) examining financial records and other money management documentation;
- (G) reviewing time schedules and time sheets; and
- (H) requesting any other information needed to complete the investigation.

(2) If assistance is needed in assessing medical issues in these cases, involvement of the OKDHS long-term care nurse may be requested. ■ 3

(3) APS staff submits findings of substantiated referrals of maltreatment by persons who are personal care assistants, Medicaid personal care attendants (MPCA), and community services workers subject to the requirements of the Community Services Worker (CSW) Registry maintained by Developmental Disabilities Services Division (DDSD) pursuant to 56 O.S. § 1025.3 of the Oklahoma Statutes within three working days to the OKDHS Office of Client Advocacy for consideration of placement of the worker's name on the statewide CSW Registry. Persons whose names are on the CSW Registry must not be employed by providers for direct care services to persons with developmental disabilities or as personal care attendants (PCA) paid through the Medicaid ADvantage Waiver. ■ 4

(4) For provider agency employees who are not subject to the CSW Registry requirements, such as program coordinators, job coaches, bus drivers, or administrative personnel, APS staff notifies the agency director or board of any substantiated elements of the investigation. Any corrective action plan on the part of the provider agency becomes a part of the APS case record. If the provider agency fails to cooperate in addressing the substantiated elements of the investigation, APS staff notifies the licensing agency, any appropriate governing board, and the district attorney's (DA's) office of the failure to cooperate.

(e) **Referrals involving other licensed or certified persons.** APS staff sends findings to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including, where appropriate, the Oklahoma State Department of Health (OSDH), the Oklahoma Board of Nursing, and any other appropriate state licensure or certification board, agency, or registry. ■ 5

(f) **Referrals alleging exploitation.** Referrals involving exploitation are complex. To assist in handling some of these referrals, the OKDHS Office of Inspector General (OIG) may accept for investigation referrals of exploitation involving large amounts of

funds or the need to access complex records regarding financial transactions. ■ 6 If OIG declines to investigate, the APS specialist completes the investigation. Protective services that may be provided in cases of exploitation include:

- (1) changing the representative payee; ■ 7
- (2) freezing all assets of the vulnerable adult;
- (3) petitioning the court for an order allowing access to records;
- (4) redirecting or stopping the flow of the vulnerable adult's assets into the alleged perpetrator's accounts; and
- (5) stopping perpetrator access to the alleged victim's account(s).

(g) **Persons referred to OKDHS by the courts.** Courts are not authorized to remand criminal defendants to OKDHS based on a finding of lack of competency. Courts are authorized to refer the alleged incompetent defendant to OKDHS for consideration of voluntary assistance according to 22 O.S. § 1175.6(b)(B). In order to qualify for such findings, the court must make findings described in (1) or (2) of this subsection.

(1) Referral for voluntary services occurs when the court finds that the person is incompetent for reasons other than the AV is a person requiring treatment under 43A O.S. and is found not to be dangerous.

(2) When a court, the DA, or the attorney for a criminal defendant notifies the APS specialist that a referral for voluntary APS services has been made, the APS specialist obtains a copy of the order from the person making the referral. If, after evaluation, it appears to the APS specialist the AV may also be developmentally disabled, the APS specialist immediately contacts the DDSD Area Intake office and requests their involvement in the process of determining what voluntary services are available. This is a joint effort between the APS specialist and the DDSD case manager. ■ 8

(h) **AV receiving services from DDSD.** When an AV is receiving or may be eligible for services from DDSD, the APS specialist contacts the appropriate DDSD Area Intake office to coordinate activities to enhance the AV's safety. 22 O.S. § 1175.3(D)(1)(b) authorizes a court to call for DDSD to conduct a competency evaluation to determine whether mental retardation or other developmental disability may be involved. ■ 9

(i) **Referrals involving residents of residential care facilities, assisted living facilities, and continuum of care facilities.** A copy of the final investigative report is sent to OSDH. ■ 10

## **INSTRUCTIONS TO STAFF 340:5-5-4**

Revised 11-1-11

1. **Adult Protective Services (APS) staff is encouraged to continue the established working relationships with tribal social services to provide services for Native American clients, but are not required to contact tribal APS prior to initiating and completing an APS investigation. APS staff may contact the United States Marshal for assistance on restricted land, as appropriate. Information from an APS investigation may be shared with the Bureau of Indian Affairs (BIA) and tribal governments.**

2. **APS staff in the county of residence of the alleged victim (AV) has primary responsibility for the investigation. APS specialists in other counties involved cooperate fully and as quickly as possible in attempting to obtain information needed for the investigation. All requested information is forwarded to the human services center (HSC) in the AV's county of residence for completion of the case. This includes, but is not limited to, interviews with collateral contacts such as family members, alleged perpetrators (APs), or other persons determined to have knowledge pertinent to the investigation and conducting property searches, obtaining bank records, or other material pertinent to the investigation.**

(1) **Staff in the HSC of the county of residence may request staff in the HSC of the county in which the AP lives to conduct the interview with the AP. All efforts to involve the AP with the APS staff in the county of residence are exhausted before this option is exercised. The same APS specialist interviews the AV and the AP if possible. When the back-up APS specialist interviews the AP, the back-up APS specialist documents the interview in the Interview tab of the APS Computer System within five working days.**

(2) **When the AV is temporarily housed in another county, the APS specialist IV in the resident county where the AV normally resides may request that the back-up specialist in the temporary county completes and documents the initial face-to-face interview as quickly as possible, completes and documents the Capacity Assessment, initiates and documents the Risk and Needs Assessments, and contacts and**

documents any available collaterals. Staff in the resident county is responsible for completing the investigation and takes into consideration the input from the temporary county's APS specialist. The time frame for initiating the investigation remains the same per OAC 340:5-5-2.

(3) If it is determined that the AV relocated to another county prior to the conclusion of the investigation, the referral may be transferred to the new county. The APS specialist IV of the initial county contacts the APS specialist IV of the receiving county as soon as this determination is known in order to complete the investigation in a timely manner.

(4) When problems with coordination occur between APS staff in different HSCs or there are delays in documenting information, HSC APS staff contact the area APS program field representative(s) (PFR) for resolution.

3. (a) The APS specialist may request the involvement of an Oklahoma Department of Human Services (OKDHS) long-term care (LTC) nurse in investigations involving agency providers or when a nursing assessment is needed. The role of the nurse in APS cases is to:

(1) act as a resource in the interpretation of physical observations made by the APS specialist;

(2) accompany the APS specialist to visit the vulnerable adult if approved by the area nurse;

(3) assist the APS specialist in determining a course of action on the vulnerable adult's behalf; and

(4) assist in the follow-up of the vulnerable adult in the home, as appropriate.

(b) In order to involve the OKDHS LTC nurse in an APS investigation, the APS specialist must determine that the need exists for an in-home medical assessment. This conclusion may be reached after discussion with the APS specialist IV and the OKDHS LTC nurse, or both.

(1) If the OKDHS LTC nurse is not available, the specialist may call the area nurse.

(2) If a nurse cannot be reached or is geographically unavailable for immediate response, the APS specialist determines whether other nursing resources are available. Examples of other nursing resources include the Developmental Disabilities Services Division (DDSD) nurse or nurse at the local Oklahoma State Department of Health (OSDH).

(3) If the situation demands immediate attention and a nursing resource is unavailable, the APS specialist initiates the home visit immediately.

(c) If assistance from the OKDHS LTC nurse is appropriate either at the initial home visit or follow-up visits, the APS specialist accompanies the nurse to visit the vulnerable adult. If the OKDHS LTC nurse accompanies the APS specialist on the initial home visit, the specialist and OKDHS LTC nurse together assess the need for further action. After a visit to the vulnerable adult, the OKDHS nurse completes all items on Form 08AP003E, Adult Protective Services Nursing Assessment, and submits the original to the APS specialist for scanning and inclusion in the Nursing Assessment Section of the APS Computer System.

4. (a) The APS specialist submits to the Office of Client Advocacy (OCA) by fax 405-525-4885 or email \*[OCA.Intake@okdhs.org](mailto:OCA.Intake@okdhs.org):

(1) Form 08AP015E, Transmittal to Client Advocacy;

(2) copies of the Intake Section and any pertinent sections from the APS Computer System;

(3) Form 08AP002E, Adult Protective Services Report of Investigation; and

(4) relevant documentation.

(b) If any supporting documentation is not available in electronic format, the APS specialist sends it to OCA Intake by interagency mail, with the APS case number clearly identified on the supporting documentation.

(c) For substantiated findings against a community services worker (CSW), the:

(1) finding substantiates physical, sexual, or verbal abuse, neglect, or financial exploitation by a caretaker. Self neglect is not included;

(2) vulnerable adult named as a victim is a person with developmental disabilities; and

(3) maltreatment was committed by a caretaker employed as a habitation training specialist (HTS) by a vocational, residential, or in-home supports provider.

(d) For substantiated findings against a personal care attendant (PCA), the:

(1) finding substantiates physical, sexual, or verbal abuse, neglect, or financial exploitation of a vulnerable adult by a caretaker. Self neglect is not included; and

(2) maltreatment was committed by an adult caretaker employed as a Medicaid PCA (MPCA) privately or through the ADvantage Waiver program.

(e) OCA screens APS reports to ensure they involve a matter subject to the CSW Registry. Within two working days of receiving a report, OCA decides whether to open an investigation. OCA Intake Unit notifies the APS specialist and or APS specialist IV by email of the decision. If OCA does not open an investigation, that does not change the APS substantiated finding.

(f) The process established for consideration of placement of a person's name on the CSW Registry must be followed.

(1) APS uses the greater weight of the evidence standard to substantiate maltreatment of a vulnerable adult. The CSW Registry process requires clear and convincing evidence which is a higher standard of proof. Some APS substantiated findings do not meet this higher burden of proof. OCA reviews APS findings to determine whether the cases merit further review.

(2) If the case appears to merit further review, OCA completes an independent investigation. If the OCA investigation results in a substantiated finding on a CSW or MPCA, OCA submits its report to OKDHS Office of General Counsel for review. If the Office of General Counsel determines that placement of the person's name on the CSW Registry may be warranted, the CSW or MPCA is notified of due process rights, including the right to an administrative hearing.

(g) When the APS specialist has any question about whether to send a particular report to OCA, the APS specialist contacts OCA Intake for guidance at 405-525-4850 or 800-522-8014.

5. (a) Contact information for OSDH includes:

(1) mailing address, 1000 N.E. 10th Street, Oklahoma City, Oklahoma (OK) 73111;

(2) local telephone number, 405-271-6868; toll-free number, 1-800-747-8419; fax number, 405-271-4172; and toll-free fax, 1-866-239-7553; or

(3) email address, LTCComplaints@health.state.ok.gov.

(b) Contact information for the Oklahoma State Board of Nursing includes:

(1) mailing address, 2915 N. Classen Blvd., OKC, OK 73106; and

(2) telephone number, 405-962-1800.

6. A referral to OKDHS Office of Inspector General (OIG) is made on Form 19MP001E, Referral Form, or electronic equivalent. An email referral is sent to oigfraud@okdhs.org.

7. A vulnerable adult's benefits may be suspended pending appointment of a payee or change of payee.

8. When an AV in a criminal defendant case is referred to OKDHS, the assigned APS specialist makes periodic reports to the court regarding the status, activities, and well-being of the AV in accordance with Section 1175.6b of Title 22 of the Oklahoma Statutes (22 O.S. § 1175.6(b)). Periodic reports are made annually, or more often when court ordered.

(1) Original case records on vulnerable adults previously remanded to OKDHS under Title 22 of the Oklahoma Statutes are maintained in the HSC of the vulnerable adult's residence. Copies of all reports and evaluations are kept in the original case record. New reports are entered in the Intake Section of the APS Computer System with references to existing paper files.

- (2) If the county of the vulnerable adult's residence is different from the county of court jurisdiction, an APS specialist is assigned as back-up for the purpose of seeing the vulnerable adult, documenting the contact, and preparing reports as needed. The reports are maintained in the specified W drive and may be printed as needed by the APS specialist.
- (3) If, in the opinion of the APS specialist or the DDSD case manager, the AV appears to have achieved competency, the APS specialist reports this opinion in writing to the court. The court then sets another hearing for the purpose of determining competency.
9. (a) APS staff provides information to DDSD staff to assist in evaluation of a vulnerable adult known or suspected to have a developmental disability. The case manager for a vulnerable adult receiving DDSD services facilitates and cooperates with the APS investigation by providing requested information and accompanying the APS specialist on home visits when needed.
- (1) When APS staff is assisted by DDSD staff on a case, a copy of Form 08AP002E is routed to the appropriate DDSD case manager upon completion of the investigation.
- (2) An example of a situation when APS and DDSD staff coordinate activities is when the AV has developmental disabilities and is facing criminal charges.
- (b) When a vulnerable adult receiving APS services appears to have developmental disabilities, but does not receive DDSD services, DDSD Intake staff or other appropriate staff may accompany the APS specialist, when necessary, on home visits and assist in making application for DDSD services. When DDSD staff assist APS staff on a case, APS staff route a copy of Form 08AP002E to the appropriate DDSD case manager upon completion of the investigation.
- (c) If the APS specialist suspects the AV has developmental disabilities, the APS specialist calls the DDSD Area Intake office to determine whether the vulnerable adult receives DDSD waiver services or is on the waiting list. To make a referral for DDSD waiver services or DDSD state funded services, the APS specialist contacts the appropriate DDSD Area Intake office.
- (1) DDSD has three Area Intake offices:

- (A) Area I includes Oklahoma City and Enid and the toll-free number is 1-800-522-1064;
- (B) Area II includes Tulsa and the toll-free number is 1-800-522-1075;  
and
- (C) Area III includes Pauls Valley and the toll-free number is 1-800-522-1086.
- (2) The APS specialist describes the situation and gives details to the DDSD intake worker regarding the person who may be in need of DDSD services. Details include the AV's:

- (A) name;
- (B) Social Security number;
- (C) date of birth;
- (D) address;
- (E) phone number;
- (F) diagnosis;
- (G) medical information;
- (H) name of responsible party or legal guardian; and
- (I) any other pertinent information.
- (3) The DDSD intake worker explains to the APS specialist the DDSD services available, if any, and how to access services and/or make application for DDSD services.

(d) If, after consultation with DDSD staff, it appears the AV may be eligible for DDSD waiver services but is not yet receiving them, the APS specialist informs the AV and/or the AV's responsible party or legal guardian that the AV may be eligible for DDSD waiver services. The APS specialist advises how to apply for services and offers to assist in completing and signing the DDSD

waiver application and obtaining all required documents, such as physical and psychological reports.

(1) If the family does not want or need the APS specialist's help in applying for DDSD waiver services, the APS specialist may provide the family the appropriate DDSD Area Intake number so they can apply. In this case the APS specialist informs the local DDSD staff that the family was referred to the DDSD Area Intake office and may need services. If there is no family, responsible party, or legal guardian, or these persons are the alleged perpetrators, the APS specialist may assist the DDSD intake worker with the application.

(2) DDSD maintains a waiting list of clients when resources are unavailable for persons to be added to services funded through the Home and Community-Based Services Waiver. The waiting list is maintained in chronological order based on the date of receipt of a written request for services. For emergency situations, exceptions to the chronological order may be made, per OAC 317:40-1-1(g).

(e) The APS specialist routes a copy of Form 08AP002E to DDSD Quality Assurance upon completion of the APS investigation involving vulnerable adults receiving DDSD services.

(f) When a complaint alleges abuse, neglect, or exploitation of a person with developmental disabilities by an OKDHS employee, refer to OAC 340:5-3-6(c).

(g) If, in the course of an investigation, the APS specialist discovers the vulnerable adult is a Hissom class member, the APS specialist immediately routes the report to OCA. OCA has the right of first refusal on investigations involving former residents of the Hissom Memorial Center and may return the report to APS for investigation.

10. The APS specialist faxes, mails, or emails final investigative findings in summary form to OSDH. See Instruction # 5 for OSDH contact information.