
POLICY TRANSMITTAL NO. 07-59	DATE: OCTOBER 30, 2007
FAMILY SUPPORT SERVICES DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF LEGISLATIVE RELATIONS AND POLICY

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:5-1-6; 5-3-1; and 5-5-6.

EXPLANATION: **Policy revisions were approved by the Commission and the Governor as required by the Administrative Procedures Act.**

OAC 340:5-1-6 is revised to define financial neglect.

OAC 340:5-3-1 is revised to expand the list of persons who are required to report maltreatment of vulnerable adults and to update form numbers.

OAC 340:5-5-6 is revised to promulgate rules for the: (1) sale of real and personal property of a vulnerable adult in the temporary guardianship of OKDHS; (2) the enforcement of involuntary court orders; (3) add clarifying information; and (4) update form numbers.

Original signed on 10-22-07

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WF # 07-19 (NAP)

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

340:5-1-6

340:5-3-1

340:5-5-6

INSERT

340:5-1-6, pages 1-5, revised 11-1-07

340:5-3-1, pages 1-3, revised 11-1-07

340:5-5-6, pages 1-12, revised 11-1-07

340:5-1-6. Definitions

Revised 11-1-07

The following words and terms, when used in this Subchapter shall have the following meaning, unless the context clearly indicates otherwise.

"Abuse" means causing or permitting the:

(A) infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish; or

(B) deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.

"Activities of daily living (ADLs)" means basic self-care activities such as toileting, transfer, feeding, bathing, and dressing.

"Adult" means a person 18 years of age or older.

"APS specialist" means an Oklahoma Department of Human Services (OKDHS) worker who has successfully completed Adult Protective Services (APS) New Worker Academy or is working under the oversight of a more experienced APS specialist.

"Caretaker" means a person who is responsible for the care of or financial management for a vulnerable adult as a result of family relationship or has assumed responsibility for care of a vulnerable adult voluntarily, by contract, or by friendship; or who serves as a legally appointed guardian, limited guardian, or conservator.

"Emergency" means a situation in which a vulnerable adult is likely to suffer death or serious physical harm without immediate intervention.

"Evidence" means all documentation, photographs, interviews, observations, objects, and other information collected, observed, or otherwise obtained during the course of an investigation.

"Exploitation" means unjust or improper use of the person or resources of a vulnerable adult for the profit or advantage of another person through undue influence, coercion, harassment, duress, deception, false representation, or false pretense.

"Financial neglect" means repeated instances by a caretaker or other person who has assumed the role of financial management or failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including but not limited to:

(A) squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult;

(B) refusing to pay for necessities or utilities in a timely manner; or

(C) providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

"Guardian" means one of the types of guardianship specified in the Oklahoma Guardianship and Conservatorship Act, Title 30 of the Oklahoma Statutes.

(A) **General guardian.** A general guardian is a person appointed by the court to serve as the guardian of an incapacitated person to ensure that the essential requirements for the health and safety of the person are met, to manage the estate of the person, or both.

(B) **Limited guardian.** A limited guardian is a person appointed by the court to serve as the guardian of a partially incapacitated person and is authorized by the court to exercise only certain powers of a guardian over the person, or estate or financial resources of the person, or both.

(C) **Special guardian.** A special guardian is a person appointed by the court to exercise certain specified powers to alleviate a situation in which there is a threat of serious impairment to the health or safety of an incapacitated or partially incapacitated person, or a situation in which the financial resources of the person will be seriously damaged or dissipated unless immediate action is taken.

"Incapacitated adult" means a vulnerable adult whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person lacks the capacity to manage his or her financial resources or to meet essential requirements for the person's mental or physical health or safety without assistance.

"Indecent exposure" means forcing or requiring a vulnerable adult to:

(A) look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult; or

(B) touch or feel the body or private parts of another person.

"Instrumental activities of daily living (IADLs)" means abilities necessary for an adult to function independently in the community, such as preparing meals, using the telephone, driving or arranging for transportation, shopping, and handling finances.

"Maltreatment" means abuse, neglect, self-neglect, exploitation, sexual exploitation, or verbal abuse.

"Neglect" means:

(A) failure to provide protection for a vulnerable adult who is unable to protect his or her own interest;

(B) failure to provide adequate shelter, nutrition, health care, or clothing for a vulnerable adult; or

(C) negligent acts or omissions that result in harm or unreasonable risk of harm to a vulnerable adult through action or inaction, or lack of supervision by a caretaker providing direct services.

"Power of attorney" means authority granted by a legal document authorizing a person or other entity to act for the principal, subject to the extent of the power authorized. The power is revoked upon:

(A) written revocation of the principal;

(B) incapacity of the principal unless it is a durable power of attorney;

(C) death of the principal;

(D) a termination date if specified in the document;

(E) order of the court; or

(F) the appointment of a guardian, in most cases.

"Self-neglect" means neglect brought about by a vulnerable adult's own actions or inactions which causes the vulnerable adult to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence, or incapacity.

"Services which are necessary to aid an individual to meet essential requirements for mental or physical health and safety" means services which include, but are not limited to the:

- (A) identification of adults in need of protective services;
- (B) provision of medical care for physical or mental health needs; and
- (C) provision of assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical maltreatment, guardianship referral, outreach, and transportation necessary to secure any of such needs. This excludes taking the adult into physical custody without the adult's consent except through proper procedures for the provision of involuntary services.

"Sexual abuse" means:

- (A) oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult with any other object by a caretaker or other person providing services to the vulnerable adult;
- (B) for the purpose of sexual gratification, the touching, feeling, or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or
- (C) indecent exposure by a caretaker or other person providing services to the vulnerable adult.

"Sexual exploitation" means and includes, but is not limited to, a caretaker causing, allowing, permitting, or encouraging a vulnerable adult to engage in prostitution or in lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult as those acts are defined by Oklahoma law.

"Substantiated" means more than 50% of the evidence collected during an APS investigation determines that maltreatment occurred.

"Temporary guardian" means a person or other entity appointed by the court under Title 43A of the Oklahoma Statutes with authority only to consent on behalf of an incapacitated adult to the provision of protective services determined necessary to remove conditions creating an emergency need and other services approved by the

court. A temporary guardian serves in that capacity only until the expiration of the order appointing him or her.

"Unsubstantiated" means evidence found during an APS investigation was insufficient to determine maltreatment occurred.

"Verbal abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions, or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame, or degradation.

"Vulnerable adult" means an adult who, because of physical or mental disability or other impairment, may be subject to maltreatment and is substantially impaired in his or her ability to independently:

- (A) provide adequately for his or her own care or custody;
- (B) manage his or her property and financial affairs effectively;
- (C) meet essential requirements for mental or physical health or safety; or
- (D) protect himself or herself from maltreatment without assistance. This determination is not made based on a person's eligibility for disability benefits from any source or on the impairment being permanent, but solely on the adult's reported physical or mental condition at the time an APS referral is made and the APS specialist's assessment of that condition during investigation.

340:5-3-1. Reporting a need for protective services

Revised 11-1-07

(a) **Mandatory requirement to report.** Any person having reasonable cause to believe that a vulnerable adult is suffering from abuse, neglect, or exploitation is mandated by law [Section 10-104.A of Title 43A of Oklahoma Statutes] to make a report to the Oklahoma Department of Human Services (OKDHS), the office of the district attorney in the county in which the suspected incident occurred, or local law enforcement.

(1) State law provides that any person who knowingly and willfully fails to promptly report any abuse, neglect, or exploitation is, upon conviction, guilty of a misdemeanor.

(2) Any person who willfully or recklessly makes a false report or a report without a reasonable basis is liable in a civil suit for any actual damages suffered by any person named in the report and any punitive damages set by the court or jury.

(3) Any person exercising good faith and due care in making a report of alleged abuse, neglect, or exploitation has immunity from any civil or criminal liability that might otherwise be incurred.

(4) Every person in Oklahoma is a mandatory reporter, and select groups who routinely have contact with vulnerable adults are specifically named in Oklahoma statutes, including:

(A) social workers;

(B) physicians;

(C) operators of emergency response vehicles;

(D) mental health professionals;

(E) law enforcement;

(F) staff of domestic violence programs;

(G) long-term care facility personnel including staff of:

(i) nursing facilities;

(ii) intermediate care facilities for persons with mental retardation;

(iii) assisted living facilities; and

(iv) residential care facilities;

(H) persons entering into transactions with a caretaker or other person who has assumed the role of financial management for a vulnerable adult;

(I) staff of:

(i) residential care facilities;

(ii) group homes; and

(iii) employment settings for individuals with developmental disabilities;

(J) job coaches;

(K) community service workers;

(L) personal care assistants; and

(M) other medical professionals.

(b) **Content of the report.** The law requires that the report of alleged abuse, neglect, or exploitation of vulnerable adults include the information in (1) through (3) of this subsection. Additional information which is useful in investigating a report is included on Form 08AP001E, Adult Protective Services Referral. The minimum information required by law is:

(1) the name and address of the vulnerable adult;

(2) the name and address of the caretaker, if any; and

(3) a description of the situation of the vulnerable adult.

(c) **Obtaining the name of the reporter.** Although the person making the report is not required by law to provide a name, address, or telephone number, such information is helpful in the event the APS specialist has further questions or needs to clarify any points of the complaint. ■ 1

INSTRUCTIONS TO STAFF 340:5-3-1

Revised 11-1-07

1. (a) The person accepting the report explains to the reporter that:

(1) the Oklahoma Department of Human Services (OKDHS) may need to contact the reporter for additional information, and stresses the importance of the reporter's testimony if legal intervention is necessary;

(2) the reporter's name is not revealed during the course of the investigation;

(3) if the caller specifically requests anonymity or refuses to provide a name and contact information, OKDHS Adult Protective Services (APS) records are confidential but may be disclosed upon order of the court; and

(4) according to state law, [Section 10-104 of Title 43A of Oklahoma Statutes] an employer may not retaliate against an employee for making an APS referral.

(b) If the reporter continues to decline to provide his or her name and contact information, the report is accepted and given to an APS supervisor for screening.

340:5-5-6. Provision of protective services to clients receiving APS services

Revised 11-1-07

(a) **Voluntary protective services.** Protective services may be provided on a voluntary basis when a vulnerable adult consents to provision of services, requests services, and is willing to allow the Adult Protective Services (APS) specialist to provide or arrange for services as authorized by Section 10-106 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-106).

(b) **Payment for protective services.** The cost of providing voluntary or involuntary protective services is borne by the client if the APS specialist determines that the person is financially able to make payment or by any private or public programs for which the vulnerable adult is eligible. If a caretaker controls the person's funds and refuses to pay for necessary services, this may be construed as caretaker interference and is handled as described in (3) of this subsection. ■ 1

(1) **Payment for voluntary services.** If voluntary services are required to meet an emergency need and no other payment source is available, procedures described in (3) of this subsection are followed. In cases where the services are not to meet an emergency need, the APS specialist arranges for voluntary services if:

- (A) services can be provided free of charge;
- (B) the client has funds and agrees to pay for the services; or
- (C) there is a public or private assistance program available to pay for the services.

(2) **Payment for involuntary services.** Payment for involuntary protective services is made from the client's funds only upon order of the court. If payment is required for involuntary services, procedures described in (3) of this subsection are followed if:

- (A) no funds are available from the client's assets; and
- (B) no private or public payment source is available.

(3) **Payment for emergency protective services.** The Oklahoma Department of Human Services (OKDHS) maintains a limited APS Emergency Fund that may be accessed only when specific criteria are met. This fund is used as a short-term measure for crisis situations until other arrangements are made. ■ 2

(c) **Court-related services.** All petitions or motions filed with the court regarding a vulnerable adult require the signature of the district attorney (DA), assistant district attorney (ADA), or OKDHS Legal Division attorney.

(d) **Non-cooperation of caretaker.** When a vulnerable adult consents to receive protective services but the caretaker refuses to allow the provision of services, OKDHS may petition the court for an injunction prohibiting the caretaker from interfering with the provision of protective services in accordance with subsection (e). ■ 3

(e) **Petitioning the court - order enjoining caretaker.** When the client's caretaker refuses to allow the provision of protective services to which the client has consented or otherwise interferes in the provision of services, OKDHS may petition the court for an Order to Enjoin Caretaker. ■ 4

(f) **Refusal to consent to protective services.** If a vulnerable adult does not consent to the provision of needed services, or withdraws consent after it is given, the APS specialist documents the client's refusal in the case narrative or on Form 08AP002E, Adult Protective Services Report of Investigation. Services are terminated unless OKDHS determines that the person lacks capacity to consent. In that case, the APS specialist considers action as outlined in OAC 340:5-1-4.

(g) **Involuntary protective services.** Involuntary protective services are authorized by 43A O.S. § 10-107. If a vulnerable adult is suffering from abuse, neglect, or exploitation that presents a substantial risk of death or immediate and serious physical harm to self, or significant and unexplained depletion of the adult's estate, but lacks the capacity to consent to receive protective services and no consent can be obtained from anyone acting as caretaker, the services may be ordered by the court on an involuntary basis. The court authorizes provision of specific services that the court finds least restrictive of the rights and liberty of the person involved.

(h) **Petitioning the court - emergency order for involuntary protective services.** OKDHS may petition the court for an order to provide emergency protective services. The petition is made in the county of the client's residence or in a county where any of the protective services are provided. ■ 5

(1) If an emergency order to provide protective services is issued by the court, the order includes the appointment of a temporary guardian for the person in need of services. The temporary guardian may be either OKDHS or an interested person. The order gives the temporary guardian authority only to consent to the specified protective services on behalf of the person. ■ 6

(2) The vulnerable adult, temporary guardian, or any other interested person may at any time petition the court to have the emergency order set aside or modified.

(i) **Notice to recipient.** The court sets a date to hear the case. The hearing is scheduled within five days of the date the judge signs the notice to the recipient of protective services. The vulnerable adult must receive notice 48 hours in advance of the hearing. Notice may be waived by the court in emergency cases, as described in (2) of this subsection.

(1) A court order is issued showing OKDHS has petitioned the court for an order to provide protective services, and giving the date, time, and place of the hearing. The order specifies who serves the notice to the client. ■ 7

(2) When petitioning the court for an order for emergency protective services, OKDHS may file a motion to waive notice if there is a risk that immediate and reasonably foreseeable death or serious physical harm to the person will result from a delay. This action is authorized by 43A O.S. § 10-108.D. In response, the court may enter a 72-hour verbal order if not during regular court hours or issue a limited order during regular hours and order written notice be served on the client and attorney, if known, of a hearing to be held within that 72-hour period. ■ 8

(3) If the hearing is declined, the court may either terminate the emergency temporary guardianship or enter a temporary 30-day order to provide involuntary protective services.

(j) **Emergency services responsibilities for out-of-home placements.** As a result of a substantiated investigation, the APS specialist develops a service plan to address the identified needs and safety issues. ■ 9 All out-of-home placements, including any change of placement, of clients under APS guardianship, are reported to and subject to approval of the court. Only protective services that are necessary to remove the conditions immediately threatening the life and well-being of the person are ordered. Protective services that may be authorized by an emergency court order include a change of residence only if the court gives specific approval for such action and names the facility in its order. Emergency placements may be made to nursing homes, personal medical institutions, other home placements, or other appropriate facilities. Emergency placement is not made to facilities for the acutely mentally ill.

(1) When the service plan recommends out-of-home placement for safety, health, and care needs, the APS specialist discusses this plan with the client. The client is provided with all the information necessary to make an informed decision. This may include visits to a variety of placement options arranged or facilitated by the APS specialist. The client's family, if appropriate and approved by the client, is included

in the planning stages. The client or family is provided with all the information available to the APS specialist regarding the quality of care provided by the identified and selected placement.

(2) Information on current quality issues of specific nursing facilities are obtained from a variety of sources to determine the appropriateness of a facility for a client receiving APS services. Placements are determined by the local APS specialist and supervisor, with approval from the county director and area APS field liaison. If a facility has any Oklahoma State Department of Health (OSDH) deficiencies at or above the actual harm level, or has had more than three substantiated Long Term Care Investigations (LTCI) reports in the past year, the placement must be approved by the APS state program office. ■ 10

(k) **Time limits for providing involuntary emergency protective services.** Protective services under an emergency court order other than a 72-hour order may be provided for 30 days. If the APS specialist determines protective services are required past this 30-day period, a petition is filed for continuation of involuntary protective services in accordance with (l) of this Section.

(l) **Continuation of services.** Continuation of services is authorized by 43A O.S. § 10-108.L.

(1) If, upon expiration of the original 30-day order, the vulnerable adult continues to require protective services, OKDHS immediately files a motion for the court to order either or both:

(A) appointment of a guardian; and

(B) commitment of the vulnerable adult to a nursing home, personal medical institution, home placement, or other appropriate facility other than a facility for the acutely mentally ill.

(2) Before the court enters a six-month order for continued protective services, the court directs that a comprehensive evaluation of the vulnerable adult is conducted and submitted to the court within 30 days at a review hearing. The evaluation includes at least:

(A) the address where the person resides and the name of any persons or agencies presently providing care, treatment, or services;

(B) a summary of the professional treatment and services provided the person by OKDHS or other agency, if any, in connection with the problem creating the need for protective services; and

(C) a medical, psychological or psychiatric, and social evaluation and review, including recommendations for or against maintenance of partial legal rights and recommendations for placement consistent with the least restrictive environment required.

(3) The original order continues in effect until the evaluation is submitted and the hearing is held on the motion.

(4) Notice of this hearing is served as described in subsection (i).

(5) The APS specialist is responsible for assembling the required information and submitting it to the court of jurisdiction.

(6) When an investigation indicates that the vulnerable adult is likely to need assistance with his or her affairs for an extended period of time, consideration is given to identifying a relative, friend, or other person interested in the well-being of the client to serve as permanent guardian. Any person interested in the welfare of a person believed incapacitated or partially incapacitated may file a guardianship petition with the court. Procedures for filing the petition are given in 30 O.S. § 3-101, the Oklahoma Guardianship and Conservatorship Act. Interested persons are referred to the office of the district court clerk for further information and assistance.

(m) **Continuation of services for an additional period.** If after the hearing the vulnerable adult is found in need of continued protective services, the court issues an order to continue the temporary guardianship to provide specified protective services for an additional period not to exceed 180 calendar days, as authorized by 43A O.S. § 10-108. If after the 180 calendar days the vulnerable adult is still found in need of protective services, the court may renew the order every six months as needed.

(n) **Sale of real property.** In the event that temporary guardianship extends for more than one year and the client owns real property that must be sold in order to qualify for SoonerCare (Medicaid), OKDHS may as temporary guardian sell the real property of the vulnerable adult pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act and as directed by the OKDHS Legal Division. The fact that the vulnerable adult would be in jeopardy for receipt of SoonerCare (Medicaid) if the property was not sold shall be stated in the court order directing the sale of the real property.

(o) Sale of personal property. The court may issue an order authorizing OKDHS to sell personal property of a vulnerable adult when additional resources are required to pay for necessary care for the vulnerable adult.

(p) Responsibilities of the temporary guardian of the person or estate. The APS specialist as temporary guardian is responsible for ensuring, to the extent possible, protection of the client residence, resources, and belongings. This includes:

(1) securing the residence, checking and gathering the mail, and feeding or arranging for care for the client's domestic animals or livestock;

(2) inventorying the client's home and personal property, using a video camera where available.

(A) For enhanced accountability a minimum of two people must be present during the inventory, one of whom is a law enforcement representative or non-OKDHS employee.

(B) All persons present during the inventory must sign a document attesting to the authenticity of the inventory and/or the video recording;

(3) establishing an account at a local financial institution and depositing any cash and uncashed checks; and ■ 11

(4) securing other valuables located during the inventory. The APS specialist:

(A) arranges to have the locks changed or padlocks the residence to secure it from intrusion, if necessary; and

(B) advises all parties that no one is allowed to enter the residence unless accompanied by a representative of OKDHS, for as long as the temporary guardianship is in effect.

(q) Additional responsibilities of temporary guardian of the estate. The APS specialist responsible for the temporary guardianship of the estate:

(1) opens a guardianship account in a local financial institution and regularly collects and deposits monies due to the client;

(2) submits an accounting to the court as ordered by the court, no less than quarterly;

(3) works with the court, the client's attorney, the DA, and the OKDHS Legal Division to obtain a professional accountant to manage the estate; and

(4) absent the availability of professional financial management, is responsible for regular financial activities as dictated by the client's circumstances, which include, but are not limited to, the timely:

(A) payment and documentation of the client's expenses, and other bills as they occur. Cash transactions require documentation of APS supervisory approval and a signed and witnessed receipt from the recipient of the cash;

(B) deposit of funds received;

(C) redirection of incoming funds to the new account; and

(D) protection of existing accounts.

(r) Responsibility of APS specialist - involuntary protective services. In cases where temporary guardianship of the person has been granted to OKDHS, the APS specialist provides, arranges, or facilitates the protective services ordered by the court. This may include, but is not limited to:

(1) hiring of in-home caregivers to provide in-home care and protection for the client;

(2) placement in a medical facility for treatment of health related problems;

(3) placement in a safe and anonymous location;

(4) placement in a facility for either short or long term care needs. Long term care facilities include:

(A) residential care facilities;

(B) group homes;

(C) nursing homes;

(D) intermediate care facilities for persons with mental retardation;

(E) assisted living centers;

(F) skilled nursing facilities; or

(G) any other type of facility licensed to provide 24-hour care and/or services for vulnerable adults. ■ 12

(s) Responsibility of APS specialist - emergency out-of-home placement - ex-parte hearing. When an emergency situation requires immediate placement, the APS specialist places the client in a licensed facility that, to the best of the APS specialist's knowledge, provides the required services needed to ameliorate the current emergency situation. Reasons for this choice are documented in the case record and provided to the court at the 72-hour hearing.

(t) Enforcement of involuntary court orders. In order to enforce the involuntary order of protective services, the court may order:

(1) forcible entry of the premises of the vulnerable adult to be protected;

(2) transportation of the vulnerable adult to another location; or

(3) the eviction of a person from any property owned, leased, or rented by the vulnerable adult and restricting that person from further access to any property of the vulnerable adult.

INSTRUCTIONS TO STAFF 340:5-5-6

Revised 11-1-07

1. The Adult Protective Services (APS) specialist may assist a client in making application for public or private assistance programs by:

(1) completing application forms; and

(2) gathering documentation necessary to determine eligibility.

2. Form 08AP017E, APS Emergency Request, is completed if the APS specialist determines a client needs emergency services for which no payment source is available. Authorization to utilize the APS Emergency Fund is:

(1) obtained from an APS programs field representative;

(2) approved on a case-by-case basis;

(3) specific to each item or service needed; and

- (4) requested only after personal, family, and community resources have been requested and denied or exhausted.
3. The date, time, and circumstances of the client's consent are documented in the case record narrative or on Form 08AP002E, Adult Protective Services Report of Investigation.
 4. (a) The APS specialist explains to the caretaker the legal responsibility of the Oklahoma Department of Human Services (OKDHS) to provide the needed services and authority to obtain an injunction if necessary. Family members and other interested parties may be involved in the attempt to persuade the caretaker to allow provision of services. If, after reasonable attempts have been made to persuade the caretaker to allow the needed services to be provided, the caretaker still refuses to allow service provision, OKDHS may petition the court for an injunction prohibiting the caretaker from interfering with the provision of protective services. The petition alleges specific facts sufficient to show that the:
 - (1) vulnerable adult is in need of protective services;
 - (2) vulnerable adult consents to receive the needed services; and
 - (3) caretaker refuses to allow the provision of such services.
 - (b) The APS specialist documents the date, time, and circumstances under which consent was obtained from the person in need of protective services, as well as the circumstances surrounding the caretaker's refusal to allow service provision.
 - (c) If the court finds that the person is in need of and consents to protective services and that the caretaker refuses to allow provision of those services, the court may enter an order enjoining the caretaker from interfering with provision of services.
 - (d) If a caretaker continues to refuse to allow provision of protective services after an injunction has been issued by the court, OKDHS requests assistance from law enforcement officials to implement the court order.
5. (a) The APS specialist must have a face-to-face interview with the client within 24 hours prior to the filing of a petition for involuntary services.

(b) The petition must include:

- (1) the name, age, and address of the vulnerable adult determined in need of services;**
- (2) the nature of the abuse, neglect, or exploitation;**
- (3) the specific services needed; and**
- (4) information relating to the capacity of the vulnerable adult to consent to services and OKDHS attempts to obtain consent.**

(c) Whether a petition for involuntary services is filed in the county of residence or the county where services are provided, the county of residence is the lead county and remains primarily responsible for the case, including documentation of the case record and coordination of service planning for the client. When two or more counties are involved with a client receiving involuntary services, close communication and coordination is required to ensure the client's needs are met.

(d) If a client's residence later changes to the county where services are provided, the case is transferred to the new county of residence. If the former county of residence still has an active court case on the client, the county of court jurisdiction informs the county of residence of any and all information requested by the court with as much lead time as possible, until the court order expires. If continued court action is needed, it is initiated in the new county of residence.

- 6. The services to be provided must be specifically listed in the court order, including the names of any facilities or agencies which will be service providers for the client.**
- 7. The APS specialist usually serves the notice on the person who is the subject of the petition unless the situation is potentially dangerous, in which case the APS specialist may request assistance from a law enforcement officer. If the client has retained or been appointed an attorney, notice is served on the attorney, which constitutes service on the client.**
- 8. If the APS specialist is uncertain whether the circumstances warrant a waiver of notice, the APS specialist staffs the situation with the APS specialist IV or**

area APS field liaison before presenting the petition and evidence to the court for a decision.

9. See OAC 340:5-5-3, Instructions to Staff 5 and 6 for additional information.
10. These include, but are not limited to, reviewing Oklahoma State Department of Health (OSDH) survey reports, Long Term Care Investigations (LTCI) records, and information available from the Long Term Care Ombudsman at the local Area Agency on Aging office. The APS state program office in the Family Support Services Division (FSSD) provides periodic updates on what information is available and how to access it. Names of facilities that have had their license suspended or revoked or been decertified for SoonerCare (Medicaid) within the past year or have a current restriction on new admissions imposed by OSDH are placed on a list maintained by FSSD. Clients are not placed in those facilities without thorough documentation of other placements attempted and the reason those would not work. Preferences expressed and decisions made by clients receiving APS services and their guardian, caretaker, or next of kin are also thoroughly documented in the case record.
11. The account must be established using the name of the APS specialist and one other OKDHS employee.
12. Involvement of the client and his or her family is desirable in all cases to the extent they are able to be safely involved.
 - (1) Any time an out-of-home placement is considered, the APS specialist assesses the:
 - (A) client's preferences and desires;
 - (B) family preferences and desires;
 - (C) client's medical condition, needs, and recommendation of physician;
 - (D) unique circumstances of the client's situation in order to provide appropriate and safe level of care;
 - (E) availability of facilities to meet clients needs;
 - (F) acceptance of client by facility; and

(G) payment arrangements, availability, and affordability.

(2) This assessment criteria is documented in the case record and made available at the request of the court in the form of a written report.