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| POLICY TRANSMITTAL NO. 07-25 | DATE: JUNE 22, 2007 |
| FAMILY SUPPORT SERVICES DIVISION | DEPARTMENT OF HUMAN SERVICES OFFICE OF LEGISLATIVE RELATIONS AND POLICY |

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:5-5-4.

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

OAC 340:5-5-4 is revised to: (1) clarify how Adult Protective Services (APS) works with an alleged victim who is a tribal member; (2) change the statute citation and language regarding voluntary referrals for APS service; (3) clarify how APS staff work with Developmental Disabilities Services Division (DDSD) staff; (4) provide other clarifying information; and (5) update obsolete language.

Original signed on 5-4-07

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WF # 07-03 (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

340:5-5-4

INSERT

340:5-5-4, pages 1-10, revised 7-1-07

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

(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. 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, local APS staff from both human services centers (HSCs) are involved in the investigation. ■ 2

(c) **Referrals involving 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 Section 1025.3 of Title 56 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 agency employees who are not subject to the CSW Registry requirements, the agency director or board is notified of any substantiated elements of the investigation. Any corrective action plan on the part of the agency becomes a part of the APS case record. If the 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 the 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. 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; **■ 6**
- (2) freezing all assets of the client; and
- (3) petitioning the court for an order allowing access to records. **■ 7**

(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 Section 1175.6b(B) of Title 22 of the Oklahoma Statutes. 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 Title 43A of the Oklahoma Statutes 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. Section 1175.3(D)(1)(b) of Title 22 of the Oklahoma Statutes 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

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.

2. **APS staff in the county of residence of the alleged victim (AV) has primary responsibility for maintaining the case record of 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.**

- (1) **Staff in the HSC of the county of residence may request staff in the HSC of the county in which the alleged perpetrator (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.**

- (2) **When problems with coordination between APS staff in different HSCs occur, they contact the area APS field liaison(s) 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 client if approved by the area nurse;**

- (3) **assist the APS specialist in determining a course of action on the client's behalf; and**

- (4) **assist in the follow-up of the client 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 no nursing resource is available, 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 client. 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 client, the OKDHS nurse completes all items on Form 08AP003E, Adult Protective Services Nursing Assessment, and submits the original to the APS specialist for inclusion in the case record.
4. **(a)** The APS specialist submits Form 08AP001E, Adult Protective Services Referral, Form 08AP002E, Adult Protective Services Report of Investigation, and relevant documentation to the Office of Client Advocacy (OCA), along with Form 08AP015E, Transmittal to Client Advocacy, by fax to 405-525-4855 or e-mail to *OCA.Intake@okdhs.org. 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 forms.
- (b)** 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.

(c) 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 a caretaker employed as a Medicaid PCA (MPCA) through the ADvantage Waiver program.

(d) 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 supervisor by e-mail of the decision. If OCA does not open an investigation, that does not change the APS substantiated finding.

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

(1) APS uses a preponderance of the evidence standard to substantiate maltreatment of a vulnerable adult. The Abuse 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 Legal Division for review. If the Legal Division determines that placement of the person's name on the Abuse Registry may be warranted, the CSW or MPCA is notified of due process rights, including the right to an administrative hearing.

(f) 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 (OKC), 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) e-mail address, LTCComplaints@health.state.ok.us.

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

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

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. Periodic reports are made at least yearly, or more often if ordered by the court.

(1) Original case records on clients previously remanded to OKDHS under Title 22 of the Oklahoma Statutes are maintained in the HSC of the client's residence. Copies of all reports and evaluations are kept in the original case record.

(2) If the county of the client's residence is different from the county of court jurisdiction, the HSC in the county of court jurisdiction maintains a "dummy" case containing copies of all court orders, evaluations, and reports submitted to the court. At least two weeks prior to the date a report is due to the court, the APS specialist in the county of court jurisdiction notifies the APS specialist in the county of residence that the report to the court is due. The APS specialist in the county of residence is responsible for completing the report and any necessary evaluations and forwarding the originals to the court, with copies made for both HSCs.

(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 is then authorized to set another hearing for the purpose of determining competency.

9. (a) APS staff provides information to DDSD staff to assist in evaluation of a client known or suspected to have a developmental disability. The case manager for a client 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 is assisted by DDSD 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 client 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, only when absolutely necessary, on home visits and assist in making application for DDSD services. When APS is assisted by DDSD on a case, a copy of Form 08AP002E is routed 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 client 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. The toll-free number is 1-800-522-1064.

(B) Area II includes Tulsa. The toll-free number is 1-800-522-1075.

(C) Area III includes Pauls Valley. 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 make their own application. 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 perpetrator, 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, in accordance with OAC 317:40-1-1(g).

(e) A referral is made by the APS specialist to DDSD Quality Assurance on all waiver services or state funded services clients. A copy of Form 08AP002E is routed to DDSD Quality Assurance upon completion of the APS investigation.

(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 report is immediately communicated to OCA. OCA may return the report to APS for investigation since OCA has the right of first refusal on investigations involving former residents of the Hissom Memorial Center.

10. Final investigative findings are faxed, mailed, or e-mailed in summary form to OSDH. See Instruction 5 for OSDH contact information.