
POLICY TRANSMITTAL NO. 10-06	DATE: APRIL 28, 2010
FAMILY SUPPORT SERVICES DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF INTERGOVERNMENTAL RELATIONS AND POLICY

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:5-1-1 through 5-1-6; 5-1-8; 5-3-1 through 5-3-3; 5-3-5 through 5-3-6; 340:5-5, Table of Contents; and 5-5-2 through 5-5-8.

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

OAC 340:5-1-1 is revised to: (1) add financial neglect and abandonment as types of maltreatment; and (2) differentiate between the terms report and referral.

OAC 340:5-1-2 is revised to: (1) update language to current terminology; and (2) provide clarifying language. Instructions to staff (ITS) are revised to clarify that an adult who recognizes and understands consequences has the right to choose an alternative life style even when maltreatment is substantiated.

OAC 340:5-1-3 is revised to update language to current terminology.

OAC 340:5-1-4 is revised to: (1) update language to current terminology; and (2) provide clarifying language. ITS are revised to clarify that the county director may also approve an exception to the number of services offered to the vulnerable adult for professional services.

OAC 340:5-1-5 is revised to: (1) add law enforcement agencies to the list of persons who may review or receive information from the case record; (2) add clarification of when information may be excluded from disclosure; and (3) update language to current terminology.

OAC 340:5-1-6 is revised to: (1) add definitions for alleged victim, adult protective services (APS) specialist III, APS specialist IV, Information and Referral, referral, and report; and (2) add financial neglect and abandonment to the definition of maltreatment.

OAC 340:5-1-8 is revised to: (1) update language to current

terminology; (2) add clarifying information; and (3) add clarifying language to address steps a complainant can take if dissatisfied with the county director's findings regarding an APS complaint. ITS are revised to clarify that the county director is responsible for addressing complaints of possible inappropriate treatment by staff.

OAC 340:5-3-1 is revised to: (1) update language to current terminology; and (2) require staff to immediately submit all reports for screening. ITS are revised to require the APS specialist IV to: (1) reassign reports that were inappropriately assigned within 24 hours; and (2) advise the APS program field representative when a delay in submission of a report occurs.

OAC 340:5-3-2 ITS are revised to update language to current terminology.

OAC 340:5-3-3 ITS are revised to: (1) update language to current terminology; and (2) remove information about reports not accepted for investigation as this instruction was moved to another section.

OAC 340:5-3-5 is revised to clarify: (1) the Oklahoma Department of Mental Health and Substance Abuse Services treat the seriously mentally ill and substance abusers when voluntarily requested; and (2) the APS specialist's role when reports are received regarding this population. ITS are revised to: (1) correct an e-mail address; and (2) update language to current terminology.

OAC 340:5-3-6 is revised to: (1) clarify the timeframe for screening new reports to identify emergency situations, ensure correct assignment of the report, and to facilitate the timely initiation of the investigation; and (2) update language to current terminology. ITS are revised to: (1) update language to current terminology; (2) clarify the documentation needed when a report is not accepted for APS investigation; and (3) remove information regarding response time for APS reports as it is duplicated in OAC 340:5-3-2 ITS.

OAC 340:5-5-2 is revised to provide clarifying language regarding the time frame for initiating an investigation. ITS are revised to: (1) provide clarifying language regarding appropriate documentation when the APS specialist is unable to locate alleged victims; (2) update language to current terminology; and (3) clarify procedures to follow when denied access to the alleged victim and to petition the court for an entry order.

OAC 340:5-5-3 is revised to: (1) provide clarifying language; (2) update language to current terminology; and (3) add findings to the

elements of an investigation. ITS are revised to: (1) update language to current terminology; (2) clarify procedures to follow when the APS specialist is unable to locate the alleged victim; and (3) add procedures for approving case extensions.

OAC 340:5-5-4 is revised to: (1) provide clarifying language regarding referrals involving two or more counties; (2) give examples of provider agency employees not subject to the Community Services Worker Registry; and (3) update language to current terminology. ITS are revised to: (1) provide clarifying language regarding information back-up APS specialists in other counties may be asked to obtain and document to complete the investigation; and (2) update language to current terminology.

OAC 340:5-5-5 is revised to include portions of statutes regarding notification of the caretaker, legal guardian, next of kin, and the court of jurisdiction. ITS are revised to: (1) provide clarifying language regarding what stages of the investigation require documentation of review by the APS specialist IV; (2) update language to current terminology; and (3) advise what information to include in the notification of findings to the caretaker, legal guardian, and next of kin.

OAC 340:5-5-6 is revised to: (1) add language from statutes regarding the vulnerable adult's right to religious beliefs for healing; (2) add clarifying language from statutes regarding the provision of involuntary protective services; (3) add language regarding a do not resuscitate (DNR) order; (4) add language from statutes regarding restricted visitation; (5) add language about when the APS specialist can request the court to order a psychological or psychiatric evaluation; (6) add language about when involuntary court orders are dismissed; (7) add clarifying language; and (8) update language to current terminology. ITS are revised to: (1) provide clarifying language regarding documentation to include in the Estate Management Section of the APS Computer System and what must be documented when the APS specialist is responsible for the vulnerable adult's finances; and (2) update language to current terminology.

OAC 340:5-5-7 is revised to: (1) update language to current terminology; and (2) correct a policy cite.

OAC 340:5-5-8 is added to provide direction for case destruction of APS paper files in accordance with rules set by Archives and Records Commission.

Original signed on 3-16-10

Mary Stalnaker, Director
Family Support Services Division

Sandra Harrison, Coordinator
Office of Intergovernmental Relations and
Policy

WF # 09-24 (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.

<u>REMOVE</u>	<u>INSERT</u>
340:5-1-1	340:5-1-1, 1 page only, revised 6-1-10
340:5-1-2	340:5-1-2, 1 page only, revised 6-1-10
340:5-1-3	340:5-1-3, pages 1-2, revised 6-1-10
340:5-1-4	340:5-1-4, pages 1-2, revised 6-1-10
340:5-1-5	340:5-1-5, pages 1-3, revised 6-1-10
340:5-1-6	340:5-1-6, pages 1-6, revised 6-1-10
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340:5-3-3	340:5-3-3, 1 page only, revised 6-1-10
340:5-3-5	340:5-3-5, pages 1-2, revised 6-1-10
340:5-3-6	340:5-3-6, pages 1-5, revised 6-1-10
340:5-5, Table of Contents	340:5-5, Table of Contents, 1 page only, revised 6-1-10
340:5-5-2	340:5-5-2, pages 1-8, revised 6-1-10
340:5-5-3	340:5-5-3, pages 1-13, revised 6-1-10

REMOVE

340:5-5-4

340:5-5-5

340:5-5-6

340:5-5-7

INSERT

340:5-5-4, pages 1-11, revised 6-1-10

340:5-5-5, pages 1-3, revised 6-1-10

340:5-5-6, pages 1-15, revised 6-1-10

340:5-5-7, 1 page only, revised 6-1-10

340:5-5-8, 1 page only, issued 6-1-10

340:5-1-1. Program goalsRevised 6-1-10

The Adult Protective Services program (APS) is for vulnerable adults who are reported to be unable to care for themselves and their needs and are reported to be suffering from abuse, neglect, self-neglect, exploitation, or verbal abuse. A protective services investigation is initiated when a report is received and assigned. Whenever possible, protective service plans are developed with the knowledge and approval of the adult victim. When it is determined that provision of services without consent is necessary to protect the life and well-being of an adult, such action is taken only with careful consideration of the effect on the adult's sense of autonomy. The goals of the APS program are to:

- (1) reestablish and maintain a stable level of functioning approaching the maximum potential of the vulnerable adult victim of abuse, neglect, self-neglect, financial exploitation, financial neglect, sexual exploitation, abandonment, or verbal abuse;
- (2) reestablish and maintain the vulnerable adult's family and community relationships;
- (3) assist the vulnerable adult to remain in the community as long as possible;
- (4) ensure that the adult who lacks the capacity to consent receives involuntary services that are ordered by the court; and
- (5) assist the adult in obtaining appropriate institutional care if no less restrictive services are available.

340:5-1-2. Principles of APSRevised 6-1-10

(a) The vulnerable adult alleged to need protective services is the client of the Oklahoma Department of Human Services. While outcomes desired by the person who reported the situation, family members, or other caretakers of the vulnerable adult are considered during the investigative process, the focus of Adult Protective Services (APS) intervention is the vulnerable adult. ■ 1

(b) The right to self-determination is primary to APS. The APS specialist approaches intervention with sensitivity to the adult's perception of his or her situation and wishes and makes an objective assessment of the circumstances and need for continued involvement. ■ 2

(c) Service planning focuses on services which meet the needs of the vulnerable adult in the least intrusive and least restrictive manner. ■ 3

INSTRUCTIONS TO STAFF 340:5-1-2Revised 6-1-10

- 1. Adult Protective Services (APS) staff recognize the fragility of certain family relationships, and approach issues with relative caretakers with a high degree of awareness.**
- 2. In some instances, an adult who has chosen an alternative life style is reported to be in need of protection. If it is determined, upon investigation by the APS specialist, that the adult recognizes and understands the consequences of his or her choices, the adult's decision is respected even if an allegation of maltreatment is substantiated.**
- 3. An important issue in the provision of protective services for adults is whether the resources available to remedy the problem offer a positive alternative to the current situation from the adult's own perspective, unless the situation is an emergency and the adult lacks decision-making capacity.**

340:5-1-3. Program coordinationRevised 6-1-10

Family Support Services Division, Adult Protective Services (APS) Unit, has responsibility for program planning, staff training, technical assistance, quality assurance, and policy development. Field Operations Division, area APS program field representatives (PFR)s assist in this process by providing local support for APS staff. The APS program is implemented in the field through APS specialists in local Oklahoma Department of Human Services offices. ■ 1

INSTRUCTIONS TO STAFF 340:5-1-3Revised 6-1-10

1. (a) Questions concerning policy issues are addressed by the Adult Protective Services (APS) specialist to the APS specialist IV for resolution. If the APS specialist IV is unavailable to answer these questions, staff may consult the area APS program field representative (PFR). Family Support Services Division (FSSD), APS Unit staff address questions concerning policy, procedures, and protocols if neither the APS specialist IV nor the area APS PFR is available, and in all cases serves as the final authority for interpreting APS program policy. All personnel issues are the responsibility of the county directors.

(b) Questions regarding legal issues may be referred to the Oklahoma Department of Human Services (OKDHS) Office of General Counsel by FSSD, APS Unit staff or APS area PFRs. In emergency situations involving temporary guardianships the APS specialist IV may refer the APS specialist directly to the Office of General Counsel.

(c) In cases where an APS specialist is subpoenaed to testify in court regarding an APS case, receives an order to release information, or receives an order to testify at a deposition, the APS specialist, following consultation with the APS specialist IV:

(1) contacts the Office of General Counsel to review what information may be divulged;

(2) faxes or scans and e-mails a copy of the subpoena or order to the OKDHS Office of General Counsel before any other contact is made; and

(3) documents contact with the Office of General Counsel in the Notes Section of the APS Computer System.

340:5-1-4. Ethical considerationsRevised 6-1-10

The Adult Protective Services (APS) specialist has ethical responsibilities according to Section 10-109a of Title 43A of the Oklahoma Statutes (43A O.S. § 10-109a). The APS specialist maintains professional objectivity when providing or arranging services for vulnerable adults, whether services are paid for by the vulnerable adult or from private or public funds.

(1) The APS specialist must not:

(A) handle the vulnerable adult's personal resources, such as bank accounts, cash, checks, notes, mortgages, trusts, deeds, sales contracts, stocks, bonds, certificates, or other liquid assets without prior APS specialist IV approval;

(B) obtain or initiate repairs, personal services, and other necessary actions to provide health care, food, or shelter to or on behalf of a vulnerable adult without prior APS specialist IV approval. Approval may be verbal rather than written in emergency situations where immediate action is required to protect the vulnerable adult from imminent harm or significant loss of property. All plans of this nature, along with approval, must be documented in writing in the case record as soon as possible after approval;

(C) solicit, charge, request, or accept a fee, gift, reward, or payment of any kind from individuals or staff for services rendered as a volunteer, intern, or employee;

(D) use contact with the vulnerable adult or any member of the vulnerable adult's support system for personal gain or personal relationships;

(E) after termination of any assignment, make personal contact with a former client or any member of the client's support system or use former contact with a client for personal gain;

(F) buy items from a vulnerable adult;

(G) engage in any employment or business interest that would constitute a conflict of interest or impair the APS specialist's ability to carry out duties in an impartial manner;

(H) give diagnostic medical or legal opinions;

(I) refer the vulnerable adult to just one physician, attorney, counselor, or other professional for services. The vulnerable adult is presented options whenever possible; ■ 1

(J) have sexual contact with vulnerable adults, their relatives, next of kin, or members of their support system; and

(K) make after hours home visits, other than those specifically approved by the APS specialist IV.

(2) The APS specialist contacts the APS specialist IV immediately when the vulnerable adult or the APS specialist is threatened or injured in the course of the investigation.

INSTRUCTIONS TO STAFF 340:5-1-4

Revised 6-1-10

- 1. The Adult Protective Services (APS) Computer System Notes Section must document the reason there was only one referral for professional services. APS specialist IV or county director approval of exceptions is also documented in writing in the Notes Section of the APS Computer System.**

340:5-1-5. ConfidentialityRevised 6-1-10

(a) All records, working papers, and reports related to an Adult Protective Services (APS) investigation are confidential under Section 10-110 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-110) and may be disclosed only by order of the court except under the circumstances described in (b) through (e) 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.

(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) 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. ■ 3

INSTRUCTIONS TO STAFF 340:5-1-5

Revised 6-1-10

- 1. To maintain the highest degree of confidentiality, Adult Protective Services (APS) records are kept in a secured area at both the local and state office levels.**
- 2. Oklahoma Department of Human Services staff who may be granted access to APS records include staff of Field Operations Division, Division of Children and Family Services, Developmental Disabilities Services Division, Office of Inspector General, Office of Client Advocacy, and any others who request records in order to evaluate eligibility or complete an investigation.**
- 3. This is in regards to 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.

340:5-1-6. DefinitionsRevised 6-1-10

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

"Abandonment" means the withdrawal of support or the act of deserting a vulnerable adult by a caretaker or other person responsible for the vulnerable adult's care.

"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.

"Alleged victim" means a vulnerable adult who is suspected of being a victim of maltreatment.

"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.

"APS specialist III" means the lead APS specialist who mentors and may be designated to act for the APS specialist IV.

"APS specialist IV" means any OKDHS staff assigned or designated to act in an APS supervisory capacity.

"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.

"Executive function" means the brain's ability to absorb information, interpret this information, and make decisions based upon this information.

"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.

"Information and Referral (I & R)" means a report that has been screened by the APS specialist IV and does not contain an alleged vulnerable adult and at least one allegation of maltreatment.

"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.

"Mandatory reporter" means any person who has reasonable cause to believe someone is suffering from abuse, neglect, or exploitation.

"Maltreatment" means abuse, neglect, self-neglect, financial exploitation, sexual exploitation, financial neglect, abandonment, 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 affidavit may be durable. If it is durable, the power of attorney has been filed at the county court house and becomes effective when the principal loses decision making abilities as defined by the document and instructions of the principal. 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.

"Referral" means a report that has been screened by the APS specialist IV and assigned for investigation.

"Report" means any allegation of maltreatment that is received by OKDHS that has not yet been screened or assigned for investigation.

"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 the greater weight of the evidence collected during an APS investigation determines that maltreatment occurred and the alleged victim meets the definition of a vulnerable adult.

"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.

"Undue influence" means the substitution of one person's will for the true desires of another.

"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 report is made and the APS specialist's assessment of that condition during investigation.

340:5-1-8. Complaints concerning the APS programRevised 6-1-10

Complaints regarding an investigation or the provision of services may be submitted to the Oklahoma Department of Human Services (OKDHS) by telephone or in written form, including e-mail. Complaints regarding:

(1) Adult Protective Services (APS) policy and procedure are referred to the county director who performs a case review. The county director sends a written response to the complainant within 45 calendar days stating the general findings of the review. If not satisfied with the county director's findings, the complainant may, within 30 days of the date of the letter, submit a written appeal to the, OKDHS Family Support Services Division, APS Unit, P. O. Box 25352, Oklahoma City, OK 73125. A committee composed of Family Support Services Division and Field Operations Division staff reviews the appeal and sends the complainant its decision within 30 calendar days; ■ 1

(2) possible inappropriate treatment by an APS specialist or APS specialist IV are referred to the appropriate county director for action; and ■ 2

(3) involuntary services are handled through the appropriate judicial system. ■ 3

INSTRUCTIONS TO STAFF 340:5-1-8Revised 6-1-10

1. (a) **No confidential information is included in the letter. A copy of the letter is also sent to the Family Support Services Division (FSSD) Adult Protective Services (APS) Unit.**

(b) The division directors for FSSD and the Field Operations Division (FOD) appoint staff to serve on the appeal review committee. Upon reaching a decision, a letter is prepared for either the FOD director or FSSD director signature depending on the nature of the complaint.

2. (a) **When a civil rights allegation is received, the county director offers to help the complainant complete Form 14CR001E, Discrimination Complaint – Client or Vendor. The completed form is sent to the Office for Civil Rights address on the form for appropriate action.**

(b) The county director of the human services center (HSC) in the county in which the alleged victim resides is responsible for addressing the complaint of possible inappropriate conduct by an APS specialist.

3. The Oklahoma Department of Human Services (OKDHS) Office of General Counsel may be consulted when these complaints are received.

340:5-3-1. Reporting a need for protective servicesRevised 6-1-10

(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 (43A O.S. § 10-104(A)), 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;
 - (iv) residential care facilities; and
 - (v) Oklahoma veteran's centers;
- (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. The minimum information required by law is: ■ 1

- (1) the name, address, or location of the vulnerable adult;
- (2) the name or 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. ■ 2

(d) Submission of reports for screening. OKDHS staff immediately submits all reports for screening by entering information into the APS Computer System or notifying local APS staff. ■ 3

INSTRUCTIONS TO STAFF 340:5-3-1

Revised 6-1-10

1. Additional information which is useful in investigating a report is included in the Intake Section of the Adult Protective Services (APS) Computer System.
2. (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 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 report.
- (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 specialist IV for screening.
3. When the person who takes the original report submits it to the incorrect county, the APS specialist IV is responsible for reassigning the report to the correct county within 24 hours. When there is a delay in submission of the report to the appropriate county, the APS specialist IV in the appropriate county advises the APS program field representative (PFR) of the delay for resolution.

340:5-3-2. Abuse hotline 1-800-522-3511

Issued 6-1-03

The Oklahoma Department of Human Services maintains a statewide, toll free hotline for the purpose of receiving reports of abuse, neglect, or exploitation of children and adults. The hotline operates 24 hours a day, seven days a week. The hotline is staffed by Children and Family Services Division personnel who are trained in Adult Protective Services reporting procedures. ■ 1

INSTRUCTIONS TO STAFF 340:5-3-2

Revised 6-1-10

1. (a) **Reports.** The hotline staff accepts all information and records it, in the Intake Section of the Adult Protective Services (APS) Computer System including the name of the reporter, if possible. Anonymous reports are handled in the same manner as those made by a person who identifies himself or herself.

(b) **Guidelines for hotline staff.** When a report falls within the Emergency Guidelines for hotline staff in (c) of this Instruction, hotline staff refers to the latest contact list provided by the Family Support Services Division (FSSD) APS Unit and immediately telephones the appropriate APS specialist IV staff. Hotline staff who receive APS calls after hours always call the APS specialist IV when:

(1) the reported allegations fall within the emergency guidelines in (c) of this Instruction;

(2) the situation does not fall within the emergency guidelines, but information given by the reporter indicates immediate action may be necessary; or

(3) hotline staff is unable to decide whether the situation reported falls within the emergency guidelines.

(c) Emergency guidelines for hotline staff. When hotline staff receives a call that meets the emergency guidelines in (1) through (17) of this Instruction, hotline staff asks the reporter if 911 or the local emergency services number has been called. If local emergency services have not been called and immediate help is needed, hotline staff tells the reporter to call 911 or other local emergency numbers. Hotline staff tells the APS specialist IV whether the

reporter called local emergency services or was asked to call. APS situations are considered emergency reports when:

- (1) abuse is occurring at the time of the report;
- (2) immediate medical attention is needed to treat conditions that could result in irreversible physical damage or death, such as unconsciousness, acute pain, severe respiratory distress, or suspected gangrene;
- (3) there is threat of suicide of the alleged victim (AV);
- (4) there is threat of homicide to the AV;
- (5) there is reason to believe the AV or alleged perpetrator (AP) is exhibiting psychotic or bizarre behavior which places the AV in immediate danger;
- (6) sexual, physical, or the threat of such abuse is reported and the AP currently has access to the AV;
- (7) the report indicates sexual abuse that occurred within the last 72 hours;
- (8) the caregiver refers self for fear he or she may harm AV;
- (9) there is reason to believe the AP may flee the investigation and move AV to an unknown location;
- (10) the AV needs total care and has been left without a caregiver. Examples include: the caregiver is hospitalized, deceased, or abandons the AV;
- (11) the AV lacks basic physical necessities severe enough to result in freezing, serious heat stress, or starvation;
- (12) there is neglect or self-neglect whether AV is without essentials for daily living or critically needed supervision, and AV's impaired judgment or physical condition places AV in immediate danger;
- (13) there are visible injuries, bruising to vital areas, or other possible life threatening conditions;
- (14) there is sudden deterioration in AV's condition, and AV may be in imminent danger;

(15) there is an environmental hazard or condition that places AV in immediate danger;

(16) there is punishment or confinement of AV, such as locking in a closet or tying to a bed; or

(17) there are any other factors, such as repeated incidents or reports, that are believed to indicate imminent danger.

(d) If a report from the hotline is made to the incorrect human services center (HSC), the APS specialist receiving the report is responsible for notifying the appropriate APS staff.

(e) Hotline staff do not screen APS reports. Some APS reports are sent to investigative bodies other than local APS, as indicated in (1) through (4) of this Instruction.

(1) If the AV is a resident of Northern Oklahoma Resource Center of Enid (NORCE), the Greer Center, or Southern Oklahoma Resource Center (SORC) of Pauls Valley, or is known to be a Hissom Class member, the report is made to the Office of Client Advocacy (OCA) at 405-525-4850 or fax 405-525-4855 or, after regular business hours, the OCA on-call ombudsman at 405-203-6056.

(2) If the AV is a resident of a licensed nursing facility, and the alleged perpetrator is a facility employee, the report is made to the FSSD APS Unit, Long Term Care Investigations (LTCI) Section, 405-521-3440.

(3) If the hotline staff determines that the AV is deceased, the caller is referred to the local district attorney's or medical examiner's office.

(4) If the AV is presently incarcerated in a city, county, state, or federal jail or prison, or is a resident of a state or federal hospital, the caller is referred to the internal advocates for the agency that regulates the facility. If the caller is resistant to being referred elsewhere, the report is accepted and forwarded to the FSSD APS Unit.

340:5-3-3. Reports received by the local human services center (HSC)

Revised 6-1-08

The local HSC office is required to accept all reports alleging maltreatment of a vulnerable adult, including anonymous reports and reports made about an adult residing in a different county. County directors are responsible for ensuring compliance. ■ 1

INSTRUCTIONS TO STAFF 340:5-3-3Revised 6-1-10

1. Local staff receiving reports record information in the Intake Section of the Adult Protective Services (APS) Computer System. In the case of a report on an adult residing in another county, the local human services center (HSC) receiving the report takes all required information. The report is automatically submitted to the APS Specialist IV for screening. In situations which require immediate response, the appropriate APS staff is telephoned immediately.

(1) The local HSC staff accepting the report explains to the caller that Oklahoma Department of Human Services (OKDHS) is not able to release or discuss specific information about the investigation unless the reporter is responsible for provision of some kind of protective services to the vulnerable adult.

(2) Any report received is considered a request for protective services and is submitted to the appropriate APS specialist IV for screening.

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 6-1-10

- 1. (a) When a report is received in the human services center (HSC) alleging that a resident of a residential care or assisted living facility, licensed or unlicensed, is suffering maltreatment, or that 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 e-mails 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 e-mail address is LTCComplaints@health.ok.gov.**
 - (b) Final investigative findings on any of these reports accepted for APS investigation are also sent 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 potential 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 are knowledgeable about:**
 - (1) current state mental health laws;**
 - (2) local law enforcement policies regarding voluntary and involuntary treatment for mentally ill persons and substance abusers;**
 - (3) mental health professionals; and**
 - (4) resources available in their communities.**

340:5-3-6. Screening APS reportsRevised 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 340:5-3-6Revised 6-1-10

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 appear to 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 the 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 which might be able to provide help for the situation. The APS specialist documents the contact as an Information and Referral (I & R) in the APS Computer System I & R Notes Section and states the 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 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 reporter, if known, is contacted to advise the reporter 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. 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 alleged perpetrator (AP); and

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

(b) The APS specialist IV and county director, in consultation with the area APS program field representative (PFR), determines whether the potential for conflict of interest or the appearance thereof may exist if the report is assigned for investigation to local staff. The potential for conflict of interest must be determined for each report by a thorough analysis of the relationships.

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

**SUBCHAPTER 5. INVESTIGATION OF ADULT PROTECTIVE SERVICES
REFERRALS**

Section

- 340:5-5-1. Statutory authority
- 340:5-5-2. Initiating investigations
- 340:5-5-3. Elements of an investigation
- 340:5-5-4. Special considerations during investigations
- 340:5-5-5. Documentation of APS cases
- 340:5-5-6. Provision of protective services to vulnerable adults receiving APS services
- 340:5-5-7. Termination of adult protective services
- 340:5-5-8. Case destruction

340:5-5-2. Initiating investigationsRevised 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 340:5-5-2Revised 6-1-10

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 and determine whether there are any risk factors associated with the family, the home, or the neighborhood. If the APS specialist believes the home visit cannot be made safely, then the APS specialist IV is consulted to determine whether a home visit is appropriate due to the safety concerns. If not, law enforcement is contacted 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 in accordance with 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 could be obtained if 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 unfamiliar vehicles; and

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

(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 in which 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 doesn't receive the referral timely, the APS specialist is still responsible for making the face-to-face visit as quickly as possible.

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 investigationRevised 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 6-1-10

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, see 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 in accordance with 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. These consultations, known as collateral contacts, are of extreme importance in determining the AV's current circumstances, expressed desires, habitual

practices, and recent changes. All interviews with collaterals, alleged perpetrators (APs), family members, next of kin, caretakers, legal guardians, or service providers are documented 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 case notes in 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 which may be helpful in facilitating the investigation process or in 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 in the Extension Request Section and the reasons why the 30-day extension was granted in the Notes Section 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. The county director makes the decision and documents in the Extension tab whether to extend the request based on:

(1) total number of referrals received for 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 in the Extension tab whether to extend the request based on information provided by the county director.

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 has been reached and Form 08AP002E submitted to the DA's office.

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 information about the visit in the Interview Section, and updating the Service Plan Monitoring 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 in the Service Plan Section of the APS Computer System.

- (2) If the APS specialist IV and APS specialist determine follow-up is necessary, that decision and the reasons for it are documented in the Notes section. The APS specialist documents the plan for completing follow-up in the Service Plan Section of the APS Computer System.

- (3) When the contact is made by phone, it must be done with a third party. The third party must not be the vulnerable adult or the AP. The APS specialist documents APS specialist IV approval of the means of contact in the Notes Section of the APS Computer System, along with the reasons justifying contact other than face-to-face.

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 investigationsRevised 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 6-1-10

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 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. In accordance with OAC 340:5-5-2, the time frame for initiating the investigation remains the same.

(3) If it is determined that the AV has 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 for the investigation to be completed in a timely manner.

(4) When problems with coordination between APS staff in different HSCs occur or delays in documentation, they 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 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 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 to 405-525-4855 or e-mail to *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 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 e-mail 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 (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.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 e-mail referral is made or 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 at least yearly, or more often if ordered by the court.

(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. These 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 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 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 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 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, 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 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. 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) 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 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. The APS specialist faxes, mails, or e-mails final investigative findings in summary form to OSDH. See Instruction 5 for OSDH contact information.

340:5-5-5. Documentation of APS casesRevised 6-1-10

The Adult Protective Services (APS) specialist documents the referral, all interviews, record reviews, other evidence, and findings of all investigations in the APS case. ■ 1

(1) Upon completion of the investigation, the identified caretaker, legal guardian, and next of kin receives a letter from the Oklahoma Department of Human Services (OKDHS) pursuant to Section 10-105.1(C)(6) of Title 43A of the Oklahoma Statutes.

(2) When the vulnerable adult has a court-appointed guardian, the APS specialist notifies the court of jurisdiction of the findings as mandated by 43A O.S. § 10-105.1(C)(6).

INSTRUCTIONS TO STAFF 340:5-5-5Revised 6-1-10

1. (a) The APS specialist documents investigations on Form 08AP002E, Adult Protective Services Report of Investigation, or its electronic equivalent within 30 calendar days after the receipt of the report in the human services center (HSC). The original is filed in the W drive and copies are routed to the local district attorney's office.

(b) Form 08AP002E is intended as a summary of the investigation and is not used as a tool to complete the investigation. The full case documentation on the APS Computer System provides a detailed chronological account of the entire investigation process, including:

(1) specific circumstances of the report;

(2) date and time of the home visit;

(3) persons present during the home visit;

(4) condition of the vulnerable adult and the vulnerable adult's environment;

(5) information from collateral contacts, including date and time;

- (6) APS specialist's evaluation of vulnerable adult's capacity to consent to services;
- (7) assessment of risk;
- (8) APS specialist's determination of whether the report is substantiated or unsubstantiated;
- (9) results of follow-up visits including date and time;
- (10) assessment of vulnerable adult's needs;
- (11) proposed service plan for substantiated investigations;
- (12) circumstances of vulnerable adult's acceptance or refusal of services offered;
- (13) information concerning the actual delivery of services; and
- (14) detailed descriptions of all legal actions and follow-up activities for vulnerable adults receiving involuntary services.

(c) The APS specialist must document each new APS referral in the Intake Section of the APS Computer System. If there is no existing APS case number for the alleged victim, a new case must be opened. For all APS referrals, the APS specialist must enter into the computer system the relevant information, including receipt of referral, case findings of substantiated or unsubstantiated, and services actually provided, including any legal actions initiated.

(d) The APS specialist III and IV must successfully complete the APS Specialist III and IV Academy to be able to provide adequate supervisory support for an APS specialist.

(e) APS cases require documentation of a review by an APS specialist IV or staffing in the Notes Section of the APS Computer System at:

- (1) intake;
- (2) risk, needs, and capacity assessments;

(3) the determination of findings;

(4) legal action determinations;

(5) service planning;

(6) extension requests;

(7) appropriate follow-up; and

(8) closure.

(f) At the conclusion of the investigation, the APS specialist routes Form 08AP002E to the local district attorney. A summarized report is sent to any appropriate licensing agency. In substantiated investigations, the APS specialist works closely with the facility to develop a plan that addresses substantiated elements of the investigation.

(g) The APS specialist submits a summary of the investigation, omitting the reporter's identity, to the Nurse Aide Registry at the Oklahoma State Department of Health for all substantiated referrals against certified nurse aides. For substantiated referrals against licensed nurses, information is submitted to the Oklahoma State Board of Nursing, 405-962-1800, fax 405-962-1826.

(h) The APS specialist sends a summary notification of findings to the caretaker, legal guardian, and next of kin. This statement includes:

(1) whether the Oklahoma Department of Human Services (OKDHS) has determined the findings to be substantiated or unsubstantiated; and

(2) a summary of the recommendations of OKDHS concerning the vulnerable adult.

(i) Form 08AP002E and any pertinent section of the APS Computer System are electronically mailed to Office of Client Advocacy (OCA). A hard copy of this material is sent in the mail on substantiated referrals involving personal care assistants who are not certified nurse aides and community service workers to OCA and to the Quality Assurance Section of Developmental Disabilities Services Division (DDSD).

340:5-5-6. Provision of protective services to vulnerable adults receiving APS servicesRevised 6-1-10

(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 vulnerable adult 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, the APS specialist follows procedures described in (3) of this subsection. 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 vulnerable adult 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 vulnerable adult'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 vulnerable adult'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 Office of General Counsel 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 vulnerable adult's caretaker refuses to allow the provision of protective services to which the vulnerable adult 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 vulnerable adult'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) **Religious beliefs.** A vulnerable adult has the right to depend on spiritual means for healing through prayer, in accordance with the practices of a recognized religious method in accordance with the tenets and practices of said church as mandated by 43A O.S. § 10-103(B).

(h) **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. In accordance with 43A O.S. § 10-107(B)(1), the court authorizes provision of specific services that the court finds least restrictive of the rights and liberty while consistent with the welfare and safety of the person involved.

(i) **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 vulnerable adult's residence or in a county where any of the protective services are provided. ■ 5

(1) If the court issues an emergency order to provide protective services, 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.

(j) Do not resuscitate (DNR). In accordance with 43A O.S. § 10-108(A), only the court may make decisions regarding the granting or denying of consent for a DNR order, the withdrawal of hydration or nutrition, or other life-sustaining treatment.

(k) 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 vulnerable adult. ■ 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 vulnerable adult 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.

(l) 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 vulnerable adult's 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 vulnerable adult. The vulnerable adult 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 vulnerable adult's family, if appropriate and approved by the vulnerable adult, is included in the planning stages. The vulnerable adult 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 vulnerable adult receiving APS services. Placements are determined by the local APS specialist and APS specialist IV, with approval from the county director and area APS program field representative (PFR). 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 Family Support Services Division (FSSD) APS Unit. ■ 10

(m) **Restricted visitation.** Supervised or restricted visitation with the vulnerable adult may be put in place only by court order as mandated in 43A O.S. § 10-111 when:

(1) consistent with the welfare and safety of a vulnerable adult; or

(2) the vulnerable adult needs protection as the OKDHS investigation determined that maltreatment occurred.

(n) **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 (o) of this Section.

(o) **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 180 calendar day order for continued protective services, the court directs that an evaluation of the vulnerable adult is conducted and submitted to the court within 30 days at a review hearing. The evaluation shall include 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 (k).

(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 vulnerable adult 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 for further information and assistance.

(7) If the alleged victim's mental state is in question, the APS specialist may request the court to order a psychological or psychiatric evaluation. ■ 11

(p) 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 180 days as needed.

(q) Sale of real property. In the event that temporary guardianship extends for more than one year or the vulnerable adult 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 Office of General Counsel. 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.

(r) 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.

(s) 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 vulnerable adult residence, resources, and belongings. This includes:

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

(2) inventorying the vulnerable adult's home and personal property, using a 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. ■ 12

(B) All persons present during the inventory must sign a document attesting to the authenticity of the inventory and/or the photographic record noting the date and their professional affiliation;

(3) establishing an account at a local financial institution and depositing any cash and uncashed checks; and ■ 13

(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.

(t) 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 vulnerable adult;

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

(3) works with the court, the vulnerable adult's attorney, the DA, and the OKDHS Office of General Counsel 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 vulnerable adult's circumstances, which include, but are not limited to, the timely:

(A) payment and documentation of the vulnerable adult's expenses, and other bills as they occur. ■ 14

(B) deposit of funds received;

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

(D) protection of existing accounts.

(u) **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 vulnerable adult;
- (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; ■ 15
- (5) making application or completing reviews for any state or federal programs on behalf of the vulnerable adult for which he or she is or may be eligible to receive; or ■ 16
- (6) making arrangements for facilities to be paid from the vulnerable adult's funds or resources.

(v) **Responsibility of APS specialist - emergency out-of-home placement - ex-parte hearing.** When an emergency situation requires immediate placement, the APS specialist places the vulnerable adult 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.

(w) Enforcement of involuntary court orders. To enforce an involuntary order of protective services, 43A O.S. § 10-108 provides that 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.

(x) Dismissal of involuntary court orders. When the vulnerable adult is subject to an involuntary court order and OKDHS serves in the role of temporary guardian, after the temporary order has expired, the APS specialist is responsible for responding to a court's request to dismiss the guardianship by preparing a motion for the attorney representing OKDHS's consideration for an order of dismissal when it is no longer needed. ■ 17

INSTRUCTIONS TO STAFF 340:5-5-6

Revised 6-1-10

- 1. The Adult Protective Services (APS) specialist shall assist a vulnerable adult, when needed, in making application for public or private assistance programs by:**
 - (1) completing application forms; and**
 - (2) gathering documentation necessary to determine eligibility.**
- 2. (a) If the APS specialist determines the vulnerable adult needs emergency services for which no payment source is available, an APS Emergency Request is completed and submitted in the Emergency Fund Section of the APS Computer System. Authorization to utilize the APS Emergency Fund is approved when:**
 - (1) the a vulnerable adult has an open referral and an emergency as defined by policy OAC 340:5-1-6;**

(2) the APS specialist has verified the vulnerable adult has no funds to pay for the services and family members and local or area resources are unwilling or unable to assist;

(3) the vulnerable adult and APS specialist have explored and applied for all state and federal programs for which the vulnerable adult may be eligible;

(4) the Service Plan Section is completed on the APS Computer System describing how the emergency fund expenditures will reduce risk, address needs, and prevent the need for future Emergency Fund expenditures;

(5) the Emergency Fund Section of the APS Computer System is completed and submitted; and

(6) the APS specialist IV and APS program field representative's (PFR)'s reviews of these circumstances and approvals are documented in the Notes Section of the APS Computer System.

(b) The APS reports containing the Emergency Fund Requests are to remain open until the human services center (HSC) has been notified of the payment of all pending claims.

(c) Forms 23C0135E, Vendor Information, and 02AD001E, Aging Services Division Claim, are completed as needed for each vendor and the originals are sent to Family Support Services Division (FSSD) Adult Protective Services (APS) Unit within 10 working days of the approved request.

(d) When claims have been paid in the Emergency Fund Section of the APS Computer System, FSSD APS Unit staff:

(1) approves or denies the request(s);

(2) documents the approval or denial in the Emergency Fund Section of the APS Computer System;

(3) processes all claims upon receipt;

(4) documents tracking of claims; and

(5) notifies HSC staff when claims have been paid in the Emergency Fund Section of the APS Computer System.

3. The date, time, and circumstances of the vulnerable adult's consent are documented in the Capacity to Consent Section of the APS Computer System and on Form 08AP002E, Adult Protective Services Report of Investigation.
4. (a) The APS specialist explains to the caretaker the legal responsibility of 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 vulnerable adult within 24 hours prior to the filing of a petition for involuntary services.
- (b) The petition must have "approved as to form" by the district attorney, assistant district attorney, or the OKDHS Office of General Counsel and 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 vulnerable adult. When two or more counties are involved with a vulnerable adult receiving involuntary services, close communication and coordination is required to ensure the vulnerable adult's needs are met.
- (d) If a vulnerable adult'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 vulnerable adult, 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 that will be service providers for the vulnerable adult.
 7. The APS specialist serves notice on the person who is the subject of the petition unless the situation is potentially dangerous. When there is the possibility of danger to the APS specialist, the APS specialist may request assistance from a law enforcement officer. If the client has retained or been appointed an attorney, notice is also served on the attorney.
 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 PFR 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 Unit 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. Vulnerable adults 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 vulnerable adults receiving APS services and their guardian, caretaker, or next of kin are also thoroughly documented in the case record.
11. If it appears the vulnerable adult has possibly regained capacity, OKDHS Office of General Counsel, the district attorney, or other attorney may make a motion to the court requesting an order for a psychological or psychiatric evaluation to determine the vulnerable adult's mental state.
12. Exceptions to this must be approved by the county director and documented in the Notes Section of the APS Computer System.
13. (a) The account must be established using the name of the APS specialist and one other OKDHS employee, preferably the county director or designee.

(b) The APS specialist documents account information in the Estate Management Section of the APS Computer System. The APS specialist scans copies of the check registry and other pertinent documentation in the case file on the W drive. Financial institutions that require Social Security numbers are given the OKDHS federal employee identification (FEI) number. In no instance does the APS specialist provide their personal Social Security number for a vulnerable adult's financial account.
14. Cash transactions are strongly discouraged and the use of automatic bank drafts by the vendors are preferred. The APS specialist must reconcile monthly bank statements and document all cash transactions with receipts that are scanned into the W drive and maintained in the local HSC. All cash transactions must be witnessed by a third party.

15. Involvement of the vulnerable adult 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) vulnerable adult's preferences and desires;

(B) family preferences and desires;

(C) vulnerable adult's medical condition, needs, and recommendation of physician;

(D) unique circumstances of the vulnerable adult's situation in order to provide appropriate and safe level of care;

(E) availability of facilities to meet vulnerable adults needs;

(F) acceptance of the vulnerable adult by facility; and

(G) payment arrangements, availability, and affordability.

(2) The APS specialist documents this assessment criteria in the case record and makes it available at the request of the court in the form of a written report.

16.(a) Applying for or maintaining benefits and services for the vulnerable adult includes:

(1) monitoring the receipt of benefits;

(2) acquiring and assisting with documentation needed to determine eligibility for benefits;

(3) documenting in the Notes Section for the APS computer system:

(A) the case number(s) for any benefits the vulnerable adult is applying for or receiving;

(B) how to get in touch with the person at each agency who is responsible for certifying or reviewing the vulnerable adult's eligibility for each benefit or service; and

(C) when reviews are due for the benefits or services the vulnerable adult is receiving.

(b) When the guardianship expires or is dismissed, arrangements must be in place and documented in the Service Plan Section of the APS computer system for the ongoing maintenance of benefits for the vulnerable adult.

17.(a) Prior to filing for dismissal of an involuntary court order, the APS specialist:

(1) consults with the APS Specialist IV to determine if dismissal is warranted; and

(2) discusses and staffs the pleadings with the attorney representing OKDHS in the matter as to form.

(b) After receiving approval from the APS specialist IV and the attorney, the APS specialist files the petition with the court clerk and obtains a dismissal order from the court.

(c) After obtaining the dismissal order, the APS specialist:

(1) scans the petition and the order into the W drive;

(2) updates the Service Plan Items Section of the APS Computer System;

(3) closes involuntary services; and

(4) updates service plan monitoring notes showing the date of the dismissal and action by the court.

340:5-5-7. Termination of adult protective services

Revised 6-1-10

Adult protective services are terminated when the situation that prompted the referral has been remedied and the vulnerable adult's circumstances are stable. Cases for vulnerable adults for whom the Oklahoma Department of Human Services has a current guardianship or remand are terminated only when the court case is terminated. These cases remain active and follow-up activities are documented as required by OAC 340:5-5-3(10) as long as the court order is in effect. ■ 1

INSTRUCTIONS TO STAFF 340:5-5-7

Revised 6-1-10

1. If preventive or supportive intervention continues to be necessary, these services are documented in the Service Plan Section of the Adult Protective Services (APS) Computer System. If another report is received and assigned for the individual, a new investigation is initiated and documented in the APS Computer System.

340:5-5-8. Case destruction

Issued 6-1-10

The destruction of the Adult Protective Services (APS) paper files is done in accordance with the rules set by Archives and Records. ■ 1

INSTRUCTIONS TO STAFF 340:5-5-8

Issued 6-1-10

- 1. Access the link to Records Management Web site for the Consolidated Records Disposition Schedule for the Family Support Services Division Adult Protective Services (APS) Unit records on the APS Web site.**