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POLICY TRANSMITTAL NO. 11-16	DATE: JUNE 13, 2011
OFFICE OF CLIENT ADVOCACY	DEPARTMENT OF HUMAN SERVICES OFFICE OF INTERGOVERNMENTAL RELATIONS AND POLICY

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TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:2-3-32 through 2-3-38.

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

OAC 340:2-3-32 is amended to: (1) add clarifying language; (2) update language to current terminology; (3) reflect renumbered statutory citations; and (4) delete reference to investigation of allegations against youthful offenders, which is currently conducted by law enforcement.

OAC 340:2-3-33 is amended to: (1) update language to current terminology; and (2) reflect renumbered statutory citations.

OAC 340:2-3-34 is amended to: (1) clarify language pertaining to an administrator's responsibility to report alleged criminal activity to law enforcement; and (2) update language to current terminology.

OAC 340:2-3-35 is amended to: (1) update language to current terminology; (2) add clarifying language; (3) add "refer for special advocacy" as a disposition option when a referral constitutes a request for advocacy services; and (4) clarify that OCA intake notifies law enforcement when an allegation alleges possible criminal activity by a caretaker or a person responsible for a child's health, safety, or welfare.

OAC 340:2-3-36 is amended to: (1) update language to current terminology; (2) add clarifying language; (3) add language pertaining to the notice given to the alleged victim, guardian, and next of kin when a vulnerable adult is the alleged victim and to a person responsible for the health, safety or welfare of a child when a child is the alleged victim; (4) reflect renumbered statutory citations; (5) add language pertaining to court-ordered access to records, treatment plans, and other documentation or the place where a child is located; and (6) add language pertaining to the dissemination of investigative reports involving confirmed findings against caretakers subject to the Child Care Restricted Registry.

OAC 340:2-3-37 is amended to add language to provide for notice to the state agency, division, or regulatory entity that contracts with a facility or provider that fails to submit a caretaker conduct review report within 45 days.

OAC 340:2-3-38 is amended to: (1) update language to current terminology; (2) add clarifying language; and (3) reflect renumbered statutory citations.

Original signed on 4-29-11

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Mark L. Jones, Advocate General  
Office of Client Advocacy

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Sandra Harrison, Coordinator  
Office of Intergovernmental Relations and  
Policy

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WF # 11-01 (NAP)

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## **INSTRUCTIONS FOR FILING MANUAL MATERIAL**

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

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

### **REMOVE**

340:2-3-32

340:2-3-33

340:2-3-34

340:2-3-35

340:2-3-36

340:2-3-37

340:2-3-38

### **INSERT**

340:2-3-32, pages 1-5, revised 7-1-11

340:2-3-33, pages 1-4, revised 7-1-11

340:2-3-34, pages 1-3, revised 7-1-11

340:2-3-35, pages 1-4, revised 7-1-11

340:2-3-36, pages 1-17, revised 7-1-11

340:2-3-37, pages 1-5, revised 7-1-11

340:2-3-38, pages 1-8, revised 7-1-11



**340:2-3-32. Office of Client Advocacy (OCA) investigation protocols**Revised 7-1-11**(a) Legal authority, scope, and purpose.****(1) Legal authority.**

(A) Section 1-9-112(A)(3)(d) and (e) of Title 10A of the Oklahoma Statutes gives the Office of Client Advocacy (OCA) the responsibility to investigate allegations of caretaker abuse, neglect, sexual abuse, sexual exploitation, and misconduct by a person responsible for a child:

(i) residing outside their own homes regardless of custody, other than children in foster care;

(ii) receiving services from a community services worker, as defined in Section 1025.1 of Title 56 of the Oklahoma Statutes;

(iii) in a day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes; and

(iv) residing in a state institution listed in Section 1406 of Title 10 of the Oklahoma Statutes. ■ 1

(B) Section 10-105 of Title 43A of the Oklahoma Statutes gives the Oklahoma Department of Human Services (OKDHS) responsibility to investigate allegations of caretaker abuse, neglect, verbal abuse, and exploitation of vulnerable adults. OKDHS confers on OCA the responsibility to conduct those investigations that involve Hissom class members and residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Robert M. Greer Center (Greer).

(C) OCA investigates, pursuant to OAC 340:75-3-8.3(3), reports alleging denial of medically beneficial treatment by a medical provider to a handicapped infant.

(2) **Scope.** OCA conducts administrative investigations of allegations of maltreatment listed in this subsection. All of the individuals listed, who are clients of the facilities and providers that provide them residential care, vocational services, or day treatment, are referred to as the "client" throughout this Section and OAC 340:2-3-33 through 340:2-3-37. OCA investigates allegations of:

(A) abuse and neglect of children by persons responsible for a child's health, safety, or welfare, and caretaker misconduct with regard to children in residential care above the level of foster care regardless of custody, including but not limited to:

(i) children in OKDHS operated or licensed shelters and group homes;

(ii) children and youth in facilities operated by, licensed by, or contracting with OJA;

(iii) children in community-based youth services shelters and community intervention centers that contract with Office of Juvenile Affairs (OJA) pursuant to Section 2-7-305 of Title 10A of the Oklahoma Statutes;

(iv) children in facilities operated by or contracting with Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS);

(v) children in facilities operated by the J.D. McCarty Center of Oklahoma;

(vi) children residing in or attending educational classes at facilities operated by the Oklahoma Department of Rehabilitation Services (ODRS): the Oklahoma School for the Blind and the Oklahoma School for the Deaf; and

(vii) children receiving services from a community services worker as that term is defined in Section 1025.1 of Title 56 of the Oklahoma Statutes; ■ 1

(B) abuse and neglect of, and caretaker misconduct with regard to, children in day treatment programs as defined in Section 175.20 of Title 10 of the Oklahoma Statutes, including sanctions programs certified by OJA to provide programming for children who are court ordered to participate in that program;

(C) abuse, neglect, and verbal abuse of, and caretaker misconduct with regard to, residents of SORC, NORCE, and Greer;

(D) abuse, neglect, verbal abuse, and exploitation of Hissom class members who live in Oklahoma and who do not reside in a private intermediate care facility for the mentally retarded (ICF/MR); and

(E) abuse, neglect, verbal abuse, and exploitation of vulnerable adults receiving services from a community services worker or a SoonerCare (Medicaid) personal care assistant, as those terms are defined in Section 1025.1 of Title 56 of the

Oklahoma Statutes, on request of the Adult Protective Services Unit of OKDHS.  
■ 2

(3) **Purpose.** OCA conducts independent and objective administrative investigations of suspected maltreatment of clients by caretakers in order to:

- (A) protect clients from further maltreatment;
- (B) deter and prevent maltreatment;
- (C) provide relevant evidence in administrative and judicial proceedings;
- (D) rule out unfounded allegations; and
- (E) hold violators accountable.

(b) **Confidentiality.** State and federal statutes and regulations, including but not limited to, Section 1-9-112(C) of Title 10A of the Oklahoma Statutes; Section 1-6-102 of Title 10A of the Oklahoma Statutes; Section 183 of Title 56 of the Oklahoma Statutes; Section 10-110 of Title 43A of the Oklahoma Statutes; and OAC 340:65-1-2, require confidentiality for many OKDHS records. Information about clients is confidential and is protected from unauthorized use. Only authorized individuals are given access to case records or provided information from those records. ■ 3

(1) **OCA investigations involving children and youth.** Statutes and policies regarding the confidentiality of OCA files, records, and reports relating to investigations involving children and youth include, but are not limited to, the confidentiality provisions of the statutes and policies listed in (A) through (C) of this paragraph.

(A) Sections 2-6-102 through 106 of Title 10A of the Oklahoma Statutes apply to OCA investigations involving children and youth in OJA custody and in facilities that contract with OJA.

(B) Sections 1-2-106, 1-2-107, and 1-6-102 et seq., and 1-6-107, of Title 10A of the Oklahoma Statutes apply to investigations involving children, regardless of custody, residing outside their own homes.

(C) OAC 340:75-1-42 through 340:75-1-46 apply to OCA investigations involving children in OKDHS custody, including information regarding placement.

(2) **OCA investigations involving vulnerable adults.** Statutes and policies

regarding the confidentiality of OCA files, records, and reports relating to investigations involving vulnerable adults, include but are not limited to (A) through (C) of this paragraph.

(A) 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, OCA staff may disclose information necessary to ensure that the client is protected and the client's needs are met. Information may be disclosed for this purpose without a court order to specific persons acting in an official capacity with regard to the investigation, including:

- (i) a district attorney or employees of the district attorney's office;
- (ii) the attorney representing an alleged victim in the matter under investigation;
- (iii) staff of an Oklahoma law enforcement agency or a law enforcement agency of another state;
- (iv) physical or mental health care professionals involved in the evaluation or treatment of the vulnerable adult;
- (v) the guardian of the vulnerable adult, in the form of a summary of the allegations in the referral;
- (vi) the provider for a vulnerable adult; and
- (vii) other public or private agencies or persons authorized by OKDHS to diagnose, or provide care, treatment, supervision, or other services to a person who is the subject of an OCA investigation.

(B) District attorneys, their staff, the attorney representing the alleged victim, and law enforcement agencies may receive information from or review the entire case record. All other disclosures are limited to summaries of information provided for a specific purpose. Case information from OCA records is not released for research purposes without the prior approval of the advocate general.

(C) In other situations, OCA investigative information is considered confidential under Section 10-110(A) of Title 43A of the Oklahoma Statutes and may be disclosed only by court order. Confidentiality applies to members of the news media as well as the general public. News media representatives requesting

information on a specific case are referred to the advocate general, the OCA programs administrator for investigations, or the OKDHS Office of Communications for a detailed explanation of OKDHS confidentiality rules.

## **INSTRUCTIONS TO STAFF 340:2-3-32**

### **Revised 7-1-11**

- 1. The Office of Client Advocacy (OCA) investigates the death of a vulnerable adult living in the community who is not a Hissom Class Member on request of the Oklahoma Department of Human Services (OKDHS) Adult Protective Services Unit.**
  
- 2. (a) Staff responsibilities. OCA staff are familiar with relevant OKDHS policies, including but not limited to OAC 340:2-3-1 et seq., 340:75-1-42 through 340:75-1-45, 340:5, and 340:100-3-2. All staff members are responsible for ensuring case information, whether recorded or unrecorded, is treated in a professional manner consistent with OKDHS policy. Failure to comply with OKDHS policies, and state and federal laws regarding confidentiality, including the Health Insurance Portability and Accountability Act (HIPAA) and The Privacy Rule, may result in criminal and administrative sanctions.**  
  
**(b) Computer data. Client and case record data stored in computer systems and available through computer screens, reports, and other printouts is confidential and is protected in the same manner as other confidential information. Passwords and sign-on codes are confidential and are not exchanged among staff or routinely posted. Terminals are not left unattended and confidential information is not left showing on a screen in view of unauthorized persons.**  
  
**(c) Subpoenas. A state court subpoena or subpoena duces tecum purporting to compel disclosure of OCA records is not valid per Section 1-6-102 of Title 10A of the Oklahoma Statutes. When a petition, motion, subpoena, subpoena duces tecum, or any other request or application for release of an OKDHS record is received by an OCA employee, the employee immediately notifies the OCA programs administrator for investigations and the advocate general.**



**340:2-3-33. Procedure for reporting suspected abuse, neglect, verbal abuse, caretaker misconduct, and exploitation**Revised 7-1-11**(a) Reporting requirements and reportable incidents.**

(1) Persons having reason to believe that a child is a victim of abuse or neglect are required by Section 1-2-101 of Title 10A of the Oklahoma Statutes to promptly report it to the Oklahoma Department of Human Services (OKDHS).

(2) Persons having reason to believe that a vulnerable adult is a victim of abuse, neglect, verbal abuse, or exploitation are required by Section 10-104 of Title 43A of the Oklahoma Statutes to promptly report it to OKDHS. This reporting requirement applies to providers, as defined in OAC 340:2-3-2, and their employees and agents.

(3) Employees of OKDHS, Oklahoma Department of Rehabilitation Services (ODRS), Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS), Office of Juvenile Affairs (OJA), and the J.D. McCarty Center who have reason to believe that caretaker misconduct, as defined in OAC 340:2-3-2, with regard to a client has occurred promptly refer it to OCA intake. This referring requirement also extends to employees of private facilities that contract with OKDHS, ODRS, ODMHSAS, and OJA to provide residential services to these clients.

(4) A person may have reason to believe that maltreatment or caretaker misconduct has occurred based on information he or she has learned directly or indirectly, including information provided by the alleged victim or witnesses to an incident. When an allegation of maltreatment is made by the alleged victim or the guardian or parent of the alleged victim, it is referred to OCA intake. Persons unsure of what to report or to refer call OCA intake, 1-800-522-8014, during business hours, and after hours call the Abuse Hotline, 1-800-522-3511.

(5) Knowledge of circumstances that may constitute maltreatment is reported even if the person reporting it cannot substantiate the information.

(6) In addition to the reportable incidents in paragraphs (1), (2), and (3) of this subsection, employees and agents of OKDHS, ODRS, ODMHSAS, OJA, the J.D. McCarty Center, facilities, and providers report to OCA events listed in (A) through (G) of this paragraph involving a person listed in OAC 340:2-3-32(a)(2):

(A) a violent death, whether apparently homicidal, suicidal, or accidental; ■ 1

(B) a death under suspicious, unusual, or unnatural circumstances;

(C) the death of a resident of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Robert M. Greer Center (Greer);

(D) the death of a Hissom class member;

(E) a serious physical injury, as defined in OAC 340:2-3-2;

(F) any physical injury if it is:

(i) unexplained; and

(ii) suspicious; or

(G) rape, sodomy, or other sexual activity prohibited by state law.

(7) "Promptly" reporting as used in this Subchapter means the same day or the next working day.

(8) The reporting obligations under this Section are individual. Employers, supervisors, and administrators do not impede or inhibit the reporting obligations of any employee or other person.

**(b) Reporting responsibilities.**

(1) **Reportable incidents.** Reportable incidents are defined in subsection (a) of this Section.

(2) **Children and youth.** An OKDHS employee with knowledge of a reportable incident involving a child or youth who is an OCA client, as defined in OAC 340:2-3-32(a)(2), is required to make an immediate referral to OCA intake. Any other person who has knowledge of this type of reportable incident involving an OCA client is required by law to make a prompt report to OCA intake, Child Welfare in an OKDHS local county office, or the statewide, toll free hotline (the "Abuse Hotline"), 1-800-522-3511. Referrals to OCA intake are made per subsection (e) of this Section.

(3) **Vulnerable adults.** An OKDHS employee who has knowledge of a reportable incident involving a vulnerable adult who is an OCA client, as defined in OAC 340:2-3-32(a), is required to make an immediate referral to OCA intake. Any other

person who has knowledge of this type of reportable incident is required by law to make a report as soon as possible to OCA intake, the office of the district attorney in the county that the alleged incident happened, or the local municipal police or sheriff's department.

(4) **Immunity from liability.** Oklahoma law provides that any person exercising good faith and due care in making a report of alleged abuse, neglect, verbal abuse, or exploitation pursuant to the Oklahoma Child Abuse Reporting and Prevention Act or the Oklahoma Protective Services for Vulnerable Adults Act shall have immunity from any civil or criminal liability the person might otherwise incur.

(5) **Questions about reporting.** A person who is uncertain if a particular incident is reportable contacts OCA intake, 1-800-522-8014, during business hours, and after hours call the Abuse Hotline, 1-800-522-3511.

(c) **Failure to report.** Any person who knowingly and willfully fails to promptly report a reportable incident as provided for in this Section may be subject to administrative action or criminal sanctions. Section 10-104(E) of Title 43A and Section 1-2-101(C) of Title 10A of the Oklahoma Statutes makes failure to report a misdemeanor, upon conviction. In addition, failure to report by an OKDHS employee may result in disciplinary action.

(d) **False reporting.**

(1) Any person who knowingly and willfully makes a false report regarding alleged maltreatment of a minor, or a report that the person knows lacks factual foundation, may be reported by OKDHS to local law enforcement for criminal investigation and, upon conviction, is guilty of a misdemeanor.

(2) With regard to vulnerable adults, any person who willfully or recklessly makes a false report may be liable in a civil action for any actual damages suffered by the person(s) being reported and for any punitive damages set by the court or jury.

(e) **Method of reporting.**

(1) Any person obligated to report an allegation of suspected abuse, neglect, verbal abuse, or exploitation of an OCA client, or caretaker misconduct towards an OCA client, contacts OCA intake in Oklahoma City by telephone at 1-405-525-4850 or 1-800-522-8014, between 8:00 a.m. and 5:00 p.m. on normal business days. At all other times, the Abuse Hotline, 1-800-522-3511 accepts referrals on behalf of OCA. Referrals also are made by completing Form 15GN001E, Office of Client Advocacy Intake Referral, and transmitting it by fax 1-405-525-4885, to OCA, Attn: OCA

intake, or sending the same information in an e-mail addressed to \*OCA.intake@okdhs.org.

(2) Allegations of exploitation of residents of SORC, NORCE, and Greer are reported to the person designated by the facility administrator to receive and investigate reports of those allegations.

(3) In lieu of contacting OCA intake, employees of SORC, NORCE, and Greer also have the option of contacting the quality assurance staff at those facilities. In this event, the reporting staff also notifies the OCA facility advocate staff assigned to the facility. OCA employees and facility staff who receive information about a reportable incident promptly contact OCA intake to transmit that information.

(f) **Confidentiality of reporting party's identity.** OCA keeps confidential the identity of a person who reports an incident involving a vulnerable adult per Section 10-105(C)(2) of Title 43A of the Oklahoma Statutes, and of a person who reports an incident involving a child or youth per Section 1-6-102(H)(7) of Title 10A of the Oklahoma Statutes. OCA accepts anonymous referrals.

(g) **Retaliation prohibited.** Section 10-104(K) of Title 43A of the Oklahoma Statutes states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act, Section 10-101 et seq. of Title 43A of the Oklahoma Statutes.

(h) **Staff training.** All administrators ensure their employees receive relevant training regarding their reporting responsibilities detailed in this Section. Except for employees of a Developmental Disabilities Services Division (DDSD) provider, employees receive this training within 30 calendar days of initial employment and subsequent training annually. The training for employees of DDSD providers is per OAC 340:100-3-38 et seq.

## **INSTRUCTIONS TO STAFF 340:2-3-33**

**Revised 7-1-07**

- 1. The death of a Developmental Disabilities Services Division (DDSD) client is reviewed pursuant to OAC 340:100-3-35.**

**340:2-3-34. Administrator's responsibilities regarding allegations reportable to Office of Client Advocacy (OCA)**

Revised 7-1-11

(a) **Immediate protection for safety, health, and welfare.** If the Office of Client Advocacy (OCA) intake receives an allegation of caretaker maltreatment involving an OCA client from anyone other than the administrator, or the administrator's designee, of the facility or provider responsible for the client, OCA intake promptly notifies the applicable administrator of the allegation.

(1) Upon becoming aware of an allegation of caretaker maltreatment involving an OCA client, an administrator ensures the safety, protection, and needed medical attention of any client named in the allegation and other clients receiving services from the facility or provider.

(2) When criminal activity is alleged, the administrator immediately notifies the appropriate local law enforcement authority. The types of criminal activity that are reported to law enforcement include, but are not limited to, the use or possession of illegal drugs, domestic abuse, illegal sexual activity, illegal use of alcohol, theft of money, property, or medicine that is a controlled substance, and when someone other than a caretaker is believed to have committed the allegation.

(3) The administrator takes necessary personnel actions to ensure the protection and safety of the alleged victim(s) and other clients. OCA does not determine or approve personnel actions taken by an administrator in response to allegations reported to OCA.

(4) In the event of alleged abuse or neglect of a Hissom class member by a provider's employee or subcontractor, the administrator ensures the protection and medical attention for any class member named in an allegation or other individual served. In the event of alleged abuse or neglect by an individual serving as a provider, it is the responsibility of the class member's case manager to ensure protection, medical attention, or both for the class member. OCA intake notifies the applicable Developmental Disabilities Services Division (DDSD) area manager by e-mail within one working day of receipt of a referral of abuse or neglect by an individual serving as provider for the class member. ■ 1

(b) **Preliminary assessment.** Upon learning of an incident reportable to OCA, the administrator:

(1) immediately ensures the safety of any client named in the referral and of other

clients;

(2) secures any physical evidence and gathers documents within the possession of the facility or provider, custody, or control that may be relevant to the allegation;

(3) immediately takes photographs of any injuries. Photographs are taken by someone who was not involved in the incident that is the subject of the allegation relating to the injuries; and

(4) coordinates activities with OCA and any other agency or law enforcement authority involved in investigating the referral.

(c) **Collecting pertinent reports and documents.** The administrator determines which employees were present when the alleged incident occurred and requires each employee to submit a written account of the alleged incident. The administrator collects medical records, other documents and reports that pertain to the alleged incident, written statements, and other documentary evidence within the possession of the facility or provider, custody, or control and places them in a holding file for investigative use by OCA and any other investigative authority. The administrator securely maintains any documents collected during the preliminary assessment.

(d) **OCA access to documents and evidence.** Upon request, an OCA investigator is provided a copy of and access to the original of written statements, incident reports, relevant documents and records, and other reports, photos, and other evidence collected during the preliminary assessment.

(e) **Prohibition from interviewing during preliminary assessment.** Employees of the facility or provider do not conduct an investigation of an alleged incident pending the OCA decision to accept the referral for investigation or during a pending OCA investigation. To avoid the consequences of over-interviewing parties involved in an alleged incident, the preliminary assessment is limited to inquiries about who were involved, obtaining written statements, and clarifying information needed to take appropriate action to ensure client safety. Determining if a staff member engaged in maltreatment is not the goal of a preliminary assessment and is avoided until the OCA disposition is determined. This prohibition does not extend to interviews and investigations conducted by law enforcement when responding to a report of criminal activity. The assigned OCA investigator coordinates activities with local, state, and federal law enforcement entities to seek the most appropriate investigative response to the referral.

(f) **Facility and provider contact person.** Each administrator of a facility or provider responsible for the care of any of the individuals listed in OAC 340:2-3-32(a)(2)

designates a contact person to receive the notice described in subsection (a) of this Section. The administrator informs the advocate general of the name, phone number, and e-mail address of the designated contact person, and immediately notifies the advocate general in writing, by mail or e-mail, of any changes in this information. The designated contact person is reasonably available by telephone, pager, or e-mail between 8:00 a.m. and 5:00 p.m. weekdays, except holidays. Form 15IV011E, Designation of Contact Person for Client Maltreatment Investigations, may be used for this purpose.

(g) **Documentation provided by SORC, NORCE, and Greer.** Within one business day of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Robert M. Greer Center (Greer) submitting to the Oklahoma State Department of Health (OSDH) an incident report, a five-day report or a final report regarding an allegation reported to OCA intake, the facility sends to OCA intake a copy by fax or e-mail attachment.

(h) **Ensuring confidentiality.** Administrators maintain information, files, and documents regarding referrals made to OCA intake, including OCA investigation reports distributed pursuant to OAC 340:2-3-36, in a manner that protects the confidentiality of information contained in them.

#### **INSTRUCTIONS TO STAFF 340:2-3-34**

**Revised 7-1-07**

- 1. In addition to the applicable Developmental Disabilities Services Division (DDSD) area manager, the Office of Client Advocacy (OCA) intake notifies one other person designated by that area manager. The area manager or designee notifies the case manager assigned to any Hissom class member named as an alleged victim.**



**340:2-3-35. Processing referrals received by the Office of Client Advocacy (OCA)**Revised 7-1-11

(a) **Disposition options.** The Office of Client Advocacy (OCA) intake records on Form 15GN001E, Office of Client Advocacy Intake Referral, or its electronic equivalent, the specifics of each referral received and makes an appropriate disposition regarding how the referral is to be handled. Consideration is given to all known information to determine an appropriate disposition and course of action. The disposition options and criteria include, but are not limited to, the options described in (1) through (7) of this subsection.

(1) **OCA investigation.** This disposition means OCA opens an investigation of an allegation of caretaker maltreatment. ■ 1

(2) **Assign for caretaker conduct review.** This disposition means the facility or provider named in the referral is given responsibility to conduct an internal caretaker conduct review per OAC 340:2-3-37. Within one working day of receiving a referral given this disposition, OCA intake notifies the administrator or designated contact person. OCA intake documents the notification on Form 15GN001E or its electronic equivalent. This disposition does not apply to allegations involving Developmental Disabilities Services Division (DDSD) clients other than residents of Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Robert M. Greer Center (Greer).

(3) **Refer to advocate.** This disposition is made when the referral involves a Hissom class member or a resident of SORC, NORCE or Greer, and involves a concern that, based on the information provided, does not rise to the level of maltreatment. Within one working day of receipt of the reported incident, the applicable OCA advocate and his or her supervisor are notified of the matter by e-mail or telephone for appropriate follow-up inquiry. If the advocate knows or learns of facts that indicate a more appropriate disposition, the advocate immediately notifies OCA intake. ■ 1 & 2

(4) **Refer to another administrative entity for handling.** This disposition means OCA intake forwards the information to another state agency or Oklahoma Department of Human Services (OKDHS) division or office for handling. This disposition is appropriate when information provided by the reporting party does not include an allegation of caretaker maltreatment within the purview of OCA, but rather involves complaints about employee performance or allegations within the scope of another administrative entity. When this disposition is made, OCA intake makes the referral within one working day of receipt of the reported incident. These

referrals are not assigned to OCA investigators for handling or intervention.

(5) **Refer to law enforcement.** This disposition is used when the referral involves possible criminal activity and it is not within OCA investigative authority as described in OAC 340:2-3-32(a). This disposition is not used when OCA opens an investigation on a referral even though a law enforcement agency also is investigating the matter.

(6) **Refer for grievance.** When a referral to a grievance system is made, OCA intake notes the specifics of that referral on Form 15GN001E, or its electronic equivalent. The referral is directed to the appropriate entity for handling as a grievance when the content of the referral is not caretaker maltreatment, but a complaint or concern that can be addressed by a grievance. If the complaint can be addressed as a grievance and is referred for grievance by OCA, the entity promptly notifies its local grievance coordinator. A referral may be appropriate for handling as a grievance when the complaint(s) concerns:

(A) conditions that do not endanger clients or residents;

(B) staff improprieties that do not constitute maltreatment; and

(C) privileges and restrictions not involving the use of isolation, force, or restraints.

(7) **No action required.** This disposition is made when OCA takes no action in response to the referral because the information provided is for notification purposes only and does not include an allegation, complaint, or concern appropriate for another disposition. This disposition is also made when an OCA investigation is not warranted in an Adult Protective Services substantiated case.

(8) **Refer to administration.** This disposition means the matter is not within the purview of OCA, another OKDHS unit, or another state agency but is relevant to the operations of a facility or provider. When this disposition is used, OCA intake contacts the administrator of the facility or provider to inform the administrator of relevant information relating to the referral. ■ 3

(9) **Refer to DDSD Quality Assurance (QA).** This disposition is made when an allegation involves an alleged contract violation that does not involve caretaker maltreatment.

(10) Refer for special advocacy. This disposition is made when the referral constitutes a request for advocacy services under OAC 340:2-3-75.

(b) **Notifying law enforcement.** If a referral opened as an OCA investigation involves possible criminal activity on the part of a caretaker or a person responsible for a child's health, safety, or welfare, OCA intake determines from the reporting party or the designated contact person for the facility or provider whether law enforcement was notified. If law enforcement has already been notified, OCA intake documents that information on Form 15GN001E or its electronic equivalent. OCA intake also notifies the appropriate law enforcement authority and notes the specifics on Form 15GN001E or its electronic equivalent. ■ 4

(c) **Assignment process for referrals opened for investigation.** A referral accepted for investigation is assigned to a specific OCA investigator. ■ 5 Investigations involving Hissom class members are assigned within one working day of making a disposition to investigate the allegation. When urgent circumstances exist in a case opened for investigation, an assignment is made and the investigation commenced immediately. ■ 6

## **INSTRUCTIONS TO STAFF 340:2-3-35**

### **Revised 7-1-11**

- 1. Hissom referrals.** The only dispositions used for referrals regarding a Hissom class member are "Office of Client Advocacy (OCA) investigation," "refer to advocate," and "refer to administration." When appropriate, intake also refers to law enforcement and to the Oklahoma Department of Human Services (OKDHS) Adult Protective Services (APS) Unit. Regardless the disposition given to a referral involving a Hissom class member, OCA intake notifies the OCA advocate assigned to the class member by e-mail copied to the advocate's supervisor and the OCA programs administrator for community ombuds programs. OCA intake promptly notifies these same individuals when there is a change in the disposition. OCA intake also notifies by e-mail the appropriate Developmental Disabilities Services Division (DDSD) area manager and other persons designated in OCA directives. If the disposition subsequently changes, OCA intake notifies the same individuals in writing of the change.
- 2. Identifying emergency situations.** OCA intake determines from available information whether the situation presents a serious risk to the victim that requires immediate attention. If an emergency response appears to be indicated, OCA arranges for an OCA investigator, an APS investigator, a law enforcement officer, or other appropriate person, such as an OCA advocate, to personally visit with the victim immediately and no later than within 24 hours. Emergency situations are those that a person is likely to suffer death or

serious physical harm without intervention.

3. When a referral from Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), or the Robert M. Greer Center (Greer) is given a "refer to administration" disposition, the facility sends OCA a copy of the incident reports, five-day reports, and final reports sent to the Oklahoma State Department of Health (OSDH) within one business day of submission of the report to the OSDH.
4. Criminal activity. The types of criminal activity that are reported to law enforcement include, but are not limited to, illegal drug use or possession, domestic abuse, illegal sexual activity, illegal use of alcohol, theft of money, property or medicine that is a controlled substance, and when someone other than a caretaker is involved in the allegation. When a reporting party indicates that law enforcement has been contacted, OCA intake documents on Form 15GN001E, Office of Client Advocacy Intake Referral, or its electronic equivalent, the particulars regarding what law enforcement agency was contacted, the date and time it was contacted, and with whom the reporting party spoke.
5. In making assignments, consideration is given to the status of the investigators' workloads, efficient use of travel resources, planned and unplanned absences of investigators, and investigator areas of expertise.
6. Following the assignment of a referral, the name of the investigator to whom a referral has been assigned is noted on Form 15GN001E or its electronic equivalent.

**340:2-3-36. Investigation procedures**Revised 7-1-11

(a) **Initiation of Office of Client Advocacy (OCA) investigation.** The assigned OCA investigator conducts a prompt investigation of the referral. The investigator contacts the applicable administrator or designee to arrange for document production, site visits, and interviews.

(1) The facility or provider administrator who employed an accused caretaker at the time of the alleged incident informs that employee of:

(A) the name and telephone number of the OCA investigator;

(B) the investigative process described in this Section;

(C) except as stated in paragraph (2) of this subsection, the employee's rights and responsibilities relating to the investigation described in subsection (d) of this Section, using Form 15IV005E, Investigations of Client Maltreatment - Rights and Responsibilities of Accused Caretakers, Form 15IV006E, Investigations of Foster Parent Retaliation Complaints - Rights and Responsibilities of Accused OKDHS Employees, or a substantially similar provider or agency form, a copy of which is provided to the OCA investigator except as stated in paragraph (2) of this subsection; and

(D) the allegation made against the accused caretaker without divulging the identity of the reporting party or the substance of the evidence.

(2) In cases involving caretakers subject to the Community Services Worker (CSW) Registry, the rights and responsibilities of accused community services workers are found in OAC 340:100-3-39. The facility or provider administrator or designee promptly completes Form 06PE059E, Rights and Responsibilities of Community Services Worker in an Investigation of Abuse, Neglect, or Exploitation, per OAC 340:100-3-39(e)(2)(C). The facility or provider administrator or designee mails Form 06PE059E to the worker when it is not possible to personally give it to a worker who is no longer employed by the provider.

(3) On request and for good cause shown, OCA expedites the time frames contained in this subsection for conducting an investigation.

(b) **Notice of Investigation.** The assigned OCA investigator provides notice to the caretaker of the alleged victim, the legal guardian, and next of kin of a vulnerable adult

as provided by Section 10-105.1 of Title 43A of the Oklahoma Statutes. The assigned OCA investigator provides notice to a person responsible for the health, safety, or welfare of a child who is the subject of an investigation as provided by Section 1-2-106 of Title 10A of the Oklahoma Statutes.

(c) **Access.** The applicable facility or provider administrator arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider. During an OCA investigation, Oklahoma Department of Human Services (OKDHS), Office of Juvenile Affairs (OJA), Oklahoma Department of Rehabilitation Services (ODRS), Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS), the J.D. McCarty Center, providers, and facilities, and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation. Denial of access may be grounds for termination of a contract between OKDHS and a contractor.

(d) **Interference prohibition.**

(1) Section 1-2-101(B)(4) of Title 10A of the Oklahoma Statutes prohibits discrimination or retaliation against a person who in good faith provides information about a reportable incident or testifies in a proceeding.

(2) Section 455 of Title 21 of the Oklahoma Statutes makes it a felony to interfere with a child abuse investigation or a vulnerable adult investigation under Title 43A. An OKDHS employee who interferes with an OCA investigation also may be subject to administrative action. Interference includes but is not limited to:

(A) intimidating, harassing, or threatening a party to the investigation;

(B) retaliation against an employee for reporting an allegation; or

(C) denial of access to clients, employees, facilities, witnesses, records, or evidence.

(3) Section 10-104(K) of Title 43A of the Oklahoma Statutes states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act, Section 10-101 et seq. of Title 43A of the Oklahoma Statutes.

(e) **Rights and responsibilities of accused caretakers.** The rights and responsibilities

of an accused caretaker during an OCA investigation are outlined in this subsection, except those of a caretaker who is a community services worker or a SoonerCare (Medicaid) personal care attendant, whose rights and responsibilities are found at OAC 340:100-3-39.

(1) **Rights.** During the investigation process, an accused caretaker has the right to:

(A) be advised by the facility or provider administrator of the nature of the allegation(s) made against him or her in the referral;

(B) be advised by OCA of the investigative process involving caretaker maltreatment;

(C) be interviewed by the investigator and allowed to give his or her position regarding the referral;

(D) be advised by the investigator of the substance of the evidence against him or her, but not the identity of the person reporting the allegation;

(E) submit or supplement a written statement relating to the allegations;

(F) seek advice from other parties concerning a caretaker's rights and responsibilities in OCA investigations;

(G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and

(H) be notified in writing by his or her employer of the outcome of the investigation.

(2) **Responsibilities.** During the investigative process, an accused caretaker has the responsibility to:

(A) prepare written statements and reports relevant to the investigation upon request;

(B) be available for interviews and accommodate the investigator in scheduling of interviews;

(C) refrain from any action that interferes with the investigation, including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and

(D) provide pertinent information and respond fully and truthfully to questions asked.

(f) **Educational employees.** This subsection applies to an employee of a school district providing contract educational services on-site at a facility, as defined in OAC 340:2-3-2, who is either a witness or an accused caretaker in an investigation opened by OCA.

(1) The administrator of the facility where the incident took place notifies the principal of the school of the nature of the allegation and the name of the assigned OCA investigator.

(2) The principal of the school is responsible for notifying the school employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process and does not extend to ensuring the protection of the alleged victim(s) or other clients at the facility where the educational services are provided. The administrator of the facility where the alleged incident took place is responsible for protection of clients.

(3) OCA investigates educational employees who meet the definition of a caretaker in OAC 340:2-3-2.

(g) **Contractor's employees.** This subsection applies to an employee of a contractor of a provider or facility when the employee is an accused caretaker in an investigation opened by OCA.

(1) The facility or provider administrator where the incident took place notifies the chief administrative officer of the contractor of the nature of the allegation against the contractor's employee and the name of the assigned OCA investigator.

(2) The chief administrative officer of the contractor is responsible for notifying the contract employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process. The facility or provider administrator where the alleged incident took place is responsible for protection of clients.

(h) **Document collection and review.**

(1) The investigator gathers and reviews relevant documents including, but not limited to:

(A) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;

(B) medical records;

(C) photos; ■ 1 and

(D) facility or provider logs, activity and tracking documents.

(2) If the OCA investigator is denied access to records, documentation, or other information relevant to an investigation involving a vulnerable adult, OKDHS Adult Protective Services is contacted for assistance in petitioning the court for an order allowing access.

(3) If the OCA investigator is denied access to the place where the child is located, access to records or treatment plans, or other documentation relevant to the alleged abuse or neglect of a child, the investigator contacts the district attorney. The district attorney may make application to the district court for an order allowing access.

(i) **Investigative interviews.** The investigator interviews or attempts to interview persons known or identified to have information about the referral. ■ 2 If an injury is alleged, the investigator or other appropriate person observes, notes, and documents apparent injuries, and obtains pertinent medical documentation, including photographic evidence. ■ 3 Interviews are conducted in private. No person other than the investigator and the person interviewed is allowed to attend an interview except a person necessary to facilitate communication. An attorney or other representative of the person interviewed attends an interview only as a silent observer with prior permission of the advocate general or designee. ■ 2

(j) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each caretaker accused of the maltreatment. ■ 4 When possible, all other witnesses are interviewed prior to interviewing the accused caretaker(s).

(1) **Recording interviews.** OCA investigators record every interview. To maintain confidentiality of the information provided in an interview, no recording by the person

interviewed or by anyone else in attendance is permitted. Recordings interviews remain with the OCA investigative file. OCA files and recordings are not public documents. ■ 5

(2) **Explanation of the process.** The investigator informs persons interviewed of the investigative process.

(3) **Presentation of the allegation.** The OCA investigator verbally informs each accused caretaker of the substance of the allegation(s). In general, the investigator discloses only the nature of information learned during the investigation and does not identify the persons who provided information. The identity of the reporter of the allegation is never disclosed during the investigation. If during the course of an investigation a witness is identified as a potential accused caretaker, the investigator interviews the witness again to inform the witness that he or she is a potential accused caretaker. At that time, the witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond. The OCA investigator informs the administrator of the facility or provider of the new allegation and the new potential accused caretaker.

(4) **Opportunity for accused caretakers to respond.** During the interview with an accused caretaker, the OCA investigator provides the caretaker an opportunity to respond to the allegation(s) and to supplement any information previously provided in written statements. Following the initial interview of the accused caretaker, if the investigator obtains information that the accused caretaker did not have an opportunity to respond, the investigator conducts another interview with the caretaker. The investigator advises the accused caretaker of the substance of the new information and provides an opportunity to present a response.

(5) **Interpreter services for persons who are deaf or hard of hearing.** When the investigator needs to interview a person who is deaf or hard of hearing, the facility or provider agency that employed the person at the time of the alleged incident provides, at no cost to OCA, oral or sign language interpreter services by an independent and qualified interpreter. Interpreter services for OKDHS employees and clients are provided per OAC 340:1-11-10.

(6) **Scheduling interviews.** To schedule an interview with an accused caretaker, the investigator contacts by phone or regular mail the facility, provider administrator, or designee that employs the caretaker. If a reasonable time has passed without being able to schedule an interview, the investigator contacts the facility or provider administrator to request the administrator to compel the employee to participate. If unsuccessful, the investigator sends both a certified letter and a letter by regular mail to the caretaker's last known address notifying the caretaker of the investigation

and offering an opportunity to be interviewed, setting a date and time for a response. The letter informs the caretaker that the consequence of failure to participate is for the OCA investigative report to be completed without the caretaker's statement and a finding is made based on available information. For other persons needing to be interviewed, the investigator follows the same sequence as for an accused caretaker, but the certified letter only requests their participation in an interview.

(7) **Failure to appear.** If a person fails to appear for a scheduled interview without good cause, as determined by the advocate general, the investigator completes the investigative report without interviewing that person. The investigative report includes an explanation of why the interview was not conducted, including documentation of efforts to interview the person.

(k) **Exit notice.** Within 30 calendar days of assignment of a referral to be investigated, the assigned OCA investigator contacts by e-mail the applicable facility or provider administrator or designee when the information gathering portion of the investigative process is completed. The investigator informs the facility or provider administrator of any areas of concern identified and that a written report will be prepared with the final finding. Preliminary findings are not required.

(l) **The written investigative report.** After completing the information gathering portion of the investigative process the investigator prepares a written investigative report containing:

(1) the allegation(s) contained in the referral investigated including the date, time, and location of the alleged incident(s), the date the allegation was reported to OCA, and the assigned OCA case number; ■ 6

(2) a statement of any physical injuries sustained by the alleged victim(s);

(3) information regarding any involved law enforcement entities;

(4) a recommendation for the district attorney whether to consider further investigation;

(5) the applicable definition(s) of caretaker misconduct or the type of maltreatment at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;

(6) the finding(s) per subsection (m) of this Section;

(7) a list of the involved parties, their titles and role in the matter, if they were interviewed and, if so, when, and whether interviewed face-to-face or by telephone;

(8) the name, address, and telephone numbers of any interpreter used during the investigation;

(9) an explanation of the basis for the finding(s);

(10) a summary of relevant information obtained during each interview conducted during the investigation;

(11) any areas of concern relating to the referral identified during the investigation regarding facility, provider, or OKDHS practices or procedures that have implications for the safety, health, or welfare of clients but do not rise to the level of abuse or neglect; ■ 7

(12) a list of relevant documents and records reviewed during the investigation;

(13) a list of attachments to the report that are provided upon request; and

(14) an explanation for any delays in meeting the time frames for completing the investigation report contained in this Section. ■ 8

**(m) Investigative findings.** The OCA investigator determines the appropriate finding for each allegation contained in the referral investigated. Findings are made based on a greater weight of the evidence standard. The finding options are:

(1) "**confirmed**" means that the greater weight of the available evidence establishes the alleged maltreatment occurred; ■ 9

(2) "**not confirmed**" means the greater weight of the available evidence indicates the alleged maltreatment did not occur; or

(3) "**ruled out**" means no evidence was discovered that indicates the alleged maltreatment occurred.

(4) "**defer**" means OCA will defer the completion of an investigation and the issuance of a finding upon reasonable request to do so by a law enforcement agency having investigative authority.

**(n) Identification of the responsible caretaker.** When a confirmed finding is made, the investigator determines the caretaker(s) responsible for the maltreatment. The

administration may be named as responsible when the policies, procedures, or practices adopted by the administration of a facility, provider, or day treatment program are the primary factor resulting in the maltreatment of individual clients. ■ 10

**(o) Dissemination of the OCA investigative reports involving caretakers not subject to the Community Services Worker Registry.** Within 60 calendar days from the assignment of a referral to be investigated, the OCA written investigative report is completed.

(1) Except as provided in subsection (p) of this Section, a copy of the final OCA investigation report is sent to the administrator of an affected facility or provider agency. The administrator is responsible for notifying the client or the client's legal representative of the OCA finding.

(2) If the referral alleged abuse, verbal abuse, sexual abuse, neglect, financial neglect, or exploitation, a copy also is sent to the applicable district attorney.

(3) A copy is sent to the appropriate OKDHS state office administrator, executive director of OJA, the director of ODRS, the director of ODMHSAS, or the director of the J.D. McCarty Center, whichever is applicable.

(4) When a facility or provider administrator is named as an accused caretaker in the allegation, OCA forwards the investigative report to the chair of the board of directors of the facility or provider agency, or to the director of the state agency operating the facility, whichever is applicable.

(5) A copy of the OCA report is sent to the Oklahoma State Department of Health (OSDH) if the investigation involved a day treatment program.

(6) The administrator of an OKDHS operated facility provides accused OKDHS employees who work at the facility a letter that summarizes the allegation and states the OCA finding. If an accused caretaker is an OKDHS employee, the applicable OKDHS division director or designee is responsible for providing the employee with a letter that summarizes the allegation and states the OCA finding.

(7) If client maltreatment by a licensed nurse is confirmed, a copy of the OCA report is submitted to the Oklahoma State Board of Nursing.

(8) When appropriate in cases involving a vulnerable adult, a copy of the OCA report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including but not limited to OSDH and any appropriate state licensure or certification board, agency, or registry. This includes sending

OSDH a copy of any report when at least one of the accused caretakers is a certified nurse aide (CNA).

(9) OCA distributes its investigation reports by United States mail, fax, or e-mail, whichever is appropriate.

(10) If maltreatment by a guardian is confirmed, a copy of the OCA investigation report is submitted to the applicable guardianship court.

**(p) Dissemination of reports involving Hisson class members and caretakers subject to the Community Services Worker (CSW) Registry or the Child Care Restricted Registry.**

(1) All OCA investigations involving a confirmed finding against a community services worker, or a SoonerCare (Medicaid) personal care assistant employed by a SoonerCare (Medicaid) personal care services provider are processed per OAC 340:100-3-39 and 317:35-15.

(2) All OCA investigations involving a confirmed finding against a caretaker of a child while in the care of a child care facility are processed per OAC 340:110-1-10.1.

(3) After the OCA investigation report has been approved, an e-mail notice of the areas of concern in the report is sent to the facility or provider administrator, the APS programs manager, the Oklahoma Child Care Services (OCCS) director or designee, and the DDSD director or designee, whichever are applicable.

(4) When the OCA finding does not confirm an allegation, OCA sends a copy of the report to the facility or provider administrator, the DDSD director, the Aging Services Division (ASD) director, the OCCS director or designee, or the APS programs manager, whichever is applicable. A copy of the report is sent to the district attorney in the county where the suspected maltreatment or abuse or neglect occurred pursuant to Section 10-104(I) of Title 43A of the Oklahoma Statutes if the victim is a vulnerable adult, or Section 1-2-105(E) of Title 10A of the Oklahoma Statutes if the victim is a child. ■ 11

(5) When the OCA finding confirms an allegation against an accused caretaker who is not a community services worker, OCA sends a copy of the report to the facility or provider administrator, the DDSD director, the ASD director, the OCCS director or designee, or the APS programs manager, whichever is applicable, and to the applicable district attorney. ■ 11

(6) When the OCA finding confirms an allegation against a caretaker who is a

community services worker or a SoonerCare (Medicaid) personal care assistant, OCA submits a copy of the report to the DDS director or the APS programs manager, whichever is applicable, and the applicable district attorney and processes the report per OAC 340:100-3-39. When the due process procedures relating to the CSW Registry have been completed, OCA sends a copy of the report to the applicable facility or agency administrator and the assigned OKDHS long-term care nurse if applicable. ■ 11

(7) When the OCA finding confirms an allegation against a caretaker when the abuse or neglect occurred to a child when in the care of a child care facility, OCA submits a copy of the report to the OCCS Licensing Records Office per OAC 340:110-1-10.1(e). OCA also submits a copy of the report to the OCCS director or designee, the facility or agency administrator, and the applicable district attorney.

(8) The Hissom class member's assigned OCA advocate notifies the class member and the class member's guardian or close family member of the result of the investigation when the investigative finding has become final. ■ 12

(9) If maltreatment by a guardian is confirmed, a copy of the OCA investigation report is submitted to the applicable guardianship court.

**(g) Confidentiality of OCA investigative reports.** Persons receiving copies of OCA investigative reports are bound by the confidentiality provisions of Sections 1-6-102 through 1-6-107 of Title 10A, and Section 10-110 of Title 43A of the Oklahoma Statutes, whichever is applicable.

**(r) Confirmed findings involving OKDHS operated facilities.** The findings of an OCA investigation report involving client maltreatment at an OKDHS operated facility are considered final when the time for requesting Grievance and Abuse Review Committee (GARC) review pursuant to OAC 340:2-3-62(b) has expired and review has not been requested, or that review was timely requested and has concluded.

(1) When the Children and Family Services Division (CFSD), the Field Operations Division, or DDS receives a copy of a final OCA investigative report or notice that a review pursuant to OAC 340:2-3-62 has been concluded, within 60 working days, the applicable division director notifies the advocate general in writing of:

(A) any personnel action taken or to be taken with regard to each accused caretaker named in the report;

(B) any corrective action taken or to be taken regarding areas of concern noted in the report; and

(C) for each worker found to have engaged in maltreatment, whether there have been any prior confirmations by OCA or the facility for client maltreatment by the worker and, if so, the basis for each such finding, and the personnel action taken in response.

(2) If personnel action has or will be taken, the division director also notifies the OKDHS Human Resources Management Division director. If the final OCA finding does not confirm maltreatment, no information or material pertaining to the allegation or the investigation is placed in the personnel file of an accused caretaker.

(3) OCA reports information regarding confirmed findings to the Oklahoma Commission for Human Services (Commission) during executive session.

**(s) Findings involving a Hissom class member.** This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed, an accused caretaker named in an OCA investigation report.

(1) Within 60 calendar days of receipt of a final OCA investigation report, the DDSD director or designee notifies the advocate general in writing:

(A) if any personnel action has or will be taken with regard to each accused caretaker named in the report; and

(B) of any corrective action taken or to be taken regarding areas of concern noted in the report.

(2) OCA reports information regarding confirmed findings to the Commission during executive session.

**(t) Storage and retention of OCA investigative records.** OCA maintains the original report, supporting documents, and applicable recordings per the applicable OKDHS records management and disposition plan. Access to investigative files and records is limited to OCA employees on a need to know basis. Requests by OKDHS employees for access to or copies of OCA investigative reports are made to the advocate general.

## INSTRUCTIONS TO STAFF 340:2-3-36

Revised 7-1-11

### 1. Photographs.

**(1) The investigator:**

**(A) obtains a copy of each photograph and document pertinent to an investigation;**

**(B) clearly labels the date, time, and by whom the photographs were taken; and**

**(C) secures them in a separate envelope or folder labeled with the investigative case number, name(s) of victim, and any other pertinent information related to the injury.**

**(2) The photographs are attached to the written investigative report and the photographic evidence is referenced in the investigative report.**

**(3) If photographs necessary to document injuries or conditions that have resulted or may result in an injury or serious harm to the person have not been taken by the time the Office of Client Advocacy (OCA) investigator initiates the investigation, the OCA investigator takes the photographs.**

**2. Interviews.**

**(1) When the alleged victim or an essential witness is a person with a developmental disability and can contribute to the investigation, the investigator interviews that person within five working days after OCA opens the investigation.**

**(2) Telephonic interviews. Interviews are conducted face-to-face with each person interviewed. An investigator obtains prior approval from the investigator's supervisor to conduct an interview by telephone. When permission to conduct a telephonic interview is granted, the telephonic interview is recorded and conducted in a manner to verify the identity of the person interviewed. Absent special circumstances, each alleged victim, each accused caretaker, and each eyewitness is interviewed in person by the investigator assigned to the case. Examples of a special circumstance are the person to be interviewed:**

**(A) has moved to another state;**

**(B) adamantly refuses to be interviewed other than by telephone and a good faith effort was made unsuccessfully to overcome that resistance;**

and

**(C)** is a collateral witness who is not anticipated to possess information regarding a material issue in the case when no credibility issues are anticipated. An example of the latter is a Developmental Disabilities Services Division (DDSD) case manager interviewed to obtain routine information from the client's file.

**(3) Peer interviews.** The OCA investigator assigned to the case is responsible for all interviews needed to complete the investigation. An investigator may request approval from the investigator's supervisor for another OCA investigator to conduct an interview when the person to be interviewed lives over 100 miles from the assigned investigator's duty station. However, if the person to be interviewed is an alleged victim, an accused caretaker, or an eyewitness to the events, all efforts for the assigned investigator are exhausted before approval is given. When approval is given, the assigned investigator provides the assisting investigator with all relevant information to conduct an effective interview and listens to the recording of the interview.

**(4) Attorney requests to be present during an interview.** An interviewee may arrange for the attorney to be on-call in the attorney's office during the interview; the interviewee could then call the attorney during the interview in the event there is a felt need for legal advice. An attorney's request to be present with a person being interviewed, if the attorney represents the person, may be granted if the attorney agrees to the conditions listed in (A) through (H) of this Instruction.

**(A)** The interview takes place in an OKDHS building or some neutral location selected by the investigator, not the attorney's office.

**(B)** The attorney and the person interviewed understand the attorney does not say anything during the interview, other than request a break to consult privately with the person interviewed or as otherwise provided in this Instruction to Staff.

**(C)** The attorney does not make an opening statement or closing argument, and does not ask questions, or make any suggestions, directly or indirectly, about how the interviewee should answer a question other than indicate when the attorney is advising the interviewee to decline to answer the question based on the Fifth

Amendment or a recognized privilege.

(D) The attorney does not record the interview by audio or video, and may not obtain a copy of the recording made by the investigator except pursuant to Oklahoma laws relating to the confidentiality of OCA investigation records.

(E) The attorney acknowledges on the record at the beginning of the interview that anything said during the interview is protected by federal and state law relating to confidentiality, and that the attorney will not violate the confidentiality of communications during the interview.

(F) The attorney is not provided discovery in connection with the interview; in other words, the attorney will not be supplied with any information, such as documents and reports relating to the case.

(G) The request to have an attorney present does not delay the interview absent good cause. In general, interviews take place within seven to ten days after the investigator contacts the interviewee to schedule the interview. The attorney needs to be able to accommodate the investigator's schedule.

(H) At any time during the interview, the interviewee or the attorney may ask to be excused to consult privately.

3. **Injuries.** If the nature and circumstances of the injury create a concern for the continuing safety of a child or vulnerable adult, the investigator promptly informs a person with authority to resolve the matter. In cases involving a Hissom class member, the investigator contacts the DDSD case manager or other DDSD staff, or the OCA advocate and other OCA staff, and remains on the scene as indicated. In other cases, the investigator contacts the OCA programs administator for investigations or an OCA supervisor for guidance. Law enforcement is contacted when warranted.
4. **Emergency situations.** If during the course of an investigation the OCA investigator becomes aware of facts creating a concern for the continuing safety of an alleged victim, the investigator takes appropriate action warranted by the situation. In cases involving a Hissom class member or DDSD client, the investigator contacts the DDSD case manager or other DDSD staff, the OCA advocate, and other OCA staff as warranted. In other cases, the investigator contacts the OCA investigations programs administator or an

OCA supervisor for guidance. The investigator contacts law enforcement when warranted. The investigator remains on the scene as needed to ensure the protection and safety of the client.

5. **Recordings.** In the written investigative report, the investigation clearly identifies any persons, other than the investigator and the interviewee, present in the interview, and explains their purpose for attending. During each interview, the investigator explains to the interviewee while recording that the interview is being recorded. Investigators include in their written report the time, date, and location of each interview conducted.
6. If the original allegation was factually inaccurate with regard to date, time, place, or identity of individuals, the report includes the allegation as corrected or expanded as a result of the investigation.
7. During the course of the investigation, when the investigator becomes aware of a significant health or safety issue regarding the alleged victim, the investigator timely informs a person with the authority to resolve the matter. In cases involving Hissom class members, this may include contacting DDSD staff, the OCA advocate assigned to the class member, the advocate's supervisor, or the OCA community ombuds programs administrator.
8. Review of OCA investigative reports. OCA supervisors monitor timely completion of OCA investigation reports and regularly discuss with each investigator supervised referrals assigned to the investigator that are pending over 30 days. The investigator submits the written report to an OCA supervisor for review. The OCA supervisor reviews the investigative report for completeness, accuracy, appropriate analysis, proper inclusion of areas of concern, timeliness, and acceptable presentation. An investigative report approved by the investigator's supervisor is reviewed by the advocate general or designee.
9. If the investigator confirms abuse by an accused caretaker and the investigator knows that caretaker is a person responsible for a child, the investigator makes a referral to Child Welfare, pursuant to Section 1-2-101 of Title 10A of the Oklahoma Statutes, if the circumstances give cause to believe the minor may be the victim of abuse or neglect.
10. If the evidence is sufficient to confirm maltreatment but the person responsible for the maltreatment cannot be identified by the greater weight of the evidence, the confirmed finding is made on an unknown caretaker.

- 11. OCA also sends a copy of each final report involving a Hissom class member to all parties designated in OCA directives regarding document distribution.**
- 12. An OCA investigative finding in a case not involving a community services worker (CSW) becomes final upon completion of review by Grievance and Abuse Review Committee (GARC) and the OKDHS Director per OAC 340:2-3-62 or when a timely request for GARC review has not been received. In cases involving a CSW, the finding is final if the investigation report does not contain a confirmed finding. In cases involving a CSW and a confirmed finding, the OCA finding is final upon completion of the review process described in OAC 340:100-3-39.**



**340:2-3-37. Caretaker conduct review (CCR)**Revised 7-1-11

(a) **Application.** This Section applies to referrals received by the Office of Client Advocacy (OCA) that OCA refers to a facility for an internal caretaker conduct review (CCR) per OAC 340:2-3-35(a)(2). This Section does not apply to allegations involving maltreatment of a Hissom class member or person receiving Developmental Disabilities Services Division (DDSD) waiver services.

**(b) Assignment to a facility to conduct a CCR.**

(1) When OCA receives a referral that indicates possible caretaker misconduct, in lieu of an investigation OCA intake may refer it to the facility where it allegedly occurred for handling as a CCR if:

(A) there is no injury or evidence that the client might have been exposed to a significant risk of harm;

(B) there is a minor physical injury and it is not a suspicious injury;

(C) there is a serious physical injury and the known credible information makes it unlikely that the serious injury was the result of abuse or neglect; ■ 1 or

(D) excessive or unauthorized use of force is alleged and there is no injury or only a minor injury that is not suspicious.

(2) In addition to the referrals in subsection (b)(1), at Oklahoma Department of Human Services (OKDHS) operated facilities, a referral indicating possible maltreatment may be referred to the facility for handling as a CCR if the allegation involves a serious physical injury that occurred under unexplained or unusual circumstances.

(c) **Protocol for conducting a CCR.** When OCA intake assigns a facility the responsibility to conduct a CCR, the administrator or designee takes necessary steps to ensure the safety of all clients and to protect the integrity of all evidence. A facility employee designated to conduct a CCR follows the investigative procedures described in OAC 340:2-3-36, with the exception of recording the interviews in OAC 340:2-3-36(j)(1), ■ 2 including:

(1) reviewing pertinent documentation, records, and evidence collected;

- (2) viewing any injuries and photos of injuries, and obtaining photos of injuries;
- (3) obtaining written statements and conducting interviews with:
  - (A) each alleged victim;
  - (B) each eyewitness;
  - (C) other persons with knowledge relevant to the allegation; and
  - (D) each accused caretaker;
- (4) reviewing statutes, policies, directives, standards, rules, or practices relevant to the allegation;
- (5) analyzing the accused caretaker's actions in relation to relevant statutes, policies, directives, standards, rules and practices; and
- (6) determining the appropriate finding(s) per 340:2-3-36(m).

(d) **Returning the investigation responsibility to OCA.** If at any time during the CCR information is learned that gives cause to believe that a client was the victim of caretaker misconduct resulting in a serious injury, abuse or neglect, the administrator immediately discontinues the CCR and contacts OCA intake to report the new information warranting an OCA investigation. OCA intake notes the new information and changes the disposition on Form 15GN001E, Office of Client Advocacy Intake Referral, or its electronic equivalent, and the case is assigned to an OCA investigator for investigation per OAC 340:2-3-35(c).

(e) **Written report of CCR.** After completion of the CCR process and determination of the appropriate finding, the person conducting CCR prepares a written report. Facilities are encouraged, but not required, to use the OCA format for CCR reports, Form 15IV007E, Caretaker Conduct Review Report. The written report contains:

- (1) the allegation(s), including the dates, times, and location of the alleged incident(s), the date the allegation was reported to OCA, and the OCA case number;
- (2) a statement of any injury sustained by the alleged victim(s) and, in cases involving an injury, a statement whether photographs were taken of the injury and if so, the date they were taken;
- (3) the finding(s), whether caretaker misconduct did or did not occur, per OAC

340:2-3-36(n);

(4) a list of the involved parties, their titles and role in the matter, whether they were interviewed and, if so, when;

(5) citation to pertinent statutes, policies, directives, standards, rules, and practices, when applicable;

(6) an explanation of the basis for the finding(s);

(7) a summary of pertinent information obtained in interviews conducted during the review;

(8) a list of relevant documents and records reviewed;

(9) a list of attachments to the report;

(10) a list of areas of concern identified during the course of the investigation regarding facility or OKDHS practices or procedures that have implications for the safety, health, or welfare of clients but that do not rise to the level of abuse or neglect; and

(11) either on a cover memo or at the end of the report, the date and signature of the person who conducted the CCR, and the signature of the person who reviewed and approved the report.

(f) **Time for completion of report.** The final written report is submitted to the advocate general within 30 calendar days from the date that OCA intake notified the administrator that an allegation is referred for CCR.

(g) **OCA processing of CCR reports.** The administrator transmits the completed CCR to the advocate general. The advocate general or designee reviews the CCR report for completeness and appropriateness of the finding. If a report is incomplete or the finding is questionable, OCA contacts the administrator to request further inquiry into the allegation. OCA opens an investigation if a report indicates the need.

(h) Final CCR report. If a final CCR report is not submitted to the advocate general within 45 calendar days from the date that OCA notifies the facility or provider administrator that the allegation is referred for CCR, OCA notifies the appropriate state agency, division, or regulatory entity that contracts with the facility or agency for the delivery of services.

(j) **Review by DDSD director.** Within five working days of completion of a CCR report at the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Robert M. Greer Center (Greer), the facility administrator or designee informs the client and the client's guardian or parent of the result of the CCR. If the client or the guardian or parent does not concur with the finding(s), the facility administrator or designee notifies the advocate general in writing by e-mail or letter. The advocate general refers the matter to the OCA grievance coordinator to process for review by the DDSD director as a contested grievance per OAC 340:2-3-46 and 340:2-3-51(g) and the client or guardian or parent who did not concur with the finding(s) is considered the grievant for purposes of the review. If the grievant does not concur with the proposed resolution of the division director or designee, the matter is reviewed by the Grievance and Abuse Review Committee (GARC) per OAC 340:2-3-62 and 340:2-3-64.

(j) **State office administrator's report.** The findings in a CCR are considered final when the time for requesting review pursuant to the paragraph (i) of this Section has expired and review has not been requested, or the review was timely requested and has concluded.

(1) Within 60 calendar days of the finding becoming final, the state office administrator or designee informs the advocate general in writing of:

(A) any personnel action taken or to be taken;

(B) any corrective action taken or to be taken; and

(C) for each worker found to have engaged in caretaker misconduct, whether there has been any prior confirmation by OCA or the facility for client maltreatment by the worker and, if so, the basis for each finding and the personnel action taken in response.

(2) If personnel action is involved, the state office administrator also notifies the OKDHS Human Resources Management Division director.

(3) If a CCR has not resulted in a confirmed finding, no information or material pertaining to the allegation or the investigation is placed in the personnel files of any employee named in the report.

## **INSTRUCTIONS TO STAFF 340:2-3-37**

**Revised 7-1-11**

- 1. Serious injuries.** When an allegation involves a serious injury, there is a presumption that Office of Client Advocacy (OCA) intake assigns it for investigation by OCA. If known credible facts provide an explanation for the injury that makes it unlikely the injury is the result of abuse, neglect, or negligent supervision, OCA intake may refer it to the facility for handling as a caretaker conduct review CCR. For example, if a client with severe osteoporosis suffers a bone fracture (a serious injury) and the treating physician reports the fracture is consistent with the osteoporosis, and it is not otherwise a suspicious injury, an OCA investigation is not required.
- 2. Interviews.** Facilities are encouraged, but not required, to record interviews with alleged victims, accused caretakers, and eyewitnesses to incidents, and to preserve the recording from these interviews for three years.



**340:2-3-38. Investigation of foster parent complaints of retaliation and discrimination**

Revised 7-1-11

(a) **Application.** This Section describes processes relating to allegations of retaliation and discrimination against a foster parent by an employee of the Oklahoma Department of Human Services (OKDHS) or a child placing agency. The Office of Client Advocacy (OCA) is designated by Sections 1-9-112 and 1-9-117 of Title 10A of the Oklahoma Statutes to conduct administrative investigations into these allegations.

(b) **Definitions.** The following words and terms when used in this Section shall have the following meanings unless the context clearly indicates otherwise:

(1) "**Administrator**," with regard to a child placing agency, means the chief administrative officer of the agency.

(2) "**Child placing agency**" means a private agency licensed to place children in foster family homes, group homes, adoptive homes, transitional or independent living programs, or family child care homes or other out-of-home placements, and that approves and monitors such placements and facilities per the licensing requirements established by the Oklahoma Child Care Facilities Licensing Act. [10 O.S. § 401 through 418]

(3) "**Child Welfare division**" means the OKDHS Field Operations Division (FOD) and the Children and Family Services Division (CFSD).

(4) "**DDSD**" means the OKDHS Developmental Disabilities Services Division (DDSD).

(5) "**Discrimination**" means knowing and willful application of a different standard to a particular foster parent that negatively affects the foster parent.

(6) "**Harassment**" means a knowing and willful course of conduct, statements, or behaviors serving no legitimate purpose directed at a foster parent that a reasonable person in the same or similar circumstances would find intimidating or substantially distressing.

(7) "**Retaliation**" means threatening a foster parent with removal of a child in the foster parent's care, harassing a foster parent, refusing or failing to place a child in a licensed or certified foster home, or disrupting a child placement in reprisal for the foster parent engaging in protected activity listed in (c)(2) of this Section.

(8) "**State office administrator**" means the FOD director, CFSD director, DDSD director, or their designees.

(c) **Scope.** A foster parent has the right, without fear of reprisal or discrimination, to lodge concerns and complaints with respect to the providing of foster care services. OCA initiates investigations of allegations that:

(1) an employee of OKDHS or a child placing agency has:

- (A) threatened a foster parent with removal of a child in the foster parent's care;
- (B) harassed a foster parent;
- (C) refused or failed to place a child in a licensed or approved foster home; or
- (D) disrupted a child placement; and

(2) for the purpose of retaliation or discrimination against a foster parent who has:

- (A) filed or attempted to file a grievance with OKDHS per OAC 340:2-3-45 or with a child placing agency, whichever is applicable; ■ 1
- (B) provided information regarding foster care services to any state official or OKDHS employee; or
- (C) testified, assisted, or otherwise participated in an investigation, proceeding, or hearing against OKDHS or a child placing agency.

(d) **Exclusions.** The provisions of this Section do not apply to:

- (1) a complaint by a foster parent regarding the result of a criminal, administrative, or civil proceeding for a violation by that foster parent of a law, rule, or contract provision, or an action taken by OKDHS or a child placing agency in conformity with the result of any such proceeding;
- (2) allegations of acts of retaliation or discrimination that occurred more than one year prior to the date of the foster parent complaint; or
- (3) allegations of a pattern of retaliation or discrimination the last incident of which occurred more than one year after the foster parent participated in protected activity.

(e) **Reportable allegations.** Section 1-9-117 of Title 10A of the Oklahoma Statutes

provides that any foster parent who has reasonable cause to believe he or she has been improperly treated by an employee of OKDHS or a child placing agency, as outlined in subsection (c) of this Section, may file a complaint with OCA. The law provides that persons making a report in good faith under this Section may not be adversely affected solely on the basis of having made such report. The law also provides that any person who knowingly and willfully makes a false or frivolous report or complaint or a report that the person knows lacks factual foundation may be subject to loss of foster parent approval or licensure status.

(f) **Reporting procedure.** Foster parents may file complaints by contacting:

- (1) the Foster Parent Hotline, 1-800-376-9729; or
- (2) the OCA offices in Oklahoma City, 1-405-525-4850 or 1-800-522-8014.

(g) **Confidentiality.** At the request of the reporter, OCA maintains confidential the identity of the reporter until the advocate general reports the results of the investigation to the Commission for Human Services (Commission) per subsection (m) of this Section. OCA maintains written records regarding the reporting source to provide information to the extent known at the time the report is received, including:

- (1) the names and addresses of the foster child and the person(s) responsible for the child's welfare;
- (2) the nature of the complaint; and
- (3) the names of the persons and agencies responsible for the allegations contained in the complaint.

(h) **Interference prohibition.**

(1) An OKDHS employee who interferes with an OCA investigation may be subject to administrative action for misconduct under OKDHS personnel policy relating to cause for disciplinary action if the employee attempts to intimidate a witness, foster parent, or other OKDHS employee, or threatens any of them with physical or mental harm.

(2) Interference includes, but is not limited to:

- (A) intimidating, harassing, or threatening a party to the investigation;
- (B) retaliation against an employee for cooperating during an OCA investigation;

(C) denial of access to clients, employees, facilities, witnesses, records, or evidence; and

(D) causing or influencing another person to provide false information during the investigation.

(i) **Initiation of OCA investigation.** Upon acceptance of a report of retaliation or discrimination against a foster parent, OCA assigns an investigator to investigate the allegations per this Section. The OCA investigation does not duplicate and is separate from any investigation mandated by the Oklahoma Child Abuse Reporting and Prevention Act or other investigations having formal notice or hearing requirements.

(j) **Rights and responsibilities of employees.** The rights and responsibilities of OKDHS employees in an OCA foster parent investigation are listed in (1) through (7) of this subsection.

(1) Employees make themselves available for interviews and accommodate the investigator in scheduling interviews.

(2) Employees provide pertinent information and respond fully and truthfully to questions asked.

(3) In addition to being interviewed, employees may submit written statements relating to the events in question.

(4) Employees may seek advice concerning their rights and responsibilities from other parties within or outside OKDHS.

(5) Employees prepare written statements or reports relevant to the investigation upon request.

(6) Employees, who reasonably believe answers to official inquiries regarding the events in question may incriminate them in a criminal prosecution, may decline to answer those questions.

(7) Employees interviewed do not discuss their interviews with anyone outside of OCA.

(k) **Access.** OCA at all times is granted access to any foster home that is approved, authorized, or funded by OKDHS or a child placing agency.

(l) **Investigation procedures.** Investigations are conducted per OAC 340:2-3-36

unless otherwise provided in this Subchapter.

(1) **Notifying administrators and accused caretakers.** The assigned investigator notifies the applicable administrator or state office administrator of the investigation and arranges for document production, site visits, and interviews. The administrator or state office administrator who employed any accused employee at the time of an alleged incident promptly informs the accused employee of:

(A) the name and telephone number of the OCA investigator;

(B) the investigative process;

(C) the employee's rights and responsibilities relating to the investigation described in subsection (j) of this Section, using Form 15IV006E, Investigations of Foster Parent Retaliation Complaints - Rights and Responsibilities of Accused OKDHS Employees, a copy of which is provided to the OCA investigator; and

(D) the nature of the allegation(s) made against the employee; however, at this time the employee is not provided the details of the allegations or the substance of the evidence.

(2) **OCA access to evidence.** Applicable administrators and state office administrators facilitate and cooperate with the OCA investigation by:

(A) providing access to requested information;

(B) producing relevant documents, files, and records, accompanying the investigator on foster home visits when requested by OCA; and

(C) providing access to accused employees and others who have knowledge of relevant information.

(3) **Document review and interviews.** The OCA investigator conducts a prompt investigation per OAC 340:2-3-36(h) through (j) unless otherwise provided in this Section.

(4) **Exit notice.** The OCA investigator provides an exit notice, either electronically or by telephone, to the applicable administrator or state office administrator when the information gathering portion of the investigative process is completed. The investigator informs the administrator or state office administrator that a written report is forthcoming. Preliminary findings are not required.

(5) **The written investigation report.** After completing the information gathering portion of the investigative process, the OCA investigator prepares a written report containing:

(A) the allegations investigated, including the date, time, and location of the alleged incidents, the date the allegation was reported to OCA, and the assigned OCA case number;

(B) a list of the involved parties, their titles and role in the matter, whether they were interviewed and, if so, when and where;

(C) the applicable definition of the type of misconduct at issue, such as discrimination, retaliation, or both;

(D) whether the foster parent engaged in an activity listed in (c)(2) in this Section and, if so, a description of the activity;

(E) the findings in accordance with OAC 340:2-3-36(m);

(F) an explanation of the basis for the finding;

(G) in cases involving a confirmed finding, a summary of relevant information obtained during each interview conducted during the investigation;

(H) any areas of concern relating to the allegations that were identified during the investigation regarding practices or procedures of OKDHS or the child placing agency;

(I) a list of relevant documents and records reviewed during the investigation; and

(J) a list of attachments to the report.

(6) **Dissemination of the OCA investigative report.**

(A) In cases involving allegations against an OKDHS employee, the advocate general submits a copy of the final OCA investigation report to the OKDHS Director and the state office administrators.

(B) In cases involving an employee of a child placing agency, the advocate general sends a copy of the OCA report to the administrator of the agency and the appropriate state office administrator. If the administrator of the child placing

agency is the subject of the report, the report is sent to the agency's board of directors.

(C) OCA sends the foster parent and each accused OKDHS employee a letter that summarizes the allegation and states the OCA finding.

(D) All parties receiving copies of the investigative reports are bound by the confidentiality provisions of Section 1-9-112 of Title 10A and Section 10-110 of Title 43A of the Oklahoma Statutes.

(m) **OKDHS Director's request for review by the Grievance and Abuse Review Committee (GARC).** Within 20 calendar days of receipt of a final OCA investigative report, the OKDHS Director may request GARC to review the allegations and submit a report of its findings per OAC 340:2-3-63.

(n) **State office administrator's response to a confirmed finding.**

(1) When a state office administrator receives a copy of an OCA investigation report containing a finding that an OKDHS employee has engaged in retaliation or discrimination against a foster parent, within 30 calendar days of receipt of the OCA report the state office administrator notifies the advocate general in writing of any personnel action taken or to be taken with regard to the employee, and any corrective action taken or to be taken regarding areas of concern noted in the OCA report.

(2) If the OKDHS Director has referred the matter for review by GARC per subsection (l) of this Section, the state office administrator's response is due within 45 calendar days of GARC's written report to the OKDHS Director.

(3) When an administrator of a child placing agency receives a copy of an OCA investigation report containing a finding that an employee of the child placing agency has engaged in retaliation or discrimination against a foster parent, within 30 calendar days of receipt of the report the administrator notifies the advocate general in writing of any personnel action taken or to be taken with regard to each employee named in the report as having engaged in misconduct, and the status of any areas of concerns noted in the report.

(4) The advocate general reports to the Commission confirmed allegations and corrective action taken.

**INSTRUCTIONS TO STAFF 340:2-3-38**

**Revised 7-1-07**

- 1. A grievance is considered filed when a foster parent has verbally or in writing communicated a complaint to an Oklahoma Department of Human Services (OKDHS) employee that is not resolved. [OAC 340:2-3-45(c)]**