
POLICY TRANSMITTAL NO. 06-25	DATE: JULY 25, 2006
FAMILY SUPPORT SERVICES DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF PLANNING, POLICY & RESEARCH

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:5-5-3.

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

340:5-5-3 is revised to change the completion time frame for an Adult Protective Services (APS) investigative report from 30 calendar days to 60 calendar days for all allegations except self-neglect to provide consistency between Oklahoma Department of Human Services programs while still providing for immediate needs of APS clients to be addressed timely.

Original signed on 5-19-06

Mary Stalnaker, Director
Family Support Services Division

Sharon Neuwald, Co-Interim Administrator
Office of Planning, Policy & Research

WF # 06-05 (NAP)

INSTRUCTIONS FOR FILING MANUAL MATERIAL

OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following a “DHS” number, such as personnel policy at DHS:2-1 and personnel rules at OAC 340:2-1. The “340” is the Title number that designates DHS 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, DHS 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, DHS: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) 521-3611.

REMOVE

340:5-5-3

INSERT

340:5-5-3, pages 1-10, revised 8-1-06

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

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

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

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

(3) **Visits to and interviews with the vulnerable adult.** Each APS investigation includes at least one visit and private interview with the vulnerable adult, and may include as many as are necessary to reach a conclusion and determine what, if any, protective services are needed. ■ 3

(4) **Consultation with others.** Other people who have or can reasonably be expected to have pertinent knowledge about the alleged victim's (AV's) circumstances are interviewed during the investigation, including any alleged perpetrator of maltreatment.

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

(B) The AV's permission is not required for these contacts. ■ 4

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

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

(7) **Determining the adult's decision-making capacity.** OKDHS is mandated by Section 10-106.C of Title 43A of the Oklahoma Statutes to determine a vulnerable

adult's capacity to consent to receive services, especially with regard to the need for involuntary services. Each investigation includes an evaluation of the vulnerable adult's decision-making capacity.

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

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

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

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

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

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

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

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

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

(B) services that are identified as needed are available through OKDHS or in the community, and the sources and manner in which they can be provided. Options are explored with the vulnerable adult; ■ 5

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

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

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

(F) the vulnerable adult desires the services. ■ 6

(9) Completion of investigative report. The APS specialist, within:

(A) 30 calendar days of the date the report is received, completes necessary interviews and assessments including identification of any immediate service needs; and

(B) 30 calendar days of the date the report is received when the allegation involves self-neglect:

(i) completes all final documentation;

(ii) submits a report to the local district attorney; and

(iii) makes a determination of substantiated or unsubstantiated based on the definitions of terms in OAC 340:5-1-6; or ■ 6,7, & 8

(C) 60 calendar days of the date the report is received when the allegation involves a third party perpetrator:

(i) completes all final documentation;

(ii) submits a report to the local district attorney; and

(iii) makes a determination of substantiated or unsubstantiated based on the definitions of terms in OAC 340:5-1-6. ■ 6,7, & 8

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

(A) On cases not requiring court-ordered involuntary services, follow-up needs are determined on a case-by-case basis.

(i) If the supervisor and APS specialist determine no follow-up is necessary, that decision and the reasons for it are documented in the case record.

(ii) If the supervisor and APS specialist determine follow-up is necessary, that decision and the reasons for it are documented in the case record, along with the plan for completing follow-up, the findings of the follow-up, and any action necessary in response to those findings.

(B) When the contact is made by phone or other means than face-to-face visit, supervisory approval of the means of contact is documented in the case record, along with the reasons justifying contact other than face-to-face.

(C) For referrals that resulted in a client receiving involuntary services, OKDHS is responsible for assuring basic needs for safety and security are met as required by the court. The APS specialist monitors the delivery of court-ordered protective services and continues to assess the need for additional services determined by the changing needs of the client. At least one follow-up visit is made at 30 days regardless of whether OKDHS continues to hold temporary guardianship.

- (i) If the client's situation is stable or improving after 30 days and OKDHS no longer holds guardianship, the case is closed.
- (ii) If OKDHS continues to hold guardianship after 30 days, a follow-up visit to the client is required at least once each 30 days for the duration of the temporary guardianship.
- (iii) If the client's situation is deteriorating at any time during the follow-up period, the service plan is reassessed and changed as needed with the concurrence of the court.
- (iv) Follow-up visits to clients receiving involuntary services may be made as often as needed to comply with APS specialist guardianship responsibilities and to monitor the client's situation.
- (v) If an out-of-home placement is used as a temporary or long term solution to identified needs, the APS specialist has regular contact with the client for the duration of the court ordered temporary guardianship. The frequency of this contact is determined by the APS specialist and supervisor's determination of the specific client situation and the availability of an independent objective third party to provide follow-up and notification to the APS specialist. Visits to the client are made at least once every 30 days while the client is under APS guardianship. Information from follow-up visits is documented in the case record and made available to the court on review of the guardianship. Follow-up visits may be made as frequently as the APS specialist and supervisor determine they are needed, based on an individual client's situation. For clients placed:
 - (I) in medical facilities such as geriatric psychiatric units or medical hospital for care, the worker follows-up with the client's assigned social worker;
 - (II) in group homes, residential care facilities, and assisted living centers, the APS specialist may contact other professionals not associated with the facility who provide treatment or services to the client for follow-up information every 30 days or more often as indicated;
 - (III) at any facility owned or operated by OKDHS, face-to face-visits are made every 30 days with interim contacts with the social work staff or more often as indicated; and

(IV) at any type of nursing home, the APS specialist visits the client, at least once every two weeks during the first month of placement to check for changes in the client's condition, such as injuries, signs of over-medication, and cognitive state. Concerns are discussed with the nursing home administrator or director of nursing, and the APS supervisor. After the first month, the APS specialist visits the client at least once every 30 days, reviews the nursing home charts and incident reports, and discusses care needs with the staff and client's family, if available.

(D) The APS specialist may determine as a result of follow-up contacts that further placement options need exploring. This may be the result of inappropriate action on the part of the provider, current information about the facility's ability to provide care for the client, or the facility's request to relocate the client. Placement alternatives are determined in accordance with this Section and approved by the supervisor, county director, and the area APS field liaison. The court appointed attorney for the client and the family is notified of the problems and alternatives that have been developed. A written report of the change of placement is submitted to the court, with a copy of the motion to the client's family and attorney of record.

(E) Follow-up contact with clients remaining at home in temporary guardianship is made frequently with a minimum of every 30 days to assure that client safety and needs are being met by the established service plan. Modifications are made as needed to the service plan as well as provision of services by providers. The quality of care and the method of contact are evaluated on a case-by-case basis depending on the individual needs of the specific client including a face-to-face visit every 30 days. Reports are submitted at the request of the court or a minimum of every 30 days.

(F) In the event the client is placed in a facility out-of-county, the APS supervisor or designee immediately contacts the APS supervisor in the county of placement to notify the receiving county of the placement and that follow-up activities pursuant to this paragraph must be provided by the receiving county.

(i) The APS specialist in the county where the client is residing is the worker designated to provide follow-up services for temporary guardianship cases. That APS specialist documents contacts and required information as set forth in this subparagraph and sends it to the county of jurisdiction once a month.

(ii) The resident county APS specialist is responsible for all issues that require written consent and other problems or concerns and acts in

coordination with the APS specialist in the county of court jurisdiction for reporting to the court as required by the court order with a minimum of every 30 days. All actions are discussed with APS specialist in the county of court jurisdiction.

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

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

(II) The area APS field liaison, State Office APS, and attorneys for the OKDHS Legal Division are consulted as needed for assistance in determining the best course of action.

INSTRUCTIONS TO STAFF

- 1. Each Adult Protective Services (APS) supervisor is responsible for determining, in conjunction with each county director and local law enforcement agencies, the method and frequency of notifying the law enforcement agencies of APS referrals within their jurisdictions.**
- 2. (a) To accomplish this mandate, existing Oklahoma Department of Human Services (OKDHS) records are reviewed by the APS specialist. The reporter, if known, other professionals involved with the vulnerable adult, and involved friends, neighbors, or service providers may provide information to identify the client's caretaker, guardian, and next of kin. For purposes of this requirement:
 - (1) "caretaker" is the vulnerable adult's primary caretaker;**
 - (2) "guardian" is a guardian, limited guardian, or conservator appointed under Title 30 of the Oklahoma Statutes. Persons holding power of attorney or similar surrogate decision-making documents are not guardians; and**
 - (3) "next of kin" of the vulnerable adult is the adult's spouse, closest adult child, closest sibling, or closest adult grandchild, or, in the case of younger vulnerable adults, the adult's parent.****

- (b) If the vulnerable adult retains the capacity to consent to voluntary services, and does not wish for a caretaker or next of kin to receive notification of the investigation, OKDHS abides by the wishes of the vulnerable adult.
- (c) When the caretaker, guardian, and next of kin are identified, a copy of "APS Questions and Answers," OKDHS Publication Number 99-07, is provided to each of them and to the vulnerable adult.
3. This requirement includes the initial visit, a follow-up visit to the home if the alleged victim (AV) is in the hospital or other place at the time of the referral, and any other visits and interviews with the vulnerable adult.
- (1) During each visit with the AV, the adult's circumstances are observed and documented in writing in the case record.
 - (2) The law requires at least one private interview with the AV.
4. These consultations, known as collateral contacts, are of extreme importance in determining the AV's current circumstances, expressed desires, habitual practices, and recent changes.
- (1) The AV's caretaker, guardian, and next of kin are considered collateral contacts if they are identified.
 - (2) Any collateral contacts about which the APS specialist is unsure are staffed with the specialist's supervisor before proceeding.
 - (3) The alleged perpetrator (AP) is interviewed in all referrals in which a perpetrator is identified. The AP is interviewed after other contacts have been interviewed.
 - (4) The APS specialist coordinates with appropriate law enforcement officials regarding interviewing APs who are also or may be the subject of a criminal investigation.
 - (5) An investigation is considered complete when a finding is reached, the Form APS-2, Adult Protective Services Report of Investigation, is submitted to the district attorney (DA), and the computer documentation of the finding is done.

- (6) At any time it appears that criminal wrongdoing may have occurred, the APS specialist discusses the case with local law enforcement, the DA, or both before interviewing the AP.
- (7) All collateral contacts and attempts at contact are documented in the case record.
5. APS specialists in each local office develop a coordinated working relationship with the local Oklahoma State Department of Health, mental health facilities, DA's office, law enforcement agencies, and other public or private agencies which may be helpful in facilitating the investigation process or in providing needed services to clients.
6. This evaluation is the basis for determining a referral substantiated or unsubstantiated, and for developing an individualized service plan for the client.
- (1) The APS specialist reviews all evidence gathered during the investigation, including all collateral contacts made and all records reviewed to assess their usefulness in making a finding on the referral.
- (2) If more than half of the evidence indicates maltreatment of the vulnerable adult is likely to have occurred, a finding of substantiated is entered.
- (3) If less than half of the evidence indicates maltreatment is likely to have occurred, a finding of unsubstantiated is entered.
- (4) Although intuition and instinct play a large part in the investigative process, they play no part in the case finding. Even a very strong feeling that maltreatment occurred, if not supported by sufficient evidence, must result in a finding of unsubstantiated.
- (5) A service plan is developed with the client and involved family and caretakers in all cases where service needs are indicated.
7. The county director is responsible for monitoring timely completion of APS investigations within 60 days and regularly discussing with the APS supervisor referrals with investigations pending over 90 days.

- 8. Service provision and follow-up activities often extend beyond the 60 days based on the individual client's needs and service plan. These ongoing activities are not considered in determining whether the investigation was timely, as long as a substantiation decision has been reached and the Form APS-2 submitted to the DA's office.**