
POLICY TRANSMITTAL NO. 04-36	DATE: JUNE 15, 2004
FAMILY SUPPORT SERVICES DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF PLANNING, POLICY & RESEARCH

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:5-1-6; 5-3-2; 5-3-4 through 5-3-6; 5-5-2 through 5-5-4; 5-5-6; 340:5-7, Table of Contents; and 5-7-1 through 5-7-6.

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

OAC 340:5-1-6 is amended to remove "causing or permitting" from the definition of neglect.

OAC 340:5-3-2 Instructions to Staff are amended to add Adult Protective Services (APS) priority guidelines for statewide hotline staff.

OAC 340:5-3-4 is amended to add language requiring the referral of reports of alleged maltreatment of a Greer Center resident by an employee of the facility to the Office of Client Advocacy.

OAC 340:5-3-5 Instructions to Staff are amended to add the fax number for Long Term Care Investigations and update references to the Domestic Abuse Reporting Act.

OAC 340:5-3-6 is amended to clarify rules for APS referrals involving domestic violence.

OAC 340:5-5-2 is amended to change language in the time frame for initiating investigations of referrals of maltreatment from 72 hours to three working days of receipt by the assigned APS unit.

OAC 340:5-5-3 is amended to simplify follow-up planning and no longer require follow-ups on all substantiated cases where the client is receiving services.

OAC 340:5-5-4 is amended by adding language regarding referrals involving other licensed or certified individuals and where referrals are sent involving a residential care facility, an assisted living facility, and continuum of care. Instructions to staff are revised to add contact information for the Oklahoma State Department of Health and the Oklahoma State Board of Nursing.

OAC 340:5-5-6 is amended to change the policy references, add language to include court related services, and change "incapacitated" to "vulnerable." Instructions to staff are revised by changing incapacitated person to vulnerable adult.

OAC 340:5-7-1 Instructions to staff concerning where and how a summary of the final OKDHS investigative report is routed have been moved to OAC 340:5-7-5.

OAC 340:5-7-2 is added to address program coordination.

OAC 340:5-7-3 is added regarding the handling of complaints concerning Long Term Care (LTC) investigators and the processing required to submit them.

OAC 340:5-7-4 is added regarding the screening of Long Term Care Investigations (LTCI) reports.

OAC 340:5-7-5 is added regarding time frames for initiating and completing LTC investigations.

OAC 340:5-7-6 is added to address the elements of a LTC investigation.

Original signed on 6-10-04

Mary Stalnaker, Director
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WF # 04-06 (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

INSERT

340:5-1-6	340:5-1-6, pages 1-5, revised 6-7-04
340:5-3-2	340:5-3-2, pages 1-3, revised 6-7-04
340:5-3-4	340:5-3-4, pages 1-2, revised 6-7-04
340:5-3-5	340:5-3-5, pages 1-2, revised 6-7-04
340:5-3-6	340:5-3-6, pages 1-6. revised 6-7-04
340:5-5-2	340:5-5-2, 1 page only, revised 6-7-04
340:5-5-3	340:5-5-3, pages 1-7, revised 6-7-04
340:5-5-4	340:5-5-4, pages 1-6, revised 6-7-04
340:5-5-6	340:5-5-6, pages 1-8, revised 6-7-04
340:5-7, Table of Contents	340:5-7, Table of Contents, 1 page only, revised 6-7-04
340:5-7-1	340:5-7-1, 1 page only, revised 6-7-04
-----	340:5-7-2, 1 page only, issued 6-7-04
-----	340:5-7-3, 1 page only, issued 6-7-04
-----	340:5-7-4, 1 page only, issued 6-7-04

REMOVE

INSERT

340:5-7-5, pages 1-2, issued 6-7-04

340:5-7-6, 1 page only, issued 6-7-04

340:5-1-6. Definitions

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

"Abuse" means causing or permitting the:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Neglect" means:

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

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

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

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

(A) written revocation of the principal;

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

(C) death of the principal;

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

(E) order of the court; or

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

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

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

(A) identification of adults in need of protective services;

(B) provision of medical care for physical or mental health needs; and

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

"Sexual abuse" means:

(A) oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult with any other object by a caretaker or other person providing services to the vulnerable adult;

(B) for the purpose of sexual gratification, the touching, feeling, or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or

(C) indecent exposure by a caretaker or other person providing services to the vulnerable adult.

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

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

"Temporary guardian" means a person or other entity appointed by the court under Title 43A of the Oklahoma Statutes with authority only to consent on behalf of an incapacitated adult to the provision of protective services determined necessary to remove conditions creating an emergency need and other services approved by the court. A temporary guardian serves in that capacity only until the expiration of the order appointing him or her.

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

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

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

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

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

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

INSTRUCTIONS TO STAFF

1. (a) **Referrals.** The hotline staff accepts all information and records it on Form APS-1, Adult Protective Services Referral, or its electronic equivalent, including the name of the reporter, if possible, and **e-mails** appropriate Adult Protective Services (APS) staff immediately. APS staff are identified from a list provided by APS. Anonymous reports are handled in the same manner as those made by a person who identifies himself or herself. The original Form APS-1 or its electronic equivalent is forwarded to the local office within 24 hours by **e-mail** or fax.

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

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

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

(3) hotline staff is unable to decide whether the situation reported falls within the priority guidelines; or

(4) the call comes in right before or during a holiday weekend and it is likely that an APS specialist cannot meet the three working days initiation time frame if the supervisor is notified the next working day.

(c) Priority guidelines for hotline staff. When a call is received that meets the priority guidelines in (1) through (5) of this Instruction, hotline staff asks the reporter if 911 or the local emergency services number has been called. If local emergency services have not been called, hotline staff tells the reporter to call

911 or other local number if immediate help is needed. Hotline staff tell the APS supervisor whether the reporter called local emergency services or was asked to call. APS situations are considered priority referrals when:

(1) abuse is occurring at the time of the referral;

(2) immediate medical attention is needed to treat conditions that could result in irreversible physical damage or death, such as unconsciousness, acute pain, severe respiratory distress, or suspected gangrene;

(3) there is threat of suicide of the alleged victim (AV);

(4) there is threat of homicide to the AV;

(5) there is reason to believe the AV or alleged perpetrator (AP) is exhibiting psychotic or bizarre behavior which places the AV in immediate danger;

(6) sexual or physical or the threat of such abuse is reported and the AP currently has access to the AV;

(7) the report indicates sexual abuse that occurred within the last 72 hours;

(8) the caregiver refers self for fear he or she may harm AV;

(9) there is reason to believe the AP may flee the investigation and move AV to an unknown location;

(10) the AV needs total care and has been left without a caregiver. Examples include: the caregiver is hospitalized, deceased, or abandons the AV;

(11) the AV lacks basic physical necessities severe enough to result in freezing, serious heat stress, or starvation;

(12) there is neglect or self-neglect whether AV is without essentials for daily living or critically needed supervision, and AV's impaired judgment or physical condition places AV in immediate danger;

(13) there are visible injuries, bruising to vital areas, or other possible life threatening conditions;

(14) there is sudden deterioration in AV's condition, and AV may be in imminent danger;

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

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

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

(d) If a referral from the hotline is made to the incorrect county, the APS specialist receiving the report is responsible for notifying the appropriate APS staff.

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

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

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

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

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

340:5-3-4. Reports under the jurisdiction of agencies other than local APS

Some reports of alleged maltreatment of vulnerable adults are not investigated by local Adult Protective Services (APS) staff.

(1) **Reports of alleged victims who are residents of Northern Oklahoma Resource Center of Enid (NORCE), Greer Center, or Southern Oklahoma Resource Center (SORC) of Pauls Valley, or former residents of Hissom Memorial Center.** Reports which allege a resident of NORCE, Greer Center, or SORC has suffered maltreatment by an employee of the facility, as well as reports which allege maltreatment of a former resident of Hissom Memorial Center by a current caretaker, are referred to the Oklahoma Department of Human Services (OKDHS) Office of Client Advocacy (OCA). ■ 1

(2) **Alleged victims of maltreatment in hospital settings.** Reports of alleged maltreatment of vulnerable adults who are receiving services in medical hospitals, rehabilitation facilities, or private psychiatric hospitals by staff of the facility are referred to the Oklahoma State Department of Health, Protective Health Services, Medical Facilities Service. ■ 2

(3) **Alleged victims of maltreatment by staff of the Oklahoma Department of Mental Health and Substance Abuse Services (DMHSAS) and its contracted providers.** Reports of alleged maltreatment of a vulnerable adult by staff of a public or private community mental health agency are referred to the Advocacy Division of DMHSAS. If DMHSAS declines to conduct an investigation, the report may be referred back to the local APS office. ■ 3

(4) **Reports alleging maltreatment of residents by staff of nursing facilities.** Reports of alleged maltreatment of nursing facility residents are sent to the Family Support Services Division, APS Unit, Long Term Care Investigations Section. These reports are also sent to the Oklahoma State Department of Health, Protective Health Services. ■ 4

(5) **Reports involving local, state, or federal correctional facilities.** Reports of abuse, neglect, or exploitation of residents by staff of state or federal public hospitals, jails, prisons, or similar facilities are referred to the facility's regulatory department for investigation and to the local district attorney.

(6) **Reports involving deceased alleged victims.** Reports of maltreatment of persons who are already deceased at the time the report is made are not accepted by APS. Reporters are referred to the state or local Office of the Medical Examiner,

local law enforcement, or, if the death occurred in a nursing facility, to the Medicaid Fraud Control Unit in the Office of the Attorney General.

INSTRUCTIONS TO STAFF

- 1. When a report regarding current residents of Northern Oklahoma Resource Center of Enid (NORCE), the Greer Center, or Southern Oklahoma Resource Center (SORC) or a former resident of Hissom is received, all pertinent information is secured on Form APS-1, Adult Protective Services Referral, or its electronic equivalent and immediately referred to the Office of Client Advocacy (OCA), by fax, 405-525-4855 or e-mail, *oca.intake@OKDHS.org. If a report is received after regular business hours, the complaint is referred to the OCA on-call ombudsman, 405-203-6056. A copy of the report is sent to Developmental Disabilities Services Division. In some instances of self-neglect involving Hissom class members, the OCA may refer a complaint back to the local Adult Protective Services (APS) staff for the county where the alleged victim resides.**
- 2. Hospital reports are telephoned to Oklahoma State Department of Health (OSDH), Protective Health Services, Medical Facilities Service, 405-271-6576.**
- 3. Reports involving Oklahoma Department of Mental Health and Substance Abuse Services (DMHSAS) operated or contracted facilities or providers are telephoned to the DMHSAS Advocacy Division at 405-573-6605 or toll free, 1-866-699-6605.**
- 4. Nursing facility reports are e-mailed, faxed, or telephoned to the Family Support Services Division, APS Unit, Long Term Care Investigations (LTCI). The LTCI telephone number is 405-521-3440; fax is 405-522-3463.**

340:5-3-5. Multiple jurisdictions

Some reports which are appropriate for Adult Protective Services (APS) intervention are also required to be sent to other agencies.

(1) Reports which are sent to Oklahoma State Department of Health (OSDH).

Reports alleging maltreatment of vulnerable adults are accepted and screened by APS but are also sent to OSDH, Protective Health Services, for residents of:

(A) residential care facilities;

(B) assisted living facilities; and

(C) nursing facilities when the report is of self-neglect or maltreatment by a person not employed by the facility. ■ 1

(2) Reports which are sent to law enforcement. Reports alleging illegal activity or situations which may be dangerous for an APS specialist are referred to local law enforcement. A referral of this type does not relieve APS of responsibility for assessing the need for protective services in such situations. ■ 2

(3) Reports involving substance abusers and persons with a mental illness.

Reports regarding alleged substance abusers or persons with a mental illness are submitted to an APS supervisor for screening and may be appropriate for APS investigation. If upon investigation the APS specialist finds that the client's primary problem is that of substance abuse or dependency, or that the client is in need of mental health treatment, the APS specialist assists the client in obtaining appropriate mental health treatment. The APS specialist may assist law enforcement officers when requested by providing behavioral assessments necessary to obtain involuntary mental health treatment, such as third party affidavits. Oklahoma law gives the Oklahoma Department of Mental Health and Substance Abuse Services (DMHSAS) primary responsibility for the mentally ill and substance abusers. DMHSAS actively treats seriously mentally ill persons until their condition is stabilized. Community mental health centers administered by or under contract to DMHSAS provide recommended aftercare services to patients who are discharged from state mental hospitals. ■ 3

INSTRUCTIONS TO STAFF

1. **(a) When a report is received in the county office alleging that a resident of a residential care or assisted living facility, licensed or unlicensed, is suffering maltreatment, or that a resident of a nursing facility is suffering maltreatment**

from anyone not on the facility's staff or self-neglect, the person accepting the report secures all pertinent information on Form APS-1, Adult Protective Services Referral, or its electronic equivalent and submits it to the appropriate Adult Protective Services (APS) supervisor or designee for screening. In addition, in accordance with Article 8, Section 1-830 of Title 63 of the Oklahoma Statutes, the person accepting the report also telephones, faxes, or e-mails a summary of the referral to Oklahoma State Department of Health (OSDH), Protective Health Services. The telephone number is 405-271-6868, toll free 1-866-239-7533; fax 405-271-4172; and e-mail address is LTCComplaints@health.state.ok.us.

(b) Final investigative findings on any of these reports accepted for APS investigation are also sent in summary form to OSDH, Protective Health Services.

2. Local law enforcement is notified when reports contain allegations of illegal drug manufacture or sale, dangerous animals, guns, and other situations that present a potential serious danger to an APS specialist.
3. APS specialists are familiar with current state mental health laws as well as local law enforcement policies regarding voluntary and involuntary treatment for mentally ill persons and substance abusers. APS specialists are knowledgeable about mental health professionals and resources available in their communities in order to appropriately utilize available services for their clients.

340:5-3-6. Screening APS reports

(a) **Responsibility for screening reports.** Adult Protective Services (APS) supervisors are responsible for screening reports and either accepting them as APS referrals or classifying them as Information and Referral. When a request is accepted as an APS referral, the supervisor determines whether an emergency response is indicated, whether the referral is employee related, and which APS specialist is assigned the referral. ■ 1

(b) **Reports involving domestic violence.** APS situations are often forms of domestic violence. Reports received alleging maltreatment of an adult by a spouse or other family or household member are considered protective services requests if the alleged victim is vulnerable as defined in OAC 340:5-1-6. ■ 2

(c) **Reports involving OKDHS employees or their families.** Specific procedures are followed when a report of maltreatment is received which involves an employee of the Oklahoma Department of Human Services (OKDHS). ■ 3

INSTRUCTIONS TO STAFF

1. (a) **The Adult Protective Services (APS) supervisor uses the items in (1) through (6) of this Instruction as screening criteria for reports.**

(1) Is the alleged victim of maltreatment reported to be a vulnerable adult?

(2) Does the situation described appear to potentially fall into one of the categories of abuse, neglect, self-neglect, exploitation, sexual abuse, sexual exploitation, or verbal abuse?

(3) Does the setting where the maltreatment is alleged to have occurred fall into the jurisdiction of the community APS program?

(4) Does the situation as reported appear to potentially require emergency intervention?

(5) The supervisor determines whether the situation presents a potential, immediate threat to the APS specialist or client. If the potential threat exists, emergency personnel are contacted and may precede or accompany the APS specialist to the home. APS specialists are not first responders and do not knowingly insert themselves into dangerous situations. APS specialists may receive referrals from emergency personnel or discover situations requiring emergency personnel at the

initial home visit and may facilitate the provision of needed services as appropriate.

(6) The response time for APS reports that are not considered an emergency is three working days. APS situations are considered emergency response referrals when:

(A) abuse is occurring at the time of the referral;

(B) immediate medical attention is needed to treat conditions that could result in irreversible physical damage or death, such as unconsciousness, acute pain, severe respiratory distress, or suspected gangrene;

(C) there is threat of suicide of the alleged victim (AV);

(D) there is threat of homicide to the AV;

(E) there is reason to believe the AV or alleged perpetrator (AP) is exhibiting psychotic or bizarre behavior that places the AV in immediate danger;

(F) sexual or physical or the threat of such abuse is reported and the AP currently has access to the AV;

(G) the report indicates sexual abuse that occurred within the last 72 hours;

(H) the caregiver refers self for fear he or she may harm AV;

(I) there is reason to believe the AP may flee the investigation and move AV to an unknown location;

(J) the AV needs total care and has been left without a caregiver. Examples include: the caregiver is hospitalized, deceased, or abandons the AV;

(K) the AV lacks basic physical necessities severe enough to result in freezing, serious heat stress, or starvation;

(L) there is neglect or self-neglect whether AV is without essentials for daily living or critically needed supervision, and AV's impaired judgment or physical condition places AV in immediate danger;

(M) there are visible injuries, bruising to vital areas, or other possible life threatening conditions;

(N) there is sudden deterioration in AV's condition, and AV may be in imminent danger;

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

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

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

(b) If there is insufficient information in the report to immediately determine the AV meets the definition of vulnerable adult, the APS supervisor attempts to determine vulnerability.

(1) Information on the Oklahoma Department of Human Services (OKDHS) computer system may be viewed, and the supervisor or designee may contact the reporter for additional information, to assist in this determination. Supervisors must be familiar with the definition of vulnerable adult, and remember that it is not necessary to have a formal determination of disability to consider an adult vulnerable.

(2) Unless it is clear that the AV is not a vulnerable adult, the report may not be screened to Information and Referral (I & R) solely based on lack of vulnerability.

(c) The APS supervisor considers the definitions of the types of maltreatment. If the alleged situation fits at least one of the definitions, it is accepted for investigation. If the situation does not fit one of the definitions, the report is screened as I & R and the reporter, if known, is contacted to discuss other alternatives for handling the issue.

(d) If a report contains allegations of serious problems that could result in death or serious physical harm to the AV, the report is screened as requiring immediate action, and is immediately communicated to the assigned Adult Protective Services (APS) specialist. In case of these emergencies, APS staff are required to carry active pagers at all times.

(e) If the setting is not in a jurisdiction APS investigates, as described in OAC 340:5-3-4, the reporter, if known, is contacted to advise the reporter the name of the agency to which APS will forward the report.

2. APS specialists are familiar with the provisions of the Protection from Domestic Abuse Act, Section 60, and the Domestic Abuse Reporting Act, Sections 40.5 through 40.7 of Title 22 and Section 150.12B of Title 74 of the Oklahoma Statutes.

(1) In cases where the AV does not meet the APS definition of vulnerable adult, the APS specialist refers the AV to the local court clerk or other appropriate service provider for assistance in obtaining legal advice, action, or both, and services.

(2) If the report includes an allegation of abuse or neglect of a person under 18 years of age, the APS specialist immediately makes a referral to Child Protective Services (CPS), and coordinates the investigation with the Children and Family Services Division (CFSD) worker.

3. (a) Additional screening criteria apply upon receipt of a report involving OKDHS employees or their immediate or extended family members. It is never appropriate for anyone to discuss the report with the involved employee outside of the investigative process, particularly if the employee is the AP. Notifying an employee of a pending investigation is a violation of the confidentiality provisions of the APS law, Section 10-110 of Title 43A of the Oklahoma Statutes. In addition to the basic screening criteria, the APS supervisor determines:

(1) the relationship of the AV to the OKDHS employee;

(2) whether the employee is the AP; and

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

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

(1) This potential may be determined to exist if, through acquaintance with the employee, the APS specialist or supervisor could possibly be accused of favoring the employee's wishes or benefiting the employee in any way through the investigation.

(2) In some cases in which the employee is a family member but not an AP or actively involved in the care of the AV, there may be no question of conflict of interest and the referral may be investigated without being transferred.

(c) If the potential exists, the APS field liaison coordinates with county directors an assignment to a different supervisory group. If an out-of-area assignment of the referral is necessary, the area director or designee coordinates the action with the other involved area director or designee as well as county directors of the sending and receiving counties. The Family Support Services Division (FSSD), APS Unit, may be consulted at any time in determining the appropriate disposition of a report involving an OKDHS employee. After a decision is reached regarding assignment of the referral, the involved county directors are both notified, as well as the APS supervisor for the receiving county.

(1) Out-of-group assignment is appropriate when the local employee who is involved in the report is not well known to other APS staff in the area.

(2) Out-of-area assignment is appropriate when the local employee involved in the report is well known over a large portion of the area, and no APS staff in the area could investigate without the potential appearance of conflict of interest.

(d) If the allegation involves possible violations of the employee's professional position, a recommendation is made to refer the report to the Office of the Inspector General (OIG) of OKDHS on Form OIG-1, Referral Form, or the electronic equivalent. If the referral is accepted by OIG, local staff cooperate with OIG as requested. If OIG does not accept the referral, the area director or

designee follows the procedure for assigning a complaint that involves an employee.

(e) In an emergency situation requiring an immediate response, the county of residence resolves the emergency and then follows the procedure to have the case reassigned out-of-county if necessary.

(f) The area director is notified immediately of substantiated referrals in which the employee is named as perpetrator, and is responsible for notifying FSSD, APS Unit, of any training issues that are identified as a result of the findings.

(g) Case records on APS investigations involving OKDHS employees are maintained in the executive files section of the local office where the investigation was conducted or, at the discretion of the county director, sent to FSSD, APS Unit, for storage.

340:5-5-2. Initiating investigations

An Adult Protective Services (APS) investigation is initiated by a visit to the vulnerable adult who is the alleged victim at the adult's home or other place of residence. ■ 1 through 4

(1) Time frame for initiating investigations.

(A) Investigations of referrals of maltreatment are initiated as soon as possible within three working days of receipt of the referral by the assigned APS unit.

(B) In the case of an emergency situation when immediate action may be required, the investigation is initiated as soon as possible within four hours of receipt. ■ 5 & 6

(2) **Denial of access to the alleged victim.** If the APS specialist is denied entry into the residence of the alleged victim, or is denied a private interview with the alleged victim, the Oklahoma Department of Human Services may petition the court for an order allowing entry or access.

INSTRUCTIONS TO STAFF

- 1. Prior to the Adult Protective Services (APS) specialist making the initial visit to the vulnerable adult, the supervisor discusses with the APS specialist any safety issues identified in the acceptance and screening of the report, and together they make arrangements for safety concerns to be addressed both before and during the visit.**
- 2. If the vulnerable adult is in the hospital or other temporary residence at the time of the referral, the initial visit is made to that location.**
- 3. The initial home visit is not preceded by a telephone call or appointment and is made unannounced.**
- 4. If the alleged victim cannot be located, efforts to locate the alleged victim are documented in the case record.**
- 5. An emergency situation is determined by the APS supervisor at the time of screening and immediately communicated to the assigned APS specialist.**
- 6. If an investigation is not initiated in a timely manner, reasons for the lack of timeliness are documented in the case.**

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 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 alleged victim'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 adult'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 investigation. The APS specialist determines, within 30 days of receipt of the referral, whether the evidence indicates the referral is substantiated or unsubstantiated based on the definitions of terms in OAC 340:5-1-6. ■ 6 & 7

(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, a 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, follow-up visits to the client are required at 30-day intervals 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.

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 to the AV, the adult's circumstances are observed and documented in writing for 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 adult's current circumstances, expressed desires, habitual practices, and recent changes.

(1) The adult'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 alleged perpetrators who are also or may be the subject of a criminal investigation.
 - (5) At any time it appears that criminal wrongdoing may have occurred, the APS specialist discusses the case with local law enforcement, the district attorney, or both before interviewing the AP.
 - (6) 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 Department of Health, mental health facilities, district attorney'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 and regularly discussing with the APS supervisor referrals pending over 30 days.

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

(a) **Referrals regarding members of Indian tribes.** Referrals are accepted for alleged victims who are tribal members, but as soon as tribal affiliation is known, the Adult Protective Services (APS) specialist determines whether that tribe has an APS program.

(1) If the tribe has an APS program, the referral is made to the tribal authorities, and Oklahoma Department of Human Services (OKDHS) APS staff do not become involved unless their assistance is requested.

(2) If there is no tribal APS program, local OKDHS APS investigates the referral. Voluntary services may be provided or arranged as indicated for a vulnerable adult whether or not the adult resides on tribal land.

(3) If involuntary services are required and the vulnerable adult resides on tribal land, OKDHS cannot petition the district court for an order to provide emergency protective services because the district court has no jurisdiction over tribal land. ■ 1

(b) **Referrals involving two or more counties.** If a referral involves two or more counties, as when the alleged victim lives in one county and the alleged perpetrator in another, local APS staff in both counties are involved in the investigation. ■ 2

(c) **Referrals involving Medicaid fraud.** If an APS investigation indicates fraud by a provider receiving Medicaid funds, the Medicaid Fraud Control Unit (MFCU) in the Office of the Attorney General is notified immediately. APS cooperates with any investigation by MFCU. If MFCU declines to investigate, APS completes the investigation and sends a summary report to MFCU upon completion of the investigation.

(d) **Referrals involving individuals and provider agency employees.** APS investigations of maltreatment of vulnerable adults may include all persons in a relationship of caretaker, regardless of organizational affiliation, except those noted in Subchapter 3 of this Chapter. Care providers who may be subject to APS investigation include, but are not limited to, home health providers, community services workers for persons with developmental disabilities, personal care assistants, adult foster homes, adult day care centers, independent living centers, residential care facilities, and assisted living centers.

(1) These agency investigations include all the elements of an APS investigation, with special emphasis placed on:

- (A) interviewing agency staff and other residents or participants who may have knowledge of the reported incident;
- (B) obtaining copies of applicable charts and records;
- (C) reviewing medication lists and schedules;
- (D) taking photographs;
- (E) examining habilitation or other care plans;
- (F) examining financial records and other money management documentation;
- (G) reviewing time schedules and time sheets; and
- (H) requesting any other information needed to complete the investigation.

(2) If assistance is needed in assessing medical issues in these cases, involvement of the OKDHS long term care nurse may be requested. ■ 3

(3) Findings of substantiated referrals of maltreatment by persons who are personal care assistants and community services workers subject to the requirements of the Community Services Worker (CSW) Registry maintained by Developmental Disabilities Services Division (DDSD) pursuant to Section 1025.3 of Title 56 of the Oklahoma Statutes are submitted within three working days to the OKDHS Office of Client Advocacy for consideration of placement of the worker's name on the statewide CSW Registry. ■ 4

(4) For agency employees who are not subject to the CSW abuse registry requirements, the agency director or board is notified of any substantiated elements of the investigation. Any corrective action plan on the part of the agency becomes a part of the APS case record. If the agency fails to cooperate in addressing the substantiated elements of the investigation, the licensing agency, any appropriate governing board, and the district attorney's office are notified of the failure to cooperate.

(e) Referrals involving other licensed or certified individuals. Findings are sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including, where appropriate, the Oklahoma State Department of Health (OSDH), the Oklahoma Board of Nursing, and any other appropriate state licensure or certification board, agency, or registry. ■ 5

(f) **Referrals alleging exploitation.** Referrals involving exploitation are complex. To assist in handling some of these referrals, the OKDHS Office of the Inspector General (OIG) may accept for investigation referrals of exploitation involving large amounts of funds or the need to access complex records regarding financial transactions. If OIG declines to investigate, the APS specialist completes the investigation. Protective services that may be provided in cases of exploitation include:

- (1) changing the representative payee;
- (2) freezing all assets of the client; and
- (3) petitioning the court for an order allowing access to records. ■ 6 & 7

(g) **Persons remanded to OKDHS.** APS no longer receives new remands. APS staff continue to carry open cases on persons previously remanded to OKDHS under Section 1175.6.A.4.a of Title 22 of the Oklahoma Statutes as long as the court order stands. ■ 8

(h) **Alleged victims receiving services from DDS.** When a vulnerable adult is receiving or may be eligible for services from DDS, the APS specialist contacts the appropriate DDS case manager to coordinate activities to enhance the client's safety. ■ 9

(i) Referrals involving residents of residential care facilities, assisted living facilities, and continuum of care facilities. A copy of the final investigative report is sent to OSDH. ■ 10

INSTRUCTIONS TO STAFF

1. If involuntary services are in the best interest of the client, a referral is made to the nearest Bureau of Indian Affairs office, to the Social Services Unit of the appropriate Indian tribe, if such unit exists, and to the federal marshal with jurisdiction in the area if no other resource can assist.
2. The county of the alleged victim's (AV) residence has primary responsibility for maintaining the case record of the investigation. Adult Protective Services (APS) specialists in other counties involved cooperate fully and as quickly as possible in attempting to obtain information needed for the investigation. All requested information is forwarded to the county of residence for completion of the case.

- (1) Staff of the county of residence may request staff of the county in which the alleged perpetrator (AP) lives to conduct the interview with the AP. All efforts to involve the AP with the county of residence are exhausted before this option is exercised. The same APS specialist interviews the AV and the AP if possible.
 - (2) Any problems with coordination between counties in these cases are taken to the area APS field liaison(s) for resolution.
3. (a) Involvement of an Oklahoma Department of Human Services (OKDHS) long term care (LTC) nurse in APS may be requested in investigations involving agency providers or when a nursing assessment is needed. The role of the nurse in APS cases is to:
 - (1) act as a resource in the interpretation of physical observations made by the APS specialist;
 - (2) accompany the APS specialist to visit the client if approved by the area nurse;
 - (3) assist the APS specialist in determining a course of action on the client's behalf; and
 - (4) assist in the follow-up of the client in the home, as appropriate.
- (b) In order to involve the OKDHS LTC nurse in an APS investigation, a determination is made that the need exists for an in-home medical assessment. This conclusion may be reached after discussion with the APS specialist IV and the OKDHS LTC nurse, or both. If the OKDHS LTC nurse is not available, the specialist may call the area nurse. If a nurse cannot be reached or is geographically unavailable for immediate response, the APS specialist determines if other nursing resources are available, for example, the Developmental Disabilities Services Division (DDSD) nurse or nurse at the local Oklahoma State Department of Health (OSDH). If the situation demands immediate attention and no nursing resource is available, the APS specialist initiates the home visit immediately.
- (c) If assistance from the OKDHS LTC nurse is appropriate either at the initial home visit or follow-up visits, the APS specialist accompanies the nurse to visit the client. If the OKDHS LTC nurse accompanies the APS specialist on the initial home visit, the specialist and OKDHS LTC nurse together assess the

need for further action. After a visit to the client, the OKDHS nurse completes all items on Form APS-2-A, Adult Protective Services Nursing Assessment, and submits the original to the APS specialist for inclusion in the case record.

4. Form APS-1, Adult Protective Services Referral, Form APS-2, Adult Protective Services Report of Investigation, and relevant documentation are submitted to the Office of Client Advocacy (OCA), along with Form APS-15, Transmittal to Client Advocacy, by fax 405-525-4855 or e-mail *oca.intake@investigations@okdhs.org.
5. The address for the OSDH is 1000 N.E. 10th Street, Oklahoma City (OKC), Oklahoma (OK) 73111, telephone number 405-271-6868, toll free number 1-866-239-7553, fax 405-271-4172, or e-mail LTCComplaints@health.state.ok.us. The address for the Oklahoma State Board of Nursing is 2915 N. Classen Blvd., OKC, OK 73106, 405-962-1800.
6. A referral to Office of Inspector General (OIG) is made on the OIG-1, Referral Form, or its electronic equivalent.
7. In many instances, a vulnerable adult's benefits may be suspended pending appointment of a payee or a change of payee.
8. (a) Original case records on clients previously remanded to OKDHS under Title 22 of the Oklahoma Statutes are maintained in the county of the client's residence. Copies of all reports and evaluations are kept in the original case record.

(b) If the county of the client's residence is different from the county of court jurisdiction, a "dummy" case containing copies of all court orders, evaluations, and reports submitted to the court is maintained in the county of court jurisdiction, in addition to the case record in the county of residence. At least two weeks prior to the date a report is due to the court, the APS specialist in the county of court jurisdiction notifies the APS specialist in the county of residence to request the report and any necessary evaluations be completed and the originals forwarded to the court, with copies made for both counties.
9. APS provides information to DDSD staff to assist in their evaluations of a client known or suspected to have a developmental disability. The case manager of a DDSD client facilitates and cooperates with the APS

investigation by providing requested information and accompanying the APS specialist on home visits when needed.

(1) When an APS client appears to have developmental disabilities but does not receive DDSD services, a case manager or other appropriate staff may, upon request, accompany the APS specialist on home visits and assist in making application for DDSD services if appropriate.

(2) When APS is assisted by DDSD on a case, a copy of Form APS-2 is routed to the appropriate DDSD case manager on completion of the investigation.

(3) When a complaint alleges abuse, neglect, or exploitation of a person with developmental disabilities by an OKDHS employee, refer to OAC 340:5-3-6(d).

(4) If in the course of an investigation the APS specialist discovers the vulnerable adult is a Hissom class member, the referral is immediately communicated to OCA as APS does not complete investigations on former residents of the Hissom Memorial Center.

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

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

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

(b) **Payment for protective services.** The cost of providing voluntary or involuntary protective services is borne by the client if the APS specialist determines that the person is financially able to make such payment or by any private or public programs for which the vulnerable adult is eligible. If a caretaker controls the person's funds and refuses to pay for necessary services, this may be construed as caretaker interference and is handled as described in OAC 340:5-5-6 (b)(3). ■ 1

(1) **Payment for voluntary services.** If voluntary services are required to meet an emergency need and no other payment source is available, procedures described in OAC 340:5-5-6(b)(3) are followed. In cases where the services are not to meet an emergency need, the APS specialist arranges for voluntary services if:

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

(2) **Payment for involuntary services.** Payment for involuntary protective services is made from the client's funds only upon order of the court. If payment is required for involuntary services, procedures described in OAC 340:5-5-6(b)(3) are followed if:

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

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

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

(d) **Non-cooperation of caretaker.** When a vulnerable adult consents to receive protective services but the caretaker refuses to allow the provision of such services, OKDHS may petition the court for an injunction prohibiting the caretaker from interfering with the provision of protective services in accordance with OAC 340:5-5-6(e). ■ 3 & 4

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

(f) **Refusal to consent to protective services.** If a vulnerable adult does not consent to the provision of needed services, or withdraws consent after it is given, the APS specialist documents the client's refusal in the case narrative or on Form APS-2, Adult Protective Services Report of Investigation. Services are terminated unless OKDHS determines that the person lacks capacity to consent. In that case, the APS specialist considers action as outlined in OAC 340:5-1-4.

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

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

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

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

(i) **Notice to recipient.** The court sets a date to hear the case. The hearing is scheduled within five days of the date the judge signs the notice to the recipient of protective

services. The vulnerable adult must receive notice 48 hours in advance of the hearing. Notice may be waived by the court in emergency cases, as described in OAC 340:5-5-6(i)(2).

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

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

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

(j) **Emergency services - change of residence.** Only protective services that are necessary to remove the conditions immediately threatening the life and well-being of the person are ordered. Protective services that may be authorized by an emergency court order include a change of residence only if the court gives specific approval for such action and names the facility in its order. Emergency placements may be made to nursing homes, personal medical institutions, other home placements, or other appropriate facilities. Emergency placement is not made to facilities for the acutely mentally ill.

(k) **Time limits for providing involuntary emergency protective services.** Protective services under an emergency court order other than a 72-hour order may be provided for 30 days. If the APS specialist determines protective services are required past this 30-day period, a petition is filed for continuation of involuntary protective services in accordance with OAC 340:5-5-6(l).

(l) **Continuation of services.** Continuation of services is authorized by Section 10-108.L of Title 43A of the Oklahoma Statutes.

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

(A) appointment of a guardian; and

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

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

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

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

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

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

(4) Notice of this hearing is served as described in OAC 340:5-5-6(i).

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

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

(m) **Continuation of services for an additional period.** If after the hearing the vulnerable adult is found in need of continued protective services, the court issues an order to continue the temporary guardianship to provide specified protective services for an additional period not to exceed six months, as authorized by Section 10-108.L of Title 43A of the Oklahoma Statutes.

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

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

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

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

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

(3) establishing an account at a local financial institution and depositing any cash and uncashed checks; and ■ 9

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

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

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

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

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

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

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

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

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

(B) deposit of funds received;

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

(D) protection of existing accounts.

INSTRUCTIONS TO STAFF

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

(1) completing application forms; and

(2) gathering documentation necessary to determine eligibility.

2. Form APS-17, APS Emergency Request, is completed if the APS specialist determines a client needs emergency services for which no payment source is available. Authorization to utilize the APS Emergency Fund is:

(1) obtained from an APS programs field representative;

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

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

(4) requested only after personal, family, and community resources have been requested and denied or exhausted.

3. The date, time, and circumstances of the client's consent are documented in the case record narrative or on Form APS-2, Adult Protective Services Report of Investigation.

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

(3) the specific services needed; and

(4) information relating to the capacity of the vulnerable adult to consent to services and OKDHS attempts to obtain consent.

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

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

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

SUBCHAPTER 7. LONG TERM CARE INVESTIGATIONS SECTION

Section

- 340:5-7-1. Reports submitted to the LTCI Section
- 340:5-7-2. Program coordination
- 340:5-7-3. Complaints concerning LTCI
- 340:5-7-4. Screening of LTCI reports
- 340:5-7-5. Initiating long term care investigations
- 340:5-7-6. Elements of an investigation

340:5-7-1. Reports submitted to the LTCI Section

Screening protocols detailed in OAC 340:5-3-5 are followed for reports submitted to the Long Term Care Investigations (LTCI) Section.

340:5-7-2. Program coordination

All Adult Protective Services (APS) rules apply to long term care investigations (LTCI) except those noted in this Subchapter.

340:5-7-3. Complaints concerning LTCI

Complaints regarding a Long Term Care Investigations (LTCI) investigator are submitted by telephone, in written form, or by e-mail to an Adult Protective Services (APS) programs manager in the Family Support Services Division. A written response is provided to the complainant within 45 days stating the general findings of the review. No confidential information is included in the report.

340:5-7-4. Screening of LTCl reports

The Adult Protective Services (APS) programs manager is responsible for screening reports and either accepting them as Long Term Care Investigations (LTCl) reports, screening them out if they do not meet criteria, or referring them to another agency for follow-up.

340:5-7-5. Initiating long term care investigations

A long term care investigation (LTCI) is initiated by a visit to the vulnerable adult in the nursing facility. ■ 1

(1) Time frame for initiating investigations.

(A) Investigations of reports of maltreatment are initiated within five working days or as soon as possible if circumstances indicate immediate action is needed.

(B) For circumstances that do not require immediate action, the investigation is initiated within seven working days.

(2) Completion of LTC investigative reports.

(A) The LTC investigator determines, within 30 working days of the receipt of the referral, whether the evidence indicates the referral is substantiated or unsubstantiated based on the definitions of terms in OAC 340:5-1-6.

(B) The findings are sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation such as, the Oklahoma State Department of Health, local district attorney, long term care ombudsman in the Aging Services Division, or any other appropriate state licensure or certification board, agency, or registry. The special considerations during investigations in OAC 340:5-5-4(d), (e), and (i) apply to LTCI. ■ 2

INSTRUCTIONS TO STAFF

1. (a) When a report is received alleging that some aspect of patient care in a nursing facility is bad but no specific patient is named or the allegations do not constitute abuse, neglect, exploitation or verbal abuse, it is considered a report of general poor patient care or poor environmental conditions. This includes complaints such as the facility is understaffed, linens are dirty, patients are not properly fed or groomed, or air conditioning or heating is inadequate. The Long Term Care Investigations (LTCI) Section secures all pertinent information and telephones, faxes, or e-mails the information to the Oklahoma State Department of Health (OSDH), Protective Health Services. No further action is taken by the Oklahoma Department of Human Services (OKDHS).

(b) All information pertaining to a LTCI investigation is maintained by the LTCI Section. The county office is not required to maintain a case record on these referrals.

(c) When the investigation is completed, whether by LTCI or community adult protective services (APS) staff, a summary of the final OKDHS investigative report is mailed, faxed, or e-mailed by the office completing the investigation to the appropriate state agency with jurisdiction over the person or issues identified in the investigation, such as OSDH, Protective Health Services, 1000 N.E. 10 St., Oklahoma City, Oklahoma 73117; fax 405-271-4172, e-mail LTCComplaints@health.state.ok.us, or toll free number 1-866-239-7553; the local assistant district attorney; and the long term care ombudsman in the OKDHS Aging Services Division, 405-521-6734 or fax 405-521-2086. The family of the alleged victim is notified by letter of the findings.

- 2. In compliance with Section 10-105.E.1 of Title 43A of the Oklahoma Statutes for all reports involving clients who reside in nursing facilities, a summary of the referral is sent to OSDH, Protective Health Services, 1000 N.E. 10th St., Oklahoma City, OK 73117, immediately upon receipt of a referral.**

340:5-7-6. Elements of an investigation

Long term care investigations (LTCI) follow elements of an investigation in OAC 340:5-5-3(1) through (6) and (9) through (10) for community adult protective services (APS).