TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:5-1-5 through 5-1-6; and 5-5-8.

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

The proposed revisions to Subchapter 1 of Chapter 5 amend the rules to: (1) add language to comply with new statute, Section 10-110.1 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-110.1), regarding the release of certain information to the public about an individual charged or indicted with committing a crime resulting in death or near death of a vulnerable adult; and (2) add the definition of near death.

The Subchapter 5 of Chapter 5 proposed revisions add language clarifying that investigative records are not expunged except by court order in accordance with 43A O.S. § 10-110.

OAC 340:5-1-5 is revised to add language regarding the release of certain information to the public of an individual charged or indicted with committing a crime resulting in the death or near death of a vulnerable adult.

OAC 340:5-1-6 is revised to add the term near death as a definition.

OAC 340:5-5-8 is revised to add language that investigative records are not expunged except by court order.
OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following an "OKDHS" number, such as personnel policy at OKDHS:2-1 and personnel rules at OAC 340:2-1. The "340" is the Title number that designates OKDHS as the rulemaking agency; the "2" specifies the Chapter number; and the "1" specifies the Subchapter number.

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

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<tr>
<td>340:5-1-5</td>
<td>340:5-1-5, pages 1-3, revised 11-3-10</td>
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<td>340:5-1-6</td>
<td>340:5-1-6, pages 1-6, revised 11-3-10</td>
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<tr>
<td>340:5-5-8</td>
<td>340:5-5-8, 1 page only, revised 11-3-10</td>
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340:5-1-5. Confidentiality

Revised 11-3-10

(a) All records, working papers, and reports related to an Adult Protective Services (APS) investigation are confidential under Sections 10-110 and 10-110.1 of Title 43A of the Oklahoma Statutes (43A O.S. §§ 10-110 and 10-110.1) and may be disclosed only by order of the court except under the circumstances described in (b) through (g) of this Section. Representatives of the general public, news media, or agencies not meeting one of the exceptions in (c) of this Section who request details on a specific case may be referred to the county director, area director, Family Support Services Division (FSSD) APS Unit staff, or the Oklahoma Department of Human Services (OKDHS) Office of Communications for a detailed explanation of OKDHS confidentiality rules.

(b) When consulting persons knowledgeable of the circumstances of an alleged victim of abuse, neglect, or exploitation, or when making other contacts as part of the investigation or service planning process, the APS specialist may disclose information necessary to ensure that the vulnerable adult is protected and the vulnerable adult's needs are met.

(c) Certain persons acting in an official capacity with regard to the vulnerable adult may review or receive information from the entire case record, including:

1. a district attorney or employees of the district attorney's office;

2. the attorney representing the person who is the subject of an involuntary services action;

3. the attorney for the Oklahoma Disability Law Center, when involved in representing the vulnerable adult;

4. staff of:
   
   (A) an Oklahoma law enforcement agency;

   (B) a law enforcement agency of another state;

   (C) a state or local Medical Examiner's Office;

   (D) a law enforcement agency of a federally recognized tribe in Oklahoma; or
(E) a federal law enforcement agency;

(5) staff of another state’s APS program;

(6) physical or mental health care professionals involved in the evaluation or treatment of the vulnerable adult; and

(7) OKDHS staff who use the information in carrying out their own responsibilities.

(d) Any agency or person authorized by OKDHS to provide services to a vulnerable adult may receive a summary of information necessary to secure or provide appropriate care for the vulnerable adult.

(e) The vulnerable adult's caretaker, legal guardian, and next of kin may receive summaries of information from an APS case record.

(f) Some information from APS records may be released to employees or contractors of the State for research purposes, upon application to and approval by the FSSD APS Unit. While local OKDHS offices may release statistical information, no specific case information is released for research purposes unless approval is received from the FSSD APS Unit.

(g) In accordance with 43A O.S. § 10-110.1, when the person responsible for the care of a vulnerable adult has been charged by information or indicted with committing a crime resulting in the death or near death of a vulnerable adult, there is a presumption that it is in the best interest of the public to disclose certain information.

(h) If federal law specifically prohibits the disclosure of any of the information required by this subsection, that information may be excluded from the disclosed health information.

INSTRUCTIONS TO STAFF 340:5-1-5

Revised 11-3-10

1. To maintain the highest degree of confidentiality, Adult Protective Services (APS) records are kept in a secured area at both the local and state office levels.

2. Oklahoma Department of Human Services staff who may be granted access to APS records include staff of Field Operations Division, Division of Children
and Family Services, Developmental Disabilities Services Division, Office of Inspector General, Office of Client Advocacy, and any others who request records in order to evaluate eligibility or complete an investigation.

3. (a) When an APS specialist has a case in which a person responsible for the care of a vulnerable adult has been charged with committing a crime resulting in the death or near death of a vulnerable adult, the APS specialist immediately notifies the Family Support Services Division (FSSD) APS Unit.

(b) The FSSD APS Unit and Office of General Counsel determine the information to be released.

4. This is in regards to the Health Insurance Portability and Accountability Act (HIPPA) of 1996 as it relates to the human immunodeficiency virus (HIV) that causes acquired immunodeficiency syndrome (AIDS). The court must order the release of such information.
340:5-1-6. Definitions

Revised 11-3-10

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

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

"Abuse" means causing or permitting the:

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

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

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

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

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

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

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

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

"Caretaker" means a person who is responsible for the care of or financial management for a vulnerable adult as a result of family relationship or has assumed responsibility for care of a vulnerable adult voluntarily, by contract, or by friendship; or who serves as a legally appointed guardian, limited guardian, or conservator.
"Emergency" means a situation in which a vulnerable adult is likely to suffer death or serious physical harm without immediate intervention.

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

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

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

"Financial neglect" means repeated instances by a caretaker or other person who has assumed the role of financial management of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including but not limited to:

(A) squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult;

(B) refusing to pay for necessities or utilities in a timely manner; or

(C) providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

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

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

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

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

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

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

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

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

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

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

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

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

"Near death" means the vulnerable adult is in serious or critical condition, as certified by a physician, as a result of abuse or neglect.

"Neglect" means:

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

(B) failure to provide adequate shelter, nutrition, health care, or clothing for a vulnerable adult; or
(C) negligent acts or omissions that result in harm or unreasonable risk of harm to a vulnerable adult through action or inaction, or lack of supervision by a caretaker providing direct services.

"Power of attorney" means authority granted by a legal document authorizing a person or other entity to act for the principal, subject to the extent of the power authorized. The affidavit may be durable. If it is durable, the power of attorney has been filed at the county court house and becomes effective when the principal loses decision making abilities as defined by the document and instructions of the principal. The power is revoked upon:

(A) written revocation of the principal;
(B) incapacity of the principal unless it is a durable power of attorney;
(C) death of the principal;
(D) a termination date if specified in the document;
(E) order of the court; or
(F) the appointment of a guardian, in most cases.

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

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

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

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

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

"Sexual abuse" means:

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

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

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

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

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

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

"Undue influence" means the substitution of one person's will for the true desires of another.
"Unsubstantiated" means evidence found during an APS investigation was insufficient to determine maltreatment occurred.

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

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

(A) provide adequately for his or her own care or custody;

(B) manage his or her property and financial affairs effectively;

(C) meet essential requirements for mental or physical health or safety; or

(D) protect himself or herself from maltreatment without assistance. This determination is not made based on a person's eligibility for disability benefits from any source or on the impairment being permanent, but solely on the adult's reported physical or mental condition at the time an APS report is made and the APS specialist's assessment of that condition during investigation.
340:5-5-8. Case destruction

Revised 11-3-10

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

(b) Records of investigations conducted pursuant to Section 10-110 of the Oklahoma Statutes, known as "The Protective Services for Vulnerable Adults Act," is not expunged except by court order. ■ 2

INSTRUCTIONS TO STAFF 340:5-5-8

Revised 11-3-10


2. (a) When the Oklahoma Department of Human Services (OKDHS) is currently or was previously appointed as temporary guardian of the alleged victim of abuse, neglect, financial exploitation, or financial neglect, any petition or motion requesting that investigative records be expunged is filed under the same case number.

   (b) When a copy of a petition or motion to expunge records, or a copy of a notice of hearing on such a petition or motion, or a copy of a court order is received pertaining to or directing that records be expunged, the APS specialist immediately contacts the Office of General Counsel. The Office of General Counsel staff decides what records to expunge. This includes, but is not limited to, written records.

      (1) The Office of General Counsel may request the case or copies of the case. The APS specialist is responsible for getting the information to the Office of General Counsel within five working days.

      (2) The Office of General Counsel notifies FSSD APS Unit and any other involved APS staff of the action taken.