

10-149 Chapter 1
OFFICE OF AGING AND DISABILITY SERVICES RULES
ADULT PROTECTIVE SERVICES SYSTEM

SUMMARY: This chapter sets forth the policy of the Maine Department of Health and Human Services (Department) regarding reporting of known or suspected abuse, neglect, or exploitation of incapacitated or dependent adults, Adult Protective Services investigations, and substantiations and coordination with other agencies.

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Section 1. DEFINITIONS

1. Abuse: the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; financial exploitation; or the intentional, knowing or reckless deprivation of essential needs, through acts or omissions.
2. Adult Protective Services (APS): the unit within the Department responsible for carrying out the requirements of 22 M.R.S. § 3473, including receiving, promptly investigating, and determining the validity of reports of alleged Abuse, Neglect, and Exploitation of incapacitated and dependent adults and reports of the substantial risk of Abuse, Neglect, and Exploitation of incapacitated and dependent adults.
3. APS Caseworker: APS unit staff involved in investigating reports of Abuse, Neglect, or Exploitation of Incapacitated or Dependent Adults, conducting guardianship and conservatorship studies, and arranging for services and supports for APS clients, as appropriate.
4. APS Central Intake: the APS unit's 24/7 telephone line through which Mandated Reports shall (and any individual may) report allegations of Abuse, Neglect, and Exploitation of an Incapacitated or Dependent Adult.
5. APS Investigation: the formal process of determining whether evidence supports a reported allegation of Abuse, Neglect, or Exploitation of a Dependent or Incapacitated Adult, which may involve reporting a matter to a licensing body or law enforcement, as appropriate.
6. Casework: any action taken by an APS Caseworker in conjunction with or following an APS Investigation or guardianship or conservatorship study to protect an Incapacitated or Dependent adult, including providing or arranging for the provision of appropriate services.
7. Critical Incident: any incident involving an Individual Receiving Services that falls into any of the categories listed in 14-197 C.M.R. ch. 12, § 2(2)(A)(1)-(16).
8. Dependent Adult: as defined in 22 M.R.S. § 3472, an adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs.

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9. Exploitation: the illegal or improper use of an incapacitated or dependent adult or that adult's resources for another's profit or advantage.
10. Incapacitated Adult: as defined in 22 M.R.S. § 3472, any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that that individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent the adult cannot effectively manage or apply that individual's estate to necessary ends.
11. Individual Receiving Services: an adult with Developmental Disabilities including, Intellectual Disabilities or Autism Spectrum Disorder, determined eligible for and receiving services from a provider of services licensed, funded, or regulated in whole or in part by the Department, or an adult with an Acquired Brain Injury determined eligible for and receiving services from a provider of services licensed, funded, or regulated in whole or in part by the Department.
12. Mandated Reporter: pursuant to 22 M.R.S. § 3477, a person required to report to the Department when the person knows or has reasonable cause to suspect that an Incapacitated or Dependent Adult has been or is likely to be Abused, Neglected, or Exploited.
13. Neglect: a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these.
14. Provider: an agency licensed, funded, or regulated in whole or in part by the Department that provides support services to Individual(s) Receiving Services.
15. Report: information shared with APS Central Intake by a Reporter related to a concern about the health and welfare of an Incapacitated or Dependent Adult or an allegation of Abuse, Neglect, or Exploitation of an Incapacitated or Dependent Adult.
16. Reporter: any person who reports to the Department known or reasonably suspected abuse, neglect, or exploitation of an incapacitated or dependent adult whether or not the person is required to report as a Mandated Reporter.

Section 2. REPORTING TO ADULT PROTECTIVE SERVICES CENTRAL INTAKE

1. Who Must Report
 - a. Mandated Reporters must report to the Department known or suspected Abuse, Neglect, or Exploitation.
 - b. In addition to Mandated Reporters, any other individual may report known or suspected Abuse, Neglect, or Exploitation to the Department.
 - c. No individual may impede or inhibit a Mandated Reporter's reporting of known or suspected Abuse, Neglect, or Exploitation to the Department. No employer, supervisor, manager, or associate of a Mandated Reporter may require a Mandated Reporter to seek or receive permission to report known or suspected Abuse, Neglect, or Exploitation prior to reporting.
2. What Must Be Reported
 - a. A Report to APS is warranted where an individual knows or has reasonable cause to suspect that an Incapacitated or Dependent Adult has been Abused, Neglected, or Exploited.
 - b. A Reporter need not have witnessed the incident in order to report known or suspected Abuse, Neglect, or Exploitation. Second-hand information can be the basis for reporting to the Department.

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- c. All Reports of known or suspected Abuse, Neglect, or Exploitation made to APS must be made in good faith.
 - d. Reporting known or suspected Abuse, Neglect, or Exploitation of an Incapacitated or Dependent Adult through APS Central Intake does not relieve any Reporter of any other duties under Federal or State statute or regulation, including duties to report Critical Incidents through the Department's Critical Incident System.
3. When Must a Report Be Made
- a. A Report of known or suspected Abuse, Neglect, or Exploitation of an Incapacitated or Dependent Adult must be made immediately when the Mandated Reporter becomes aware of the incident or allegation.
 - b. Individuals who are not Mandated Reporters should make Reports of known or suspected Abuse, Neglect, or Exploitation of an Incapacitated or Dependent Adult to APS immediately, if possible, or otherwise as soon as possible.
4. How to Report
- a. Known or suspected Abuse, Neglect, or Exploitation of an Incapacitated or Dependent Adult must be reported through APS Central Intake via telephone.
 - b. The Reporter shall provide, at a minimum, the following information to APS Central Intake, to the greatest extent possible:
 - i. The name and address of the Incapacitated or Dependent Adult involved;
 - ii. The nature and extent of the known or suspected Abuse, Neglect, or Exploitation;
 - iii. The source of the Report;
 - iv. The Reporter's name, occupation, and contact information;
 - v. Any other information the Reporter believes may be relevant.

Section 3. APS CENTRAL INTAKE

1. Central Intake
- a. APS Central Intake shall document in the electronic APS system all Reports received through APS Central Intake, including the information provided by the Reporter in accordance with Section 2(4)(b) of this Rule.
 - b. On the day that a Report is received, APS Central Intake shall review the documented Report to determine whether APS has jurisdiction to investigate the allegation(s).
 - c. Based on the information obtained from the Reporter, APS Central Intake shall determine whether the Report is to be assigned for APS Investigation or closed without an APS Investigation.
 - i. A Report shall be closed without an APS Investigation when APS Central Intake determines that one or more of the following circumstances exists based on the information provided by the Reporter:
 - A. The Report alleges Abuse, Neglect, or Exploitation, but the alleged victim is not an Incapacitated or Dependent Adult in Maine;
 - B. The Report alleges Abuse, Neglect, or Exploitation, but the alleged actions as described by the Reporter could not reasonably meet the definition of Abuse, Neglect, or Exploitation;
 - C. An APS Investigation has already been assigned relative to the incident reported;

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- D. No action can be taken by APS under the circumstances.
- ii. The determination as to whether a Report will be assigned for APS Investigation or closed shall be made on a case-by-case basis and APS Central Intake's reasoning shall be documented.
- d. All APS Reports that are not closed by Central Intake shall be assigned for APS Investigation.

Section 4. APS INVESTIGATIONS

- 1. Prioritization
 - a. Any Report that is assigned for APS Investigation shall be prioritized in accordance with the potential risk or danger faced by the APS client based on the information provided by the Reporter.
 - b. Based on prioritization, an APS Investigation may begin on the date the Report is received through APS Central Intake and will begin no later than five (5) business days from the date the Report is received.
- 2. Investigation
 - a. APS shall document all steps taken to collect facts to reach a finding, including dates of phone calls, interviews, site visits, and document reviews.
 - b. APS shall perform the following tasks during the APS Investigation, as appropriate:
 - i. Conduct face-to-face interview(s) with the Incapacitated or Dependent Adult who is the subject of the Report. All interviews shall be in a private setting, to the greatest extent possible, and shall not be conducted in the presence of an alleged perpetrator of Abuse, Neglect, or Exploitation.
 - ii. Conduct face-to-face interview(s) with the alleged perpetrator(s) of Abuse, Neglect, or Exploitation. Where multiple alleged perpetrators are involved, interviews shall be conducted separately outside of the presence of any other witnesses or alleged perpetrators.
 - iii. Conduct interviews with witnesses to alleged Abuse, Neglect, or Exploitation or other individuals who are likely to have relevant information related to the Report.
 - iv. Request (issuing subpoenas as necessary) from the appropriate parties and review any documents, criminal history record information, recordings, photographs, and other records relevant to the Report.
 - v. Compare statements of the Incapacitated or Dependent Adult, alleged perpetrator(s) of Abuse, Neglect, or Exploitation (if applicable), and witnesses, physical evidence, and documentary evidence to identify any significant discrepancies or contradictions and draw fact-based conclusions.
 - c. Providers shall cooperate with APS during APS Investigations, which includes but is not limited to the following:
 - i. Providing documentation related to a reported incident or situation;
 - ii. Preserving documentation or evidence related to a reported incident under investigation;
 - iii. Providing access to facilities and staff as requested by APS.

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- d. A Provider is permitted to conduct an internal review of an incident involving an Incapacitated or Dependent Adult that is the subject of an APS Investigation. The Provider shall not actively interfere with, delay, or obstruct an APS Investigation in conducting an internal review of an incident.
 - i. Any written documentation related to an incident, which a Provider knows or has reason to believe is the subject of an APS Investigation, must be kept on file with the Provider and be made available to the Department for review and copying upon request.
- 3. Law Enforcement
 - a. APS shall refer a Report to law enforcement at any point, including during the Central Intake process, when APS has reasonable cause to believe that the Report involves allegation(s) of criminal action.
 - b. Where a Report or ongoing APS Investigation has been referred to law enforcement, APS shall coordinate with law enforcement to complete the APS Investigation.

Section 5. CASEWORK

- 1. APS shall take appropriate action, including providing or arranging for the provision of appropriate services to the Incapacitated or Dependent Adult to ensure his or her health and safety, throughout the course of an APS Investigation and at the time the APS Investigation is concluded.
- 2. Where APS has determined that a guardianship/conservatorship study must be conducted as a result of an APS Investigation, APS shall determine the type of guardianship (or conservatorship) to be sought and proceed accordingly as soon as possible.
 - a. A guardianship/conservatorship study shall include analysis of relevant history and assessment information to determine necessity of guardianship, which may include but is not limited to:
 - i. Criminal history, living (habitation) history, medical history and present condition, financial history, social interactions in Incapacitated Adult's environment, and family (relatives who support the member) information.

Section 6. APS FINDINGS

- 1. Final Written Findings
 - a. APS shall determine whether or not the facts support the allegation(s) in the Report, based on the available fact-based evidence, and document the determination in writing.
 - b. The standard of proof to reach a finding on an allegation of Abuse, Neglect, or Exploitation is by "a preponderance of the evidence" (i.e., the greater weight of the evidence supports a finding that an individual or individuals Abuse, Neglect, or Exploitation of an Incapacitated or Dependent Adult did occur).
 - c. Final written findings shall include the following, as appropriate:
 - i. A summary of the facts on which APS relied to reach a determination;
 - ii. A clear statement indicating whether or not the reported allegation(s) of Abuse, Neglect, or Exploitation are supported by a preponderance of the evidence;

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- iii. What, if any, services were arranged for the protection of the Incapacitated or Dependent Adult;
 - iv. What, if any, actions will be taken as a result of the findings, including, but not limited to, whether the findings will result in a Substantiation, whether the findings will result in a referral to law enforcement, and whether additional written recommendations should be made to a Provider as a result of the investigation.
2. Timing
 - a. Final written findings shall be entered into the electronic APS system by the assigned APS Caseworker no later than thirty (30) days from the date of assignment to the APS Caseworker.
 - b. In the event that an APS Investigation cannot be completed within thirty (30) days of assignment, the APS Caseworker shall document the reasons and estimate the number of days needed to complete the investigation in writing. An APS supervisor shall review and approve the APS Investigation extension and document same.
 - i. Any necessary subsequent extensions shall be reviewed and documented through the same process.
 3. Additional Written Recommendations
 - a. APS may issue written recommendations to a Provider where an allegation(s) of Abuse, Neglect, or Exploitation has not been substantiated but where, during the course of an investigation, APS has identified deficiencies related to a Provider's practices or facilities that may impact the health and welfare of Individuals Receiving Services.
 - b. The Department will work with a Provider that receives written recommendations to put in place an appropriate corrective action plan and follow up on the action plan steps.

Section 7. SUBSTANTIATION

1. Applicability
 - a. Any individual who cares for, supports, or provides services to an individual with intellectual disability or autism and is found by APS to have Abused, Neglected, or Exploited an individual with intellectual disability or autism is subject to the substantiation process described herein.
2. Substantiation Categories
 - a. Level I Substantiation
 - i. A Level I Substantiation reflects a finding by a preponderance of the evidence (based on an APS Investigation and final written findings) that an individual Abused, Neglected, or Exploited an individual with intellectual disability or autism by engaging one or more of the following:
 1. Sexual abuse or sexual exploitation, which means contact or interaction of a sexual nature involving an individual with intellectual disability or autism without the individual's consent or where consent cannot be given by the individual (i.e., incapacity);
 2. Exploitation involving the illegal or improper use of an individual with intellectual disability or autism's resources for another's profit or advantage;

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3. Intentionally, knowingly, or recklessly causing physical harm or pain or mental anguish through the infliction of injury, unreasonable confinement, intimidation, or cruel punishment;
 4. Intentionally, knowingly, or recklessly causing a threat to the health or welfare of an individual with intellectual disability or autism by physical or mental injury or impairment, deprivation of essential needs, or failure to protect from these;
 5. Intentionally, knowingly, recklessly, or negligently engaging in abuse or neglect that results in serious harm to an individual with intellectual disability or autism;
 - ii. The terms “intentionally”, “knowingly”, and “recklessly” have the meanings set forth in 17-A M.R.S. § 35.
 - iii. Multiple Level II Substantiations against an individual within a nine (9) month period may result in a Level I Substantiation.
 - iv. A Level I Substantiation triggers an individual’s right to due process.
 - b. Level II Substantiation
 - i. A Level II Substantiation reflects a finding by a preponderance of the evidence (based on an APS Investigation and final written findings) that an individual Abused, Neglected, or Exploited an individual with intellectual disability or autism but the acts or omissions do not rise to the level of the categories described in Section 6(2)(a).(i).(1)-(5) of this rule.
 - ii. Where an individual receives two (2) Level II Substantiations in a nine (9) month period, APS may issue a Level I Substantiation.
3. Notice and Appeal Rights
- a. Written Notice
 - i. When APS issues a Level I Substantiation finding against an individual, the individual shall be notified in writing of the Level I Substantiation and the potential consequences of a Level I Substantiation.
 - ii. A Level I Substantiation notice shall be accompanied by a written notice to the individual of the right to appeal the Substantiation finding to the Department’s Administrative Hearings Unit. The written notice shall include information on the appeal process and information on the right to request an expedited hearing.
 - b. Due Process and Appeal Rights
 - i. An individual who is found Substantiated – Level 1 by APS may exercise his or her right to appeal by submitting a request to appeal via letter, fax, or email in accordance with the instructions provided in the written notice from the Department.
 - ii. An individual who is found Substantiated – Level 1 by APS may exercise the right of appeal within thirty (30) days after written notice is received.
 - iii. When an individual who is found Substantiated – Level 1 by APS exercises the right of appeal, the hearing on the appeal shall be scheduled as soon as possible but no later than sixty (60) days after the appeal request is made, unless he or she requests an extension. Where the individual can demonstrate to the Administrative Hearings Unit an immediate and ongoing harm to his or her employment status, the hearing must be given priority and take place as soon as practicable.
 - iv. Appeal hearings shall be conducted in accordance with the Administrative Hearings Regulations, 10-144 C.M.R. ch. 1.

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- v. A Level 1 Substantiation will not be reported out to any State or national registry until the individual found Substantiated – Level 1 has received the due process rights outlined herein.
 - vi. If a Level 1 Substantiation finding is reversed by the Administrative Hearings Unit or by the court, the record of substantiation shall be immediately expunged by the Department from any State or national registry and the reversed substantiation shall not be disclosed outside the Department to any person or entity without a court order. A record of the reversed substantiation may be maintained by the Department for internal purposes, provided that the individual Substantiated – Level 1 (reversed) is not in any manner prejudiced by the retention of such records.
 - vii. The mandated and optional disclosure provisions of 22 M.R.S. §§ 3474, 3478, 3485 are not limited by the exercise of due process described herein.
- c. Issues on Appeal
- i. A Substantiation Appeal hearing is limited to review of the Level I Substantiation of the individual. If the Level 1 Substantiation is not upheld, the Administrative Hearing Officer may make a subsidiary finding on whether the alleged conduct constitutes a Level II Substantiation.
 - ii. A finding on appeal that the individual’s conduct warrants a Level II substantiation is not final agency action and is not appealable under M.R. Civ. P. 80C, unless the finding is made in an appeal of a substantiation of repeated Level II findings resulting in a Level I Substantiation.
- d. Final Agency Action
- i. The Commissioner’s decision based on an Administrative Hearing Officer’s Recommended Decision on a Substantiation Appeal shall constitute final agency action.
 - ii. The decision on an Substantiation appeal or the Department’s decision to withdraw a Level I Substantiation prior to hearing does not alter or affect any protective measures put in place by APS during or at the conclusion of an APS Investigation.
 - iii. A final decision following an Administrative Hearing, including subsidiary findings as to Level II findings as provided in Section 6(3)(c)(ii) of this Rule, shall be considered final agency action for purposes of 5 M.R.S. § 8002(4), appealable in accordance with 5 M.R.S. § 11001, *et seq.* and M.R. Civ. P. 80C.
- e. Provider Response
- i. The fact that a Substantiation has been issued by the Department, is pending appeal, or has sustained on appeal shall not serve as the basis for any adverse employment decisions made by a Provider. Adverse employment decisions must be made independent of the Substantiation process.
 - ii. The existence of a Report of Abuse, Neglect, or Exploitation, which does not result in a Level I Substantiation, shall not serve as the basis of an adverse employment action.

STATUTORY AUTHORITY: 22 M.R.S. § 3493; 34-B M.R.S. § 5604-A.

SECTION 11: ADULT PROTECTIVE SERVICES: GENERAL INFORMATION**11.01 DEFINITIONS**

Statutory definitions are indicated by an *.

- (#1) ~~Abuse is the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or exploitation; or the intentional, knowing or reckless deprivation of essential needs. Abuse includes acts and omissions.~~
- (#2) ~~An adult is any person who has attained the age of 18 years or who is a legally emancipated minor.~~
- (3) ~~Case management is the implementation of a case plan by which service delivery, coordination and agency follow-up are provided in order to give protective services to adults.~~
- (4) ~~Case management services defined by MaineCare Policy 13.01 (10-144 CMR Ch. 101(11)§13.01) include intake/investigation/reassessment, plan of care development, coordination/advocacy, monitoring and evaluation.~~
- (5) ~~A case plan is the result of an investigation or reassessment. It consists of realistic objectives stated in terms of measurable outcomes.~~
- (6) ~~Case reassessment is an assessment to review capacity, dependency, and danger or substantial risk of danger; the need for services; medical and financial information; an evaluation of findings; and the development of a revised case plan.~~
- (7) ~~Case recording is the documentation of casework activities, including investigation and case reassessment.~~
- (*8) ~~Commissioner is the Commissioner of the Department of Health and Human Services.~~
- (9) ~~A Conservator is a person who is appointed by a Probate court to manage the financial affairs of a protected person, pursuant to the Maine Probate Code, 18-A M.R.S.A. Article V, Part 4.~~
- (10) ~~Danger is a situation or condition of abuse, neglect or exploitation, as defined in 22 M.R.S.A. §3472, or the inability to give informed consent when there is no responsible substitute decision maker.~~
- (*11) ~~Department is the Department of Health and Human Services (DHHS.)~~
- (*12) ~~A Dependent adult is an adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs. "Dependent adult" includes, but is not limited to, any of the following:~~

- (a) ~~A resident of a nursing home licensed or required to be licensed under 22 M.R.S.A. §1817;~~
- (b) ~~A resident of a facility providing assisted living services licensed or required to be licensed pursuant to 22 M.R.S.A. §7801; or~~
- (c) ~~A person considered a dependent person under 17 A.M.R.S.A. §555.~~
- (13) ~~A Diligent Search is a planned effort to locate an individual.~~
- (14) ~~An Emergency under the Adult Protective Services Act (22 M.R.S.A. §§ 3470-93) is a situation where:~~
- (a) ~~The incapacitated or dependent adult is in immediate risk of serious harm;~~
- (b) ~~The incapacitated or dependent adult is unable to consent to services which will diminish or eliminate the risk; and~~
- (c) ~~There is no person legally authorized to consent to emergency services.~~
- (See OES Policy Manual Section 15 for Temporary Guardianship definition/proceedings.)
- (*15) ~~Emergency services are those services necessary to remove from serious harm.~~
- (*16) ~~Exploitation is the illegal or improper use of an incapacitated or dependent adult or that adult's resources for another's profit or advantage.~~
- (17) ~~A Finding is a determination made at the completion of an investigation/case reassessment regarding capacity, dependency, danger and substantial risk of danger (definition #10), based on facts gathered.~~
- (18) ~~A Guardian is a person who is appointed by a Probate court pursuant to the Maine Probate Code, 18 A.M.R.S.A., Article V, Part 3 to be responsible for the care of their ward and who has limited authority over the estate of the ward when no conservator has been appointed.~~
- (*19) ~~An Incapacitated adult is any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that the individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent the adult cannot effectively manage or apply that individual's estate to necessary ends. (APS Act, 22 M.R.S.A. §3472 [10])~~
- ~~“Incapacitated person” means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except minority to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person. (Probate Code, 18 A.M.R.S.A. §5-101 [1])~~

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- (20) — ~~**Informed consent** is a decision made with all relevant information about the issue, with an understanding of the consequences of a decision, and in the absence of duress.~~
- (21) — ~~**Intake** is the process of collecting facts from a reporter and gathering other readily available information to determine whether the problem(s) presented is appropriate for case assignment.~~
- (22) — ~~**Investigation** is an assessment to determine capacity, dependency, and danger or substantial risk of danger, including the ability to give informed consent. An investigation results in findings, identification of service needs, and development of a case plan.~~
- (23) — ~~**Mandatory Reporting** requires persons, while acting in their professional capacity and other individuals as identified in 22 M.R.S.A. §3477, to immediately report when the person has reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect, or exploitation.~~
- (*24) — ~~**Neglect** is a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these.~~
- (*25) — ~~**Optional Reporting** allows any person to make a report when that person has reasonable cause to suspect an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation.~~
- (*26) — ~~**A Protected person** is a person for whom a conservator has been appointed or other protective order has been made.~~
- (27) — ~~**A Protective Order** under the Probate Code is an order issued as a result of a protective proceeding, including but not limited to conservatorship pursuant to 18-A M.R.S.A. §5-401, protective arrangement or single transaction authority pursuant to 18-A M.R.S.A. §5-409, temporary conservatorship pursuant to 18-A M.R.S.A. §408-A or an interim order pursuant to 18-A M.R.S.A. §5-416. A Protective Order under Domestic Violence statutes allows family and household members who are victims of abuse to obtain protection against further abuse.~~
- (*28) — ~~**A Protective Proceeding** is a probate proceeding to determine that an individual cannot effectively manage or apply his or her estate to necessary ends, either because the individual lacks the ability or is otherwise inconvenienced, and to secure administration of his or her estate by a conservator or other appropriate relief.~~
- (*29) — ~~**Protective Services** are services that separate incapacitated or dependent adults from danger or risk of danger. Protective services include, but are not limited to, social, medical and psychiatric services necessary to preserve the incapacitated or dependent adult's rights and resources and to maintain the adult's physical and mental well-being. Protective services may include seeking guardianship or a protective order under 18-A M.R.S.A., Article 5.~~
- (30) — ~~**A Referral** is a request for protective services or a report by any person who knows or has reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation.~~

- ~~(31) — Self neglect is neglect that is the result of an incapacitated or dependent adult's own actions or inability to provide or obtain services necessary for that adult's care or support.~~
- ~~(*32) — Serious harm is:~~
- ~~(a) — Serious physical injury or impairment;~~
 - ~~(b) — Serious mental injury or impairment which now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including, but not limited to, severe anxiety, depression or withdrawal, untoward aggressive behavior or similar serious dysfunctional behavior; or~~
 - ~~(c) — Sexual abuse or exploitation;~~
 - ~~(d) — Serious waste or dissipation of resources.~~
- ~~(*33) — Sexual abuse or exploitation is contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's informed consent.~~
- ~~(34) — Substantial Risk is a situation or condition where it is more likely than not that danger (definition #10) will occur.~~
- ~~(*35) — Temporary Guardianship or Conservatorship is a probate appointment made by the court in order to prevent serious, immediate and irreparable harm to the health or financial interests of an allegedly incapacitated adult. (Probate Code 18-A M.R.S.A. §§ 310-A and 5-408-A.~~
- ~~(*36) — A Ward is a person for whom a guardian has been appointed.~~

~~11.02 — CONFIDENTIALITY AND DISCLOSURE~~

- ~~(A) — Confidentiality. 22 M.R.S.A. §3474 makes Office of Elder Services (OES) records confidential, and includes information or records obtained by subpoena.~~
- ~~(B) — Disclosure of Confidential Information.~~
- ~~(1) — OES Records. Disclosure of relevant information to persons identified in 22 M.R.S.A. §3474(2) is optional; disclosure of relevant information to persons identified in 22 M.R.S.A. §3474(3) is mandatory.~~
 - ~~(2) — Records of Other Persons or Agencies.~~
 - ~~(a) — Records created by other persons or agencies that are included in OES records can only be disclosed in accordance with the terms of the release or within the terms of applicable statutes.~~

- (b) — Evaluations and reports prepared at the direction of OES can be disclosed in accordance with 22 M.R.S.A. §3474.
- (3) — ~~Disclosure Pursuant to Authorization.~~
- (a) — Upon receipt of a written request by someone named in a record, OES has discretion to release information in the record that pertains to the individual who made the written request on their own behalf. Any released information cannot reveal confidential information about other persons, unless otherwise authorized by law.
- (b) — If the person signing the release purports to be acting on behalf of another, e.g. a guardian or power of attorney, the requesting party must also provide a copy of the relevant documents.
- (4) — ~~Disclosure Regarding Public Wards or Protected Persons.~~ When OES is appointed as a person's public guardian or conservator, it has the authority and discretion to authorize disclosure of relevant information in its records, within the scope of its legal appointment, and in the same manner as the individual person, had that person been able to exercise that authority. In fulfilling its responsibilities, the OES will make reasonable efforts to maintain the person's privacy to the maximum extent possible.
- (5) — ~~Protected Information.~~ Protected information is relevant information that may not be disclosed to the requesting party under the terms of 22 M.R.S.A. §3474 or other applicable law without appropriate authorization or court order. Such information includes but is not limited to:
- (a) — Names of reporters who have requested confidentiality;
- (b) — Work products between OES staff and their attorney; and
- (c) — Non conviction data.

~~11.03 INTAKE AND AFTER HOURS EMERGENCY SERVICES~~

- (A) — ~~Information Gathering.~~ Referrals will be received by DHHS staff assigned to do intake or by Adult and Children's Emergency Services (ACES) staff. Information will be gathered from the reporter and others regarding the adult's capacity, dependency, and danger or substantial risk of danger. All referrals shall be recorded in the OES' Maine Adult Protective Services Information System (MAPSIS.)
- (B) — ~~Confidentiality.~~ Any information, including the nature and extent of investigation findings, may be shared with referral sources and collateral contacts only to the extent provided by the Adult Protective Services Act, 22 M.R.S.A. §3474.

~~11.04 DILIGENT SEARCH~~

- ~~(A) Purpose. OES staff may need to make diligent search efforts in order to locate a new referral, a client who has moved, a private guardian or conservator, a relative, or a public ward.~~
- ~~(B) Law Enforcement Notification. Immediate law enforcement notification must be made upon determining a public ward is missing and is believed to be in danger.~~
- ~~(C) Documentation. All diligent search efforts shall be documented in the case record.~~

SECTION 12: ADULT PROTECTIVE SERVICES: INVESTIGATION**12.01 INVESTIGATION**

- (A) **Description.** Investigation is the collection and assessment of facts from clients, family and other relevant persons to determine or review the nature of client or family problems and the services that are necessary to resolve those problems. Activities include interviewing, review written materials, assessing needs, making referrals and recommendations, preparing reports, and developing a case plan. A complete investigation includes:
- (1) assessments of capacity, dependency, danger and substantial risk of danger, and findings. An investigation may result in a decision regarding petitioning the Probate Court for an appointment;
 - (2) the provision of services where appropriate; and
 - (3) the development of a case plan.
- (B) **Planning and Client Refusal.** The casework supervisor shall plan the investigation activities with the caseworker. Investigation, with the exception of service provision, is a mandated activity and is not subject to client refusal.
- (C) **Notification to Legal Guardian/Conservator.** The caseworker will notify any legal guardian/conservator of an investigation involving an incapacitated person, unless there is reason to believe that notification would cause harm to the incapacitated person.
- (D) **Assessments.**
- (1) The caseworker will assess client capacity, dependency, danger and substantial risk of danger. All allegations made at intake will be addressed.
 - (2) Assessments of danger and substantial risk of danger result in findings regarding abuse, neglect, exploitation and the inability to give informed consent.
 - (3) The caseworker will see the client as often as necessary in order to complete the assessments. The client will be interviewed at least once in private. If it is not possible to interview the client in private, the caseworker will document in the case record why it was not possible.
 - (4) The caseworker will interview collaterals and witnesses having information about suspected incapacitation, dependency, danger and substantial risk of danger. The caseworker may contact collaterals, witnesses, and the person alleged to have abused, neglected or exploited the client without client permission. An administrative subpoena may be utilized to require persons or agencies to disclose or provide information or records regarding the client to the OES.
 - (5) Interviews with the client shall be coordinated with law enforcement, medical, and mental health personnel when indicated.

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- (6) If the person alleged to have abused, neglected or exploited the client can be identified and located, the caseworker shall conduct a face to face interview. Exceptions require supervisory approval.
- (7) Information provided by the person alleged to have abused, neglected or exploited the client may be disclosed for use in civil or criminal proceedings or referrals and reports to others, consistent with confidentiality rules.
- (8) The caseworker will assess support systems for strengths and weaknesses; will determine whether these supports provide essential services or are willing and able to perform or obtain such services and will determine if the support systems are placing the client in danger.

(E) Findings.

- (1) Facts will be documented in the case record.
- (2) The caseworker makes findings regarding capacity, dependency, danger and substantial risk of danger based on facts. The caseworker will compare statements made by the client, person alleged to have abused, neglected or exploited the client, witnesses, and others for consistency, and identify significant discrepancies or contradictions. The caseworker will also determine whether the allegations are valid or not, based on client report, collateral contacts, eyewitness report and/or physical evidence.
- (3) The caseworker's evaluation of findings determines the need for further client assessments. In addition to findings regarding capacity, dependency, danger and substantial risk of danger, it may be necessary to assess any or all of the following: living arrangement and placement; medical and mental health; medications; dental health; financial status; service providers; family, relatives and friends; legal; behavioral and social functioning; education, vocation, and rehabilitation; socialization and recreation.
- (4) When an investigation results in a decision to not seek guardianship or conservatorship, this decision will be documented.

(F) Services.

Based on the client's needs and abilities, the caseworker will determine appropriate services. To the extent such services are available, services will be offered, and will be provided only with consent of the client or client's legal representative.

(G) Case Plan.

- (1) The caseworker will develop and implement a case plan in consultation with the client or the client's legal representative. To the extent they can participate, clients under guardianship and/or conservatorship will be involved in the development and implementation of the case plan.

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- (2) — The case plan must be related to the needs of the client, as determined by the assessments. Case plans must be client specific and include the frequency of caseworker visits and attendance at treatment team meetings. Specific tasks or services to be provided to meet identified needs will be documented, including time frames for each task or service.
- (3) — Case plans must be realistic, objective, measurable and consistent with current casework activity.
- (4) — The caseworker must inform any member of a client's support system who agrees to be a part of the case plan of that member's role and responsibilities in carrying out the case plan.
- (5) — Casework supervisors will review and approve the required documentation and ensure implementation of the case plan.

~~12.02 REFERRALS/REPORTS TO LAW ENFORCEMENT AND OTHER AUTHORIZED AGENCIES~~

~~(A) — **General Referrals.** OES staff shall make referrals or reports to law enforcement and other agencies as required by statute or cooperative agreement. Casework supervisors shall ensure this notification. The casework supervisor ensures that staff determines if joint investigations are to be undertaken. If there is to be a joint investigation, the casework supervisor is responsible for coordinating the plan of investigation.~~

~~(B) — **Law Enforcement and Health Care Crimes Unit**~~

~~Law enforcement or the Health Care Crimes Unit of the Office of the Attorney General may be consulted prior to or during an investigation to determine respective responsibilities in the conduct of the investigations, including the responsibility for interviewing the person alleged to have abused, neglected or exploited the client.~~

~~(C) — **Professional and Occupational Licensing Boards.** Protective Program Administrators (PPAs) shall ensure proper notification to central office of situations requiring reports to professional and occupational licensing boards. The OES may make referrals to professional and occupational licensing boards regarding a person alleged to have engaged in any unlawful activity or professional misconduct or in conduct in violation of laws or rules relating to a licensing board. Mandated reporters who fail to report are included in this category. No release of information can be made to licensing boards absent specific Office Director approval.~~

~~(D) — **Suspicious Deaths.** The Director of Adult Protective Services or PPA will notify the Medical Examiners Office immediately of any referrals involving a suspicious death. Referrals may also be made to law enforcement and to the Health Care Crimes Unit.~~

SECTION 14: ADULT PROTECTIVE SERVICES: CASE MANAGEMENT SERVICES**14.01 CASE MANAGEMENT**

- (A) ~~Description.~~ Case management is designed to ensure comprehensive planning, coordination and provision of services to protect clients, enhance their quality of life, and promote self-care and independence whenever possible.
- (B) ~~Activities.~~ Case management includes, but is not limited to, the following activities:
- (1) ~~referrals for services and case coordination of ongoing services;~~
 - (2) ~~ongoing assessment of client needs and safety;~~
 - (3) ~~addressing identified problems, including unmet needs;~~
 - (4) ~~attendance at treatment team, planning meetings and case conferences including all Individual Support Plan (ISP) meetings;~~
 - (5) ~~regularly scheduled visits, in order to carry out the case plan, at minimum quarterly and more often as necessary;~~
 - (6) ~~medical and psychiatric authorizations on behalf of public wards;~~
 - (7) ~~utilization of case service funds, with the authorization of the casework supervisor or PPA;~~
 - (8) ~~estate management on behalf of public wards and protected persons;~~
 - (9) ~~consults with specialists, i.e. OT, PT, medical, psychiatric;~~
 - (10) ~~directing and monitoring case aides;~~
 - (11) ~~crisis management, including coordination with service providers;~~
 - (12) ~~advocacy with other agencies;~~
 - (13) ~~involving relatives and significant others as appropriate;~~
 - (14) ~~addressing client's social needs, including the nature and extent of contacts with others; and~~
 - (15) ~~re-evaluation and adjustment of case plan.~~
- (C) ~~Case Reassessment.~~
- (1) ~~A reassessment includes assessments of client capacity, dependency, danger and substantial risk of danger.~~

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- ~~(2) — Caseworkers will complete a case reassessment and case plan at least annually or sooner if there is significant change. Significant change includes but is not limited to:
 - ~~(a) — A change in mental capacity;~~
 - ~~(b) — A change in dependency status;~~
 - ~~(c) — A change in danger or substantial risk of danger;~~
 - ~~(d) — A case transfer to another district (See also OES Policy Manual Section 16.02 (A.))~~~~
- ~~(3) — Caseworkers will complete reassessments on class member public wards in accordance with OES Policy Manual Section 15.11.~~

~~(D) — Case Plan.~~

- ~~(1) — The caseworker will develop and implement a case plan in consultation with the client or the client's legal representative. To the extent they can participate, clients under guardianship and/or conservatorship will be involved in the development and implementation of the case plan.~~
- ~~(2) — The case plan must be related to the strengths and needs of the client, as determined by the assessments. Case plans must be client specific and include the frequency of caseworker visits and attendance at treatment team meetings. Specific tasks or services to be provided to meet identified needs will be documented, including time frames for each task or service.~~
- ~~(3) — Case plans must be realistic, objective, measurable and consistent with current casework activity.~~
- ~~(4) — Case plans for public wards and protected persons must be consistent with the terms of the Probate Court appointment and with the court plan.~~
- ~~(5) — The caseworker must inform any member of a client's support system who agrees to be a part of the case plan of that member's role and responsibilities in carrying out the case plan.~~
- ~~(6) — Casework supervisors will review and approve the required documentation and ensure implementation of the case plan.~~

~~14.02 — CASE SERVICE FUNDS~~

- ~~(A) — Purpose. OES funds may be used to purchase goods or services necessary to reduce or eliminate danger or substantial risk of danger to individuals receiving adult protective services. Case service funds are available to meet short term needs and may not be used when other funding sources are available, unless services would be delayed. See OES Policy Manual Section 63.01(A.)~~

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~~(B) — Authorization. PPAs and casework supervisors are responsible for the authorization of Case Service funds in the purchase of goods or services for clients, in accordance with the case plan. The needs of the client will be the primary consideration in selecting the provider of services. In the purchase of goods and services for clients, staff will be prudent in selecting qualified vendors.~~

~~Staff will avoid the appearance of conflict of interest or appearance of nepotism in the selection process. If authorizations are made involving the utilization of services owned, operated by, or employing relatives of employees, PPAs or casework supervisors will document for the Director of Adult Protective Services the justification for this choice. The case record will also document the decision.~~

~~(C) — Clients with Long Term Care Needs. Funds allocated for OES Adult Protective Services from the Home Based Care appropriation may be used to serve clients with long term care needs who might otherwise be inappropriately institutionalized and for whom the cost of care does not exceed 100% of the cost of nursing facility care or 100% of the cost of residential facility care. The Director of Adult Protective Services may grant an exception to the limit on the cost of care to protect a client awaiting placement in a nursing facility. Exceptions must be obtained prior to placement.~~

~~(D) — Public Ward/Protected Person Contributions. DHHS public wards and protected persons receiving In-Home and Community-based services are expected to contribute to the cost of services in accordance with OES Policy Manual Section 63.11.~~

~~(E) — Reimbursement from Public Wards and Protected Persons. Case service funds can be reimbursed from the accounts of public wards and protected persons. PPAs are required to review and approve authorizations for reimbursement.~~

~~14.03 CASE CLOSINGS~~

~~(A) — Conditions Supporting Case Closings at the Conclusion of an Investigation or Reassessment.~~

- ~~(1) — Danger or substantial risk of danger to an incapacitated or dependent adult is not valid or cannot be determined.~~
- ~~(2) — Danger or substantial risk of danger to an incapacitated or dependent adult has been reduced or eliminated.~~
- ~~(3) — The client cannot be located or is deceased.~~
- ~~(4) — A dependent client who has mental capacity refuses services, or presents an imminent or serious threat of harm to OES staff.~~
- ~~(5) — A public appointment is not necessary or desirable as a means of providing continuing care and supervision for an incapacitated adult.~~