

11-28

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on [upon filing] by the
Date prior to or same as filing date

Department of Human Services, Adult Abuse Prevention and Investigations 411
Agency and Division Administrative Rules Chapter Number

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Rules Coordinator Address Telephone
to become effective [November 28, 2012]. Rulemaking Notice was published in the [November 2012] Oregon
Bulletin.** Date upon filing or later Month and Year

RULE CAPTION

Adult Protective Services - House Bill 4084
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)
Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:
411-020-0123, 411-020-0126

AMEND:
411-020-0002, 411-020-0030, 411-020-0085

REPEAL:
Temporary Rules 411-020-0002(T), 411-020-0030(T), 411-020-0085(T),
411-020-0123(T), 411-020-0126(T)

AMEND & RENUMBER:

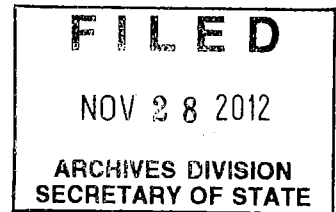
Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, and 443.767

Other Auth.: House Bill 4084 (2012) and 2012 Oregon Laws, Chapter 70

Stats. Implemented: ORS 124.050 to 124.095, 410.020, 410.040, 410.070, 411.116, 441.630
to 441.695, 443.450, 443.500, 443.767, and 2012 Oregon Laws, Chapter 70

RULE SUMMARY

The Department of Human Services is permanently updating the adult protective services rules in OAR chapter 411, division 020 to immediately implement provisions of House Bill 4084 (2012), including changes to the way confidential information is handled and how medical or financial records need to be obtained during the course of an adult protective services investigation.



SPD 15-2012

Marie Cervantes 11/28/12 Marie G. Cervantes
Signature Date Printed Name

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday. ARC 930-2005

**DEPARTMENT OF HUMAN SERVICES
ADULT ABUSE PREVENTION AND INVESTIGATIONS
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 20**

ADULT PROTECTIVE SERVICES -- GENERAL

411-020-0002

Definitions

(1) "Abuse" means any of the following:

(a) **PHYSICAL ABUSE.**

(A) Physical abuse includes:

(i) The use of physical force that may result in bodily injury, physical pain, or impairment; or

(ii) Any physical injury to an adult caused by other than accidental means.

(B) For purposes of this section, conduct that may be considered physical abuse includes but is not limited to:

(i) Acts of violence such as striking (with or without an object), hitting, beating, punching, shoving, shaking, kicking, pinching, choking, or burning; or

(ii) The use of force-feeding or physical punishment.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults in a coma or adults otherwise incapable of expressing injury or pain.

(b) **NEGLECT.** Neglect including:

(A) Active or passive failure to provide the care, supervision, or services necessary to maintain the physical health and emotional well-being of an adult that creates a risk of serious harm or results in physical harm, significant emotional harm or unreasonable discomfort, or serious loss of personal dignity. The expectation for care, supervision, or services may exist as a result of an assumed responsibility or a legal or contractual agreement, including but not limited to where an individual has a fiduciary responsibility to assure the continuation of necessary care.

(B) Failure of an individual who is responsible to provide care or services to make a reasonable effort to protect an adult from abuse.

(C) An adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall, for this reason alone, not be considered subjected to abuse by reason of neglect as defined in these rules.

(c) **ABANDONMENT.** Abandonment including desertion or willful forsaking of an adult for any period of time by an individual who has assumed responsibility for providing care, when that desertion or forsaking results in harm or places the adult at risk of serious harm.

(d) **VERBAL OR EMOTIONAL ABUSE.**

(A) Verbal or emotional abuse includes threatening significant physical harm or threatening or causing significant emotional harm to an adult through the use of:

(i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or

(ii) Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(B) For the purposes of this section:

(i) Conduct that may be considered verbal or emotional abuse includes but is not limited to the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance, regardless of their ability to comprehend.

(ii) The emotional harm that may result from verbal or emotional abuse includes but is not limited to anguish, distress, fear, unreasonable emotional discomfort, loss of personal dignity, or loss of autonomy.

(e) FINANCIAL EXPLOITATION. Financial exploitation including:

(A) Wrongfully taking, by means including but not limited to deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of an adult;

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out;

(C) Misappropriating or misusing any money from any account held jointly or singly by an adult; or

(D) Failing to use income or assets of an adult for the benefit, support, and maintenance of the adult.

(f) SEXUAL ABUSE. Sexual abuse including:

(A) Sexual contact with a non-consenting adult or with an adult considered incapable of consenting to a sexual act. Consent, for purposes of this definition, means a voluntary agreement or concurrence of wills. Mere failure to object does not, in and of itself, constitute an expression of consent;

(B) Sexual harassment or sexual exploitation of an adult or inappropriately exposing an adult to, or making an adult the subject of, sexually explicit material or language;

(C) Any sexual contact between an employee or volunteer of a facility or caregiver and an adult served by the facility or caregiver, unless a pre-existing relationship existed. Sexual abuse does not include consensual sexual contact between an adult and a caregiver who is the spouse or domestic partner of the adult;

(D) Any sexual contact that is achieved through force, trickery, threat, or coercion; or

(E) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467, or 163.525 except for incest due to marriage alone.

(g) INVOLUNTARY SECLUSION. Involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult.

(A) Involuntary seclusion may include:

(i) Confinement or restriction of an adult to his or her room or a specific area; or

(ii) Placing restrictions on an adult's ability to associate, interact, or communicate with other individuals.

(B) In a facility, emergency or short-term, monitored separation from other residents may be permitted if used for a limited period of time when:

(i) Used as part of the care plan after other interventions have been attempted;

(ii) Used as a de-escalating intervention until the facility can evaluate the behavior and develop care plan interventions to meet the resident's needs; or

(iii) The resident needs to be secluded from certain areas of the facility when their presence in that specified area would pose a risk to health or safety.

(h) WRONGFUL USE OF A PHYSICAL OR CHEMICAL RESTRAINT OF AN ADULT.

(A) A wrongful use of a physical or chemical restraint includes situations where:

- (i) A licensed health professional has not conducted a thorough assessment prior to implementing a licensed physician's prescription for restraint;
 - (ii) Less restrictive alternatives have not been evaluated prior to the use of the restraint; or
 - (iii) The restraint is used for convenience or discipline.
- (B) Physical restraints may be permitted if used when a resident's actions present an imminent danger to self or others and only until immediate action is taken by medical, emergency, or police personnel.
- (2) "Adult" means an older adult, an individual with a physical disability who is 18 years of age or older, or a resident of a Department licensed residential care facility, assisted living facility, or adult foster home.
 - (3) "APS" means adult protective services.
 - (4) "APS Risk Management" means the process by which adult protective services continues to maintain ongoing active contact with a reported victim who continues to be at serious risk of harm.
 - (5) "Area Agency on Aging (AAA)" means the agency designated by the Department with responsibility to provide a comprehensive and coordinated system of service to older adults or adults with disabilities in a designated planning and service area.
 - (6) "At-risk" means there is reason to believe injury, hazard, damage, or loss may occur.
 - (7) "Community Based Care Facility" means an assisted living facility, residential care facility, adult foster home, or registered room and board facility.
 - (8) "Conclusion" means:
 - (a) For the purposes of a facility investigation, a determination by the adult protective services worker whether an incident occurred and, if it did, whether the incident was the result of wrongdoing; and
 - (b) For the purposes of a community investigation or self-neglect assessment, a determination by the adult protective services worker as to whether an incident occurred and, if it did, whether the incident was the result of wrongdoing or self-neglect.
 - (9) "Conservatorship" means that a court has issued an order appointing and investing an individual with the power and duty of managing the property of another individual.
 - (10) "Department" means the Department of Human Services. The term "Department" is synonymous with "Division (SPD)".
 - (11) "Evidence" for the purpose of these rules, means material gathered, examined, or produced during the course of an adult protective services investigation. Evidence includes but is not limited to witness statements, documentation, photographs, and relevant physical evidence.
 - (12) "Financial Institution" has the meaning given that term in ORS 192.583.
 - (13) "Financial Records" has the meaning given that term in ORS 192.583.
 - (14) "Guardianship" means a court has issued an order appointing and investing an individual with the power and duty of managing the care, comfort, or maintenance of an incapacitated adult.
 - (15) "Health Care Provider" has the meaning given that term in ORS 192.556.
 - (16) "Imminent Danger" means there is reasonable cause to believe an adult's life, physical well-being, or resources are in danger if no intervention is initiated immediately.
 - (17) "Inconclusive" means that after a careful analysis of the evidence gathered in an investigation, a determination of whether wrongdoing occurred cannot be reached by a preponderance of the evidence.
 - (18) "Informed Choice" means the individual has the mental capacity, adequate information, and freedom from undue influence to understand the current situation, understand the options

available and their likely consequences, and be able to reasonably choose from among those options and communicate that choice.

(19) "Law Enforcement Agency" means:

- (a) Any city or municipal police department;
- (b) Any county sheriff's office;
- (c) The Oregon State Police;
- (d) Any district attorney; or
- (e) The Oregon Department of Justice.

(20) "Licensed Care Facility" means a facility licensed by the Department, including nursing facilities, assisted living facilities, residential care facilities, and adult foster homes.

(21) "Local Office" means the local service staff of the Department or Area Agency on Aging.

(22) "Mandatory Reporter" for the purpose of these rules, means any public or private official who is required by statute to report suspected abuse or neglect.

(a) If an individual is a mandatory reporter and, while acting in an official capacity, comes in contact with and has reasonable cause to believe that any individual living in a nursing facility or an older adult in any setting has suffered abuse or neglect, the mandatory reporter must immediately file a report with local law enforcement or an office of the Department.

(b) Definitions of abuse or neglect for these purposes and procedures for investigation are defined in ORS 124.050 to 124.095 or ORS 441.615 to 441.695 and OAR 411-085-0005, 411-085-0360, and 411-085-0370 (Nursing Facility Abuse).

(c) Mandatory reporting is also required if the individual, while acting in an official capacity, comes into contact with anyone who has abused an older adult or any individual living in a nursing facility.

(d) The public or private officials who are mandatory reporters are:

- (A) Physician, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident;
- (B) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health agency;
- (C) Employee of the Department, county health department, community mental health program, community developmental disabilities program, or a nursing facility, or an individual who contracts to provide services to a nursing facility;
- (D) Peace officer;
- (E) Clergy;
- (F) Licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist;
- (G) Physical, speech, or occupational therapist, audiologist, or speech language pathologist;
- (H) Senior center employee;
- (I) Information and referral or outreach worker;
- (J) Area Agency on Aging employee;
- (K) Firefighter;
- (L) Emergency Medical Technician;
- (M) Psychologist;
- (N) Licensee of an adult foster home or an employee of the licensee; and
- (O) For nursing facility abuse, all of the above, plus legal counsel, guardian, or family member of the resident.

- (23) "Multidisciplinary Team (MDT)" means a county-based investigative and assessment team that coordinates and collaborates for allegations of adult abuse and self-neglect. The team may consist of personnel of law enforcement, the local district attorney office, local Department or Area Agency on Aging offices, community mental health and developmental disability programs, plus advocates for older adults and individuals with disabilities, and individuals specially trained in abuse.
- (24) "Multidisciplinary Team (MDT) Member" means an individual or a representative of an agency that is allowed by law and recognized to participate on the multidisciplinary team.
- (25) "Older Adult" for the purpose of these rules, means any individual 65 years of age or older.
- (26) "Physical Disability" for the purpose of these rules, means any physical or cognitive condition such as brain injury and dementia that significantly interferes with an adult's ability to protect his or her self from harm or neglect. (See OAR 411-020-0015, Eligibility)
- (27) "Protected Health Information" has the meaning given that term in ORS 192.556.
- (28) "Relevant" means tending to prove or disprove the allegation at hand.
- (29) "Reported Perpetrator (RP)" means the facility, an agent or employee of the facility, or any individual reported to have committed wrongdoing.
- (30) "Reported Victim (RV)" means the individual whom wrongdoing or self-neglect is reported to have been committed against.
- (31) "Risk Assessment" means the process by which an individual is evaluated for risk of harm and for the physical and cognitive abilities to protect his or her interests and personal safety. The living situation, support system, and other relevant factors are also evaluated to determine their impact on the individual's ability to become or remain safe.
- (32) "Self-Determination" means an adult's ability to decide his or her own fate or course of action without undue influence.
- (33) "Self-Neglect" means the inability of an adult to understand the consequences of his or her actions or inaction when that inability leads to or may lead to harm or endangerment to self or others.
- (34) "Serious Risk of Harm" means that without intervention the individual is likely to incur substantial injury or loss.
- (35) "Services" as used in the definition of abuse includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other service essential to the well-being of an adult.
- (36) "Substantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is true.
- (37) "These Rules" mean the rules in OAR chapter 411, division 020.
- (38) "Undue Influence" means the process by which an individual uses his or her role and power to exploit the trust, dependency, and fear of another individual and to deceptively gain control over the decision making of the second individual.
- (39) "Unsubstantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is not true.
- (40) "Wrongdoing" means:
- (a) For the purposes of a facility investigation, an act that violates a licensing or other rule without regard to the intent of the reported perpetrator or the outcome to the reported victim; and
 - (b) For the purposes of a community investigation, an action or inaction that meets the definition of abuse, without regard to the intent of the reported perpetrator or the outcome to the reported victim.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.050 – 124.095, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, 443.767, & 2012 Or. Laws Chapter 70

411-020-0030

Confidentiality

(1) Oregon and federal statutes provide for the confidentiality of the identity of certain individuals and information obtained as a result of an APS intervention. Confidentiality of information is important to protect the privacy of individuals, to encourage the reporting of abuse and neglect, and to facilitate the obtaining of information.

(2) All information involving non-facility based investigations is confidential except for disclosure of the conclusion under OAR 411-020-0100(6) and may be disclosed only by judicial process, or as required by specific exceptions under state and federal law, or with the consent of the victim, but no names may be released without the consent of the individual named except as provided in section (5) of this rule.

(3) If the investigation involves a licensed care facility, information regarding the complaint and subsequent findings shall be made available to the general public upon request. On these types of complaints, information regarding the identity of the complainant, the reported victim, all witnesses, and the protected health information of any party shall remain confidential, unless release is specifically authorized by the affected individual or otherwise dictated by judicial process.

(4) The Department shall make the protective services report and underlying investigatory materials available to the protection and advocacy system designated by ORS 192.517 when the reported victim is an individual with a disability or mental illness as identified by ORS 192.517.

(5) Where the Department deems it is appropriate for the purpose of furthering a protective service, or when necessary to prevent or treat abuse, or when deemed to be in the best interest of a reported victim, the names of the reported victim, witnesses (other than the complainant except as expressly permitted below), any investigative report, and any records compiled during the course of an investigation, may be made available to:

(a) Any law enforcement agency, to which the name of the complainant may also be made available;

(b) An agency that licenses or certifies a facility where the reported abuse occurred, or licenses or certifies the individual who practices there;

(c) A public agency that licenses or certifies an individual that has abused or is alleged to have abused an older adult;

(d) The Long Term Care Ombudsman;

(e) Any governmental or private non-profit agency providing adult protective services to the reported victim when that agency meets the confidentiality standards of ORS 124.090, including any federal law enforcement agency that has jurisdiction to investigate or prosecute for abuse defined in these rules, including but not limited to the Federal Bureau of Investigation (FBI), the Federal Trade Commission, or the U.S. Postal Inspection Service;

(f) An MDT as described in OAR 411-020-0025;

(g) A court, pursuant to court order, to which the name of the complainant may also be made available as required by the court order; or

(h) An administrative law judge in an administrative proceeding when necessary to provide protective services, investigate, prevent, or treat abuse of an older adult or when in the best interest of an older adult.

(6) Recipients of information disclosed under section (4) of this rule must maintain the confidentiality of the information as required by Oregon statute unless superseded by other state or federal law.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.050 – 124.095, 410.070, 410.150, 411.116, 441.630 – 441.695, 443.769, & 2012 Or. Laws Chapter 70

411-020-0085

Law Enforcement Notification

(1) The Department shall immediately notify law enforcement if any of the following conditions exist and proceed collaboratively in a way that does not further endanger the reported victim. Any law enforcement officer accompanying the investigator must be identified as such to any party interviewed. Conditions include:

(a) There is reasonable cause to believe a crime has been committed;

(b) Access to the reportedly abused individual is denied and legal assistance is needed in gaining access;

(c) The situation presents a credible danger to the Department worker or others and police escort is advisable;

(d) Forensic photographic or other evidence is needed; or

(e) As required under OAR 411-020-0123 or 411-020-0126.

(2) Written notice, regardless of any verbal notice given, shall be provided to law enforcement for all instances when the Department finds that there is reasonable cause to believe a crime has been committed.

(3) When the local Department or AAA office notifies a law enforcement agency of suspected crime committed against a reported victim, the local office must track the progress as reported from the law enforcement agency on the investigation and the district attorney's office on the prosecution of the crime.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.065 – 124.070, 410.070, 411.116, 441.645 – 441.650, 443.500, & 443.767

411-020-0123

Accessing Protected Health Information, including Records

Protected health information from a health care provider may be obtained in the course of an APS investigation either from a mandatory reporter performing that reporter's duties required by Oregon statute or as follows:

(1) DISCLOSURE BY HEALTH CARE PROVIDER. A health care provider may disclose, in accordance with 45 CFR 164.512(j), protected health information to APS to prevent or lessen a serious and imminent threat to the health or safety of a person or the public if the health care provider, in good faith, believes that the disclosure is necessary to prevent or lessen the threat. APS may request protected health information in the course of a self-neglect assessment or abuse investigation under this provision to prevent or lessen a serious and imminent threat.

(2) **COMMUNITY ABUSE INVESTIGATION.** In the course of an APS investigation into abuse in a community-based setting where the process under section (1) does not apply or is declined by the health care provider:

(a) **CONSENT BY REPORTED VICTIM.** APS may obtain a reported victim's protected health information for an APS investigation with that reported victim's consent.

(b) **DECLINED CONSENT.** If a reported victim is able to make an informed choice and declines to consent to APS obtaining protected health information, APS may not obtain the reported victim's protected health information beyond the information a mandatory reporter is required to disclose.

(c) **REPORTED VICTIM INCAPABLE OF CONSENT.** If a reported victim is an older adult and does not have the ability to make an informed choice to consent to APS obtaining the reported victim's protected health information, and the reported victim does not have a fiduciary or legal representative that can consent to APS accessing the reported victim's protected health information, or when the fiduciary or legal representative is a reported perpetrator and refuses to consent to APS accessing the reported victim's protected health information, then the following procedure must be followed in order for APS to obtain the protected health information:

(A) APS must request that the appropriate law enforcement agency submit a written request to the health care provider to allow the law enforcement agency to inspect and copy, or otherwise obtain, the protected health information.

(B) APS shall inform the law enforcement agency that the written request must state that an investigation into abuse is being conducted under ORS 124.070 (elder abuse) or ORS 441.650 (nursing facility resident abuse).

(3) **HEALTH CARE PROVIDER NOTICE.** In investigations where APS is seeking disclosure of protected health information by a health care provider under sections (1) or (2) of this rule, APS shall inform the health care provider, either directly or through the law enforcement agency requesting the information, that the health care provider is required, in accordance with 45 CFR 164.512(c)(2), to promptly inform the individual to whom the protected health information pertains that information has been or shall be disclosed, unless:

(a) The health care provider, in the exercise of their professional judgment, believes that informing the individual may place the individual at risk of serious harm; or

(b) The health care provider would be informing a personal representative of the individual and the health care provider reasonably believes that the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the health care provider in the exercise of their professional judgment.

(4) **LICENSED CARE FACILITY INVESTIGATIONS.** In the course of an APS investigation into abuse in a licensed care facility:

(a) **OBTAINING RESIDENT RECORDS MAINTAINED BY A LICENSED CARE FACILITY.** Licensed care facilities must provide APS access to all resident and facility records, including protected health information, maintained by the facility as required by their respective Oregon Administrative Rules.

(b) **DISCLOSURE BY HEALTH CARE PROVIDER.** A health care provider, such as a hospital, a medical office, or a provider other than a licensed care facility, may disclose, in accordance with 45 CFR 164.512(d), a reported victim's protected health information to APS as a health oversight agency for purposes of oversight of that facility, including oversight through investigation of complaints of abuse of residents in such facility. APS shall inform the health

care provider of its authority as a health oversight agency and that such disclosures are permitted in accordance with 45 CFR 164.512(d).

(c) **HEALTH CARE PROVIDER REFUSAL TO DISCLOSE.** If a health care provider refuses to disclose protected health information to APS as a health oversight agency, APS may follow the procedure set forth in section (2)(c) of this rule if the reported victim is an older adult.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.050 – 124.095, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, 443.767, & 2012 Or. Laws Chapter 70

411-020-0126

Accessing Financial Records

(1) Financial records may be obtained from a financial institution in the course of an APS investigation into alleged abuse.

(2) **DEFAULT STANDARD.** APS may not request financial records from a financial institution unless one of the following exceptions applies and the corresponding procedures are followed:

(a) **CUSTOMER AUTHORIZATION.** APS may request and receive financial records from a financial institution when the customer authorizes such disclosure in accordance with ORS 192.593. The authorization must:

(A) Be in writing, signed, and dated by the customer;

(B) Identify with detail the records authorized to be disclosed;

(C) Name the Department or Area Agency on Aging to whom disclosure is authorized;

(D) Contain notice to the customer that the customer may revoke such authorization at any time in writing; and

(E) Inform the customer as to the reason for such request and disclosure.

(b) **FINANCIAL INSTITUTION INITIATES CONTACT.** Where a financial institution initiates contact with APS or a law enforcement agency regarding suspected financial exploitation, the financial institution may share financial records with APS or the law enforcement agency and is not otherwise precluded from communicating with and disclosing financial records to APS or the law enforcement agency.

(c) **CUSTOMER INCAPABLE OF AUTHORIZING.** If a financial institution has not initiated contact with APS or a law enforcement agency and the reported victim does not have the ability to make an informed choice to consent to APS obtaining the reported victim's financial records; or a fiduciary or legal representative who is a reported perpetrator refuses to authorize disclosure; or the account is jointly held by a reported perpetrator as well as the reported victim and the reported perpetrator refuses to authorize disclosure of the reported victim's financial records, these procedures must be followed:

(A) APS shall work with the appropriate law enforcement agency to obtain a subpoena issued by a court or on behalf of a grand jury to request financial records of the reported victim.

(B) APS shall:

(i) Confirm to the law enforcement agency that an investigation under ORS 124.070 (elder abuse, including older adult residents in a community based care facility) or under ORS 441.650 (abuse of a nursing facility resident) is open and that the individual about whom financial records are sought is the alleged victim in the abuse investigation.

(ii) Provide or work with the law enforcement agency to obtain the name and social security number of the individual about whom financial records are sought.

(C) A financial institution, before making disclosures pursuant to a subpoena described in this section, may require reimbursement for the production of records, in accordance with ORS 192.602.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.050 – 124.095, 192.586, 192.600, 192.602, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, 443.767, & 2012 Or. Laws Chapter 70