

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

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

Department of Human Services, Office of Adult Abuse Prevention and Investigation,
411

Agency and Division	Administrative Rules Chapter Number
Kimberly Colkitt-Hallman	(503) 945-6398
500 Summer Street NE, E-48 Salem, OR 97301-1074	

Rules Coordinator	Address	Telephone
to become effective [January 1, 2016] through [June 28, 2016]. Date upon filing or later	A maximum of 180 days including the effective date.	

RULE CAPTION

Adult Protective Services Definition of Sexual Abuse and Addition of Mandatory Reporters

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 rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND: 411-020-0002

SUSPEND:

Stat. Auth.: ORS 441.630, ORS 441.635, ORS 441.640

Other Auth.: H.B. 2227 (2015), S.B. 622 (2015)

Stats. Implemented: ORS 124.050, 441.630, 441.635, 441.640

RULE SUMMARY

The Department of Human Services (Department) is immediately amending the adult protective services rules in OAR chapter 411, division 020 to comply with provisions of House Bill 2227 and Senate Bill 622. The Department must amend the sexual abuse and mandatory reporter definitions to comply with legislation.

Signed Michael R. McCormick, Deputy Director, Aging and People with Disabilities 12/16/2015

Signature

Date

Secretary of State

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Office of Adult Abuse Prevention and Investigation,
411

Agency and Division

Administrative Rules Chapter Number

In the Matter of: **The temporary amendment of OAR 411-020-0002 in regards to Adult Protective Services.**

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Adult Protective Services Definition of Sexual Abuse and Addition of Mandatory Reporters

Statutory Authority: **ORS 441.630, 441.635, 441.640**

Other Authority: **H.B. 2227 (2015), S.B. 622 (2015)**

Stats. Implemented: **ORS 124.050, 441.630, 441.635, 441.640**

Need for the Temporary Rule(s):

The Department needs to immediately amend OAR 411-020-0002 to comply with House Bill 2227 and Senate Bill 622. The Department needs to have these changes implemented by January 1, 2016 in order to comply with both sets of legislation.

The Department will do this by amending OAR 411-020-0002 to clarify that sexual abuse does not include relations between a staff member and a resident who work and reside in a licensed care setting if the two are spouses. The Department will also update the definition of "mandatory reporter" to add new mandatory reporters to the list of who qualifies as a public or private official for purposes of mandatory reporting.

Documents Relied Upon, and where they are available:

H.B. 2227 (2015), S.B. 622 (2015), available from DHS Hearings and Rules Unit, 500 Summer Street NE E48, Salem, Oregon 97301.

Justification of Temporary Rule(s):

Failure to act promptly and immediately amend OAR 411-020-0002 will result in serious prejudice to the public interest, the Department, and residents and staff working and residing in licensed settings who are spouses. These rules need to be adopted promptly so that the Department can comply with the enacted legislation.

OAR 411-020-0002 needs to be amended promptly because without clarification to the sexual abuse definition, sexual relations between spouses who work and reside in a licensed care setting is abuse. The employee could be found as abusive toward the resident and be subject to loss of employment. The rule also needs to be amended to reflect who is considered a public or private official for purposes of mandatory reporting. The Department is required to make these changes by January 1, 2016.

Signed Michael R. McCormick, Deputy Director, Aging and People with Disabilities 12/16/2015

Signature

Date

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

**CHAPTER 411
DIVISION 20**

ADULT PROTECTIVE SERVICES -- GENERAL

411-020-0002 Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 020:

(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) Failure to provide the basic care, or services necessary to maintain the health and safety of an adult:

(i) Failure may be active or passive.

(ii) Failure creating a risk of serious harm or results in physical harm, significant emotional harm or unreasonable discomfort, or serious loss of personal dignity.

(iii) The expectation for care 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 or services.

(B) An adult who in good faith is voluntarily under treatment solely by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination 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 reasonably believes that the threat conveyed maybe 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) Verbal or physical harassment of a sexual nature, including but not limited to severe, threatening, pervasive or inappropriate exposure of an adult to sexually explicit material or language;

(C) Sexual exploitation of an adult;

(D) Any sexual contact between an employee of a facility and an adult residing in the facility; unless the two are spouses;

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

(F) 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 evaluates the behavior and develops 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 poses 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 before implementing a licensed physician's prescription for restraint;

(ii) Less restrictive alternatives have not been evaluated before 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 individual who is 18 years of age or older.

(3) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(4) "APD" means "Aging and People with Disabilities".

(5) "APS" means adult protective services as described in these rules.

(6) "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.

(7) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of service to individuals in a planning and service area.

(8) "At-risk" means there is reason to believe injury, hazard, damage, or loss may occur.

(9) "Basic Care" means care essential to maintain the health and safety needs of an adult, but is not limited to, assistance with medication administration, medical needs, nutrition and supervision for safety as well as activities of daily living including assistance with bathing, dressing, hygiene, eating, mobility and toileting.

(10) "Community-Based Care Facility" means an assisted living facility, residential care facility, adult foster home, or registered room and board facility.

(11) "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.

(12) "Conservatorship" means a court has issued an order appointing and investing an individual with the power and duty of managing the property of another individual.

(13) "Consumer" means the person applying for or eligible for Medicaid home or community-based services.

(14) "Department" means the Department of Human Services (DHS).

(15) "Evidence" means material gathered, examined, or produced during an adult protective services investigation. Evidence includes, but is not limited to, witness statements, documentation, photographs, and relevant physical evidence.

(16) "Financial Institution" has the meaning given that term in ORS 192.583.

(17) "Financial Records" has the meaning given that term in ORS 192.583.

(18) "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.

(19) "Health Care Provider" has the meaning given that term in ORS 192.556.

(20) "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.

(21) "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.

(22) "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, be able to reasonably choose from among those options, and communicate that choice.

(23) "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.

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

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

(26) "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 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 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, psychiatrist, 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 service;

(C) Employee of the Department of Human Services, community developmental disabilities program, or Area Agency on Aging;

- (D) Employee of the Oregon Health Authority, county health department, or community mental health program;
- (E) Employee of a nursing facility or an individual who contracts to provide services to a nursing facility;
- (F) Peace officer;
- (G) Member of the Clergy;
- (H) Regulated social worker, licensed professional counselor, or licensed marriage and family therapist;
- (I) Physical, speech, or occupational therapist, audiologist, or speech language pathologist;
- (J) Senior center employee;
- (K) Information and referral or outreach worker;
- (L) Firefighter or emergency medical services provider;
- (M) Psychologist;
- (N) Licensee of an adult foster home or an employee of the licensee;
- (O) Attorney;
- (P) Dentist;
- (Q) Optometrist;
- (R) Member of the Legislative Assembly, ~~and;~~
- (S) Personal support worker;
- (T) Home care worker; and

~~(S)~~(U) For nursing facilities, all of the above, plus legal counsel, guardian, or family member of the resident.

(27) "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.

(28) "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.

(29) "Older Adult" means any individual 65 years of age or older.

(30) "Physical Disability" means any physical condition or cognitive condition such as brain injury or dementia that significantly interferes with an adult's ability to protect themselves from harm or neglect. (See OAR 411-020-0015, Eligibility).

(31) "Protected Health Information" has the meaning given that term in ORS 192.556.

(32) "Relevant" means tending to prove or disprove the allegation at hand.

(33) "Reported Perpetrator (RP)" means the facility, an agent or employee of the facility, or any individual reported to have committed wrongdoing.

(34) "Reported Victim (RV)" means the individual whom wrongdoing or self-neglect is reported to have been committed against.

(35) "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 the impact on the individual's ability to become or remain safe.

(36) "Risk of Serious Harm" means that without intervention, the individual is likely to incur substantial injury or loss.

(37) "Self-Determination" means an adult's ability to decide his or her own fate or course of action without undue influence.

(38) "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.

(39) "Services" as used in the definition of abuse includes, but is not limited to, the provision of food, clothing, medicine, housing, medical services, housekeeping, and transportation as well as assistance with bathing or personal hygiene, or any other service essential to the well-being of an adult.

(40) "Substantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is true.

(41) "These Rules" mean the rules in OAR chapter 411, division 020.

(42) "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.

(43) "Unsubstantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is not true.

(44) "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