

# Adult Protective Services Policy

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West Virginia Department of Health and Human Resources  
Bureau for Children and Families  
Office of Children and Adult Services

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## **Section 1 Introduction and Overview**

### **1.1 Introduction**

Adult Protective Services (APS) policy sets forth the philosophical, legal, practice, and procedural issues which currently apply to Adult Services in West Virginia. This material is based upon a combination of requirements from various sources including but not limited to: social work standards of practice, accepted theories and principles of practice relating to services for vulnerable adults, chapter 9 of the West Virginia Code, and case decisions made by the Supreme Court of Appeals of West Virginia.

### **1.2 Philosophical Principles**

APS workers uphold the right to self-determination of all clients. It is of the utmost importance to enhance capacity and allow vulnerable adults to address their own needs. When working with vulnerable adults, APS workers shall ensure that the adult's rights, as guaranteed under the Fourteenth Amendment of the United States Constitution, and the West Virginia Constitution, are not infringed upon unnecessarily.

#### ***Client's Consent***

APS **investigations** are not voluntary; however, the client's consent must be obtained before **case management services** are provided, unless the consent cannot be obtained; such as when the client is in an emergency situation and appears to meet the definition of a vulnerable adult:

- is unwilling to remove themselves from danger; or
- is unwilling to be removed by others.

If the APS worker is unable to reduce the resistance in any of these situations, it may be necessary to pursue legal action in order to provide needed intervention.

Because of these varied and complex considerations, it is vital that the DHHR be able to proceed in a timely manner but also with sensitivity, understanding, and knowledge when intervening with adults. Whenever the DHHR becomes involved, the intervention provided must be the least restrictive alternative and be appropriate to meet the needs of the individual while assuring the highest degree of autonomy and self-determination possible. Meeting all these requirements frequently calls for maintaining a delicate and skillful balance by the APS worker.

#### ***Cultural Awareness***

Effective intervention requires that APS respond in a non-punitive noncritical manner and offer help in the least intrusive way possible. Adults shall be treated with dignity and respect by staff and all providers of service working with them. It is the worker's responsibility to ensure the rights of adults and families being served are protected. In doing so, APS workers shall not assume all adults are heterosexual, cis-gender or gender-conforming and will treat Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex (LGBTQI) adults with respect

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and competence. Workers will also adhere to all state and federal laws related to protected classes.

Cultural awareness is ensured by recognizing, respecting, and responding to the culturally defined needs of individuals that we serve.

All professionals in state and local welfare systems have an obligation to understand and adhere to the federal laws that protect adults in the communities they serve. Decisions made by APS workers should be made without intentional or unintentional discrimination. This includes not discriminating on the basis of age, race, color, sex, mental or physical disability, religious creed, national origin, sexual orientation, political beliefs and limited proficiency in speaking, reading, writing or understanding the English language. Additionally, when necessary, adults and families will have the right to auxiliary aids and limited language interpretation to ensure effective communication for individuals with hearing, vision, or speech impairments at no additional costs. This would include but not be limited to:

- Services and devices such as qualified interpreters, assistive listening devices, note takers, and written materials for individuals with hearing impairments;
- Qualified readers, taped texts, and Brailled or large print materials for individuals with vision impairments; and,
- Access to language and interpretation services.

For more information on obtaining auxiliary aids, contact:

Center for Excellence in Disabilities (CED)  
959 Hartman Run Road  
Morgantown, WV 26505  
Phone: 304-293-4692.  
Toll Free: (888) 829-9426  
TTY: (800) 518- 1448

For Language translation and interpretation services Adult Services may Contact:

911 Interpreters Inc.  
1-855-670-2500  
BCF Code: 25646

The APS worker will obtain a signed statement from the interpreter stating all information is confidential and must not be shared with anyone.

### **1.3 Mission & Purpose**

The primary purpose of Adult Protective Services is to investigate reports of adult abuse, neglect, and financial exploitation while providing least restrictive interventions. It is the mission of APS to provide support and services to vulnerable adults in order to improve the safety, well-being, and independence of victims of abuse, neglect, self-neglect, and financial exploitation.

### 1.4 Statutory Basis

Adult Protective Services is governed by W. Va. Code §9-6-1 *et seq.* Excerpts from Chapter 9 regarding these obligations are included within this policy; however, reference should be made to the entire chapter and to the following chapters:

- Chapter 16- Public Health
- Chapter 27- Mentally Ill Persons
- Chapter 32- Uniform Securities Act
- Chapter 39B-Uniform Power of Attorney Act
- Chapter 44A – West Virginia Guardianship and Conservatorship Act
- Chapter 48- Domestic Relations
- Chapter 55- Actions, Suits, and Arbitrations
- Chapter 61- Crimes and Their Punishments

### 1.5 Definitions

This section contains a number of terms which are used frequently in APS. The terms and definitions are taken from state statute or have been adopted by the Department as a part of the APS program.

<b>Abuse:</b> The infliction or threat of physical or psychological harm, including the use of undue influence or the imprisonment of any vulnerable adult or facility resident.	W. Va. Code §9-6-1
<b>Adult Protective Services:</b> Services provided to vulnerable adults and may include, but are not limited to, services such as: <ol style="list-style-type: none"> <li>a. Receiving reports of adult abuse, neglect, or exploitation;</li> <li>b. Investigating the reports of abuse, neglect, or exploitation;</li> <li>c. Case planning, monitoring, evaluation, and other case work and services; and,</li> <li>d. Providing, arranging for, or facilitating the provision of medical, social service, economic, legal, housing, law enforcement, or other protective, emergency, or support services.</li> </ol>	W. Va. Code §9-6-1
<b>Adult Protective Services Agency:</b> Any public or nonprofit private agency, corporation, board or organization furnishing protective services to adults.	W. Va. Code §9-6-1
<b>Basic Needs:</b> The essential requirements necessary to sustain life, health and well-being such as food, clothing, shelter, and necessary medical care.	
<b>Caregiver:</b> An individual who is responsible for the care of a vulnerable adult or a facility resident, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law, and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an adult with disabilities or a facility resident who needs supportive services in any setting.	W. Va. Code §9-6-1

<p><b>Centralized Intake (CI):</b> The Centralized Intake Unit is a specialized unit of workers and supervisors who are responsible for receiving and screening abuse, neglect, and financial exploitation referrals, requests to receive services, and contacting after-hours workers when necessary, as well as other duties. The Centralized Intake Unit operates 24 hours a day, 7 days a week.</p>	
<p><b>Comprehensive Child Welfare Information System (CCWIS):</b> The automated client information system used by West Virginia Department of Health and Human Resources Bureau for Children and Families.</p>	
<p><b>Diminished Capacity:</b> The inability to address, avoid, prevent or stop financial exploitation because of physical, mental or emotional conditions</p>	<p>W. Va. Supreme Court Rules of Practice and Procedure for Financial Exploitation Civil Proceedings</p>
<p><b>Domestic Violence:</b> The occurrence of one or more of the following acts between family or household members: (1) attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons; (2) placing another in reasonable apprehension of physical harm; (3) creating fear of physical harm by harassment, psychological abuse or threatening acts; (4) committing either sexual assault or sexual abuse as those terms are defined in W.Va. Code §§61-8b-1, <i>et seq.</i> and 61-8d-1, <i>et seq.</i>; and (5) holding, confining, detaining or abducting another person against that person’s will.</p>	<p>W. Va. Code §48-27-202</p>
<p><b>Elder:</b> A person aged 65 years or older.</p>	<p>W. Va. Code §61-2-29</p>
<p><b>Emancipated Minor:</b> A child over the age of sixteen (16) who has been emancipated by 1) order of the court, pursuant to a proceeding outlined in W. Va. Code §49-4-115(a) based on a determination that the child can provide for his or her physical and financial well-being and has the ability to make decisions for himself or herself; or 2) marriage of the child. An emancipated minor has all the privileges, rights and duties of an adult including the right to contract, except that the child remains a child as defined for the purposes of W. Va. Code §49-2-1001 <i>et seq.</i> and §49-4-701 <i>et seq.</i></p>	<p>W. Va. Code §49-4-115</p>
<p><b>Emergency or Emergency Situation:</b> A situation or set of circumstances which presents a substantial and immediate risk of death or serious injury to a vulnerable adult.</p>	



<p><b>Facility or Nursing Home:</b> Any institution, residence, intermediate care facility for individuals with an intellectual disability, care home or any other adult residential facility, or any part or unit thereof, that is subject to the provisions of W. Va. Code §16-5C-1 <i>et seq.</i>, §16-5D-1 <i>et seq.</i>, §16-5E-1 <i>et seq.</i>, or §16-5H-1 <i>et seq.</i></p>	<p>W. Va. Code §9-6-1</p>
<p><b>Facility Resident:</b> An individual living in a nursing home or other facility, as that term is defined in subdivision (9) of this section.</p>	<p>W.Va. Code §9-6-1</p>
<p><b>Family or Household Member:</b> Current or former spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, current or former sexual or intimate partners, are or were dating, other persons related by blood or marriage, persons who are presently or in the past have resided or cohabitated together or a person with whom the victim has a child in common.</p>	<p>W. Va. Code §48-27-204</p>
<p><b>Fiduciary:</b> A person or entity with the legal responsibility to make decisions on behalf of and for the benefit of another person; to act in good faith and with fairness; and includes a trustee, a guardian, a conservator, an executor, or an agent under a financial power of attorney</p>	<p>W. Va. Code §9-6-1</p>
<p><b>Financial Exploitation:</b> The intentional misappropriation, misuse, or use of undue influence to cause the misuse of funds or assets of a vulnerable adult or facility resident, but does not apply to a transaction or disposition of funds or assets where a person made a good faith effort to assist the vulnerable adult or facility resident with the management of his or her money or other things of value;</p>	<p>W. Va. Code §9-6-1</p>
<p><b>Imminent Danger:</b> Circumstances exist which indicate the immediate threat of death or serious physical injury.</p>	
<p><b>Incapacity:</b> The inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented, and to communicate that choice in an unambiguous manner.</p>	<p>W. Va. Code §16-30-3</p>
<p><b>Legal Representative:</b> A person lawfully invested with the power and charged with the duty of taking care of another person or with managing the property and rights of another person, including, but not limited to, a guardian, conservator, medical power of attorney, trustee or other duly appointed person.</p>	<p>W. Va. Code §9-6-1</p>
<p><b>Neglect:</b> The unreasonable failure by a caregiver to provide the care necessary to maintain the safety or health of a vulnerable adult or self-neglect by a vulnerable adult, including the use of undue influence by a caregiver to cause self-neglect</p>	<p>W. Va. Code §9-6-1</p>

<p><b>Preventative Adult Protective Services (PAPS):</b> A range of supportive services provided to vulnerable adults or facility residents where the threat of harm exists, and without intervention, it is likely that abuse, neglect, or financial exploitation will result.</p>	
<p><b>Regional Long-Term Care Ombudsman:</b> Any paid staff of a designated regional long-term care ombudsman program who has obtained appropriate certification from the Bureau for Senior Services and meets the qualifications set forth in W. Va. Code §16-5L-7.</p>	<p>W. Va. Code §9-6-1</p>
<p><b>Self-Neglect:</b> The inability of a vulnerable adult to meet his or her own basic needs of daily living due to mental or physical condition.</p>	
<p><b>Sexual Abuse:</b> The coercion of a vulnerable adult or facility resident into having sexual contact with the perpetrator or another person. The perpetrator may be involved either directly (e.g. the sexual partner) or indirectly by allowing or enabling the conditions which result in the sexual coercion.</p>	
<p><b>Social Isolation:</b> Controlling, denying, limiting, or coercing visits or conversations, or both, with friends, family, and acquaintances; outside involvement; reading; spiritual beliefs, traditions and events; and access to others. Examples are controlling, denying, limiting or coercing transportation, phone use, electronic or assistive communication devices; using verbal abuse and threats to keep others away; severing social relationships through manipulative tactics; and limiting access to friends or family through frequent moves or remote housing, or both.</p>	
<p><b>State Long-Term Care Ombudsman:</b> An individual who meets the qualifications of West Virginia Code §16-5L-5 and who is employed by the State Bureau for Senior Services to implement the State Long-term Care Ombudsman Program.</p>	<p>W. Va. Code §9-6-1</p>
<p><b>Subpoena:</b> The process by which a court commands a witness to appear and give testimony.</p>	
<p><b>Subpoena Duces Tecum:</b> A subpoena that commands the production of specified evidence in a person's possession.</p>	
<p><b>Substantiation:</b> A determination that a vulnerable adult or facility resident meets all of the Adult Protective Services eligibility criteria. The investigation and documentation of a situation in which a vulnerable adult has been abused, neglected or financial exploited, or the investigation and documentation of a situation in which a vulnerable adult is at threat of harm from abuse, neglect, or financial exploitation.</p>	

<p><b>Threat of Harm:</b> All activities, conditions, and circumstances that are likely to place the vulnerable adult or facility resident at threat of severe harm of abuse, neglect, or financial exploitation.</p>	
<p><b>Undue Influence:</b> Excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity.</p>	<p>W. Va. Supreme Court Rules of Practice and Procedure for Financial Exploitation Civil Proceedings</p>
<p><b>Verbal Abuse:</b> The threat to inflict physical pain or injury on or the imprisonment of any vulnerable adult or facility resident. The threat to inflict physical pain or injury includes, but is not limited to, threatening to withhold food, hydration and/or medical treatment. The threat to imprison includes, but is not limited to, isolation. The verbal threat(s) must be perceived by the client or others to be real. Non-malicious teasing does not constitute verbal abuse.</p>	
<p><b>Verification of Allegations:</b> A determination made that addresses the allegations reported and indicates if the alleged incident occurred or not. The allegation may be verified that it occurred but may or may not meet the definition of neglect, abuse or financial exploitation in order to substantiate.</p>	
<p><b>Vulnerable Adult:</b> Any person over the age of 18, or an emancipated minor, who by reason of physical or mental condition is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health and protection</p>	<p>W. Va. Code §9-6-1</p>

## Section 2 Intake

### 2.1 Introduction

W. Va. Code §9-6-11 sets forth the details regarding reporting of abuse, neglect, financial exploitation, or emergency situations involving a vulnerable adult or facility resident. Any individual may report known or suspected cases of abuse, neglect, financial exploitation, or emergency situations involving a vulnerable adult or resident of a nursing home or residential facility. These reports shall be made directly to DHHR’s Centralized Intake. Reports shall be received 24 hours a day, 7 days a week. In addition, if the vulnerable adult or facility resident is willing and able, they may make a report on their own behalf.

## **2.2 Statutory Requirements**

### ***Reporting Allegations***

In addition to the general provisions related to reporting of abuse, neglect, financial exploitation, or an emergency situation involving a vulnerable adult or facility resident, W. Va. Code §9-6-9 also sets forth requirements related to mandatory reporting. These include:

- Identification of various individuals who are mandatory reporters;
- Statement of requirements regarding immediate reporting by mandatory reporters;
- Statement of a requirement to submit a report within 48 hours;
- Statement of a requirement that mandatory reporters distribute reports to various parties; and,
- Identification of the instances in which the DHHR is required to report substantiated findings to others such as the prosecuting attorney, law enforcement, medical examiner, etc.

### ***Abrogation of Privileged Communications***

W. Va. Code §9-6-13 states that privileged status of communications between husband and wife, and with any person identified as a mandatory reporter in W. Va. Code §9-6-9, except communications between an attorney and his client, is abrogated in circumstances involving suspected or known abuse, neglect, or financial exploitation of a vulnerable adult or where the vulnerable adult is in a known or suspected in an emergency situation. Therefore, in APS cases privileged communications do not apply between husband and wife, patient and doctor, or with any mandated reporter.

### ***Mandatory Reporting***

In addition to the general provisions related to reporting of abuse, neglect, financial exploitation, or an emergency situation involving a vulnerable adult, W. Va. Code §9-6-9 also identifies various individuals who are mandatory reporters. This means that if any of these individuals have reasonable cause to believe or observe that a vulnerable adult or facility resident is being subjected to or has the potential to be subjected to abuse, neglect, financial exploitation, or an emergency situation, they must immediately, and no more than 48 hours after learning of the alleged incident, report the circumstances to the DHHR through Centralized Intake. The following are identified as mandatory reporters:

- Medical professionals;
- Dental professionals;
- Mental health professionals;
- Christian science practitioners;
- Religious healers;
- Social service worker (including those employed by the DHHR);
- Law enforcement officers;
- Humane officers;
- Any employee of a nursing home or other residential facility.

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The requirements, set forth in state statute regarding mandatory reporters, apply without regard to where the alleged victim resides (i.e. own home, the home of another individual, or an institutional/facility setting). In addition to submission of the report to the local DHHR, the mandated reporter must notify other various parties, dependent on the circumstances of the allegations:

- If the alleged victim is a resident of a nursing home or other residential facility, submit a report to state or regional ombudsman, Office of Health Facilities Licensure and Certification (OHFLAC), and facility administrator;
- In case of death of the alleged victim, submit a report to appropriate local medical examiner or coroner and if abuse or neglect is believed to have been a contributing factor to the death, report also to law enforcement; and,
- When applicable (i.e. financial exploitation, violent crime, sexual assault, domestic violence, death, etc.), submit a report to law enforcement and prosecuting attorney.

As stated in W. Va. Code §9-6-14, failure to make such a report can be punishable by a fine of up to \$100.00 or imprisonment of up to ten days in the county jail or both.

Under W. Va. Code §9-6-9(c), the DHHR is required to provide notification to mandated reporters whether the referral has been accepted for investigation or screened out with no further action required, and at the conclusion of the investigation, if the referral was accepted (refer to [Appendix E](#) Notification Letter).

### ***Reporting Suspected Animal Cruelty***

W. Va. Code §9-6-9a sets forth the details regarding mandatory reporting by APS workers to the county humane officer. If the APS worker forms a reasonable suspicion that an animal is the victim of cruel or inhumane treatment, they shall report the suspicion and the basis therefore to the county humane officer within 24 hours of the response to the report. This report must be documented in the Contact Screen in CCWIS with the date of the contact and the individual to whom the report was made.

### ***Follow-Up Reporting to the Medical Examiner***

W. Va. Code §9-6-10 specifies certain requirements involving abuse, neglect, or financial exploitation of a vulnerable adult or facility resident which resulted in death. Specifically, any person or official who is required to report cases of known or suspected abuse, neglect, or financial exploitation and who has reason to believe that a vulnerable adult or facility resident has died as a result of abuse, neglect, or financial exploitation must report that fact to the appropriate local medical examiner or coroner. The medical examiner/coroner will then report their findings to the local law enforcement agency, the local prosecuting attorney, the local DHHR, and if the institution making the report is a hospital, nursing home or other residential facility, to the administrator of the facility, the state and regional long-term care ombudsman and the Office of Health Facility Licensure and Certification (OHFLAC).

Generally, if there is a need to refer a case to the state medical examiner, this determination and the subsequent referral is to be made by the local coroner/medical examiner. The only

instance when a referral might need to be made directly to the state medical examiner would be:

- If there is no medical examiner or coroner responsible for the county where the death occurred; or,
- The local medical examiner or coroner in the county where the death occurred cannot be reached or is unavailable. In these instances, the referral would be made to the state medical examiner's Forensic Investigations Unit.

A referral to the state medical examiner is generally made by the reporter or local law enforcement, rather than the DHHR.

### ***Immunity from Liability***

W. Va. Code §9-6-12 specifies that any person who in good faith makes or causes to be made any report permitted or required by W. Va. Code §9-6-9, shall be immune from any civil or criminal liability which might otherwise arise solely as a result of making such a report. In addition, no facility may discharge or discriminate against a resident, family member, legal representative or employee because they filed a complaint or participated in a proceeding resulting from a report being made. Violation of the later provisions can result in suspension or revocation of the facility's license.

### ***Cooperation Among Agencies***

W. Va. Code §9-6-3 states whenever possible and appropriate, conducting investigations of alleged abuse, neglect, or financial exploitation should be coordinated between APS, various agencies of the DHHR, the state and regional long-term care ombudsman, administrators of nursing homes or other residential facilities, county prosecutors and other applicable state and federally authorized entities, such as patient advocates in state operated behavioral health facilities, and the identified Protection and Advocacy Agency (Disability Rights of West Virginia). These and other state and federal agencies are required to cooperate with each other for the purposes of observing, reporting, investigating and acting on complaints of abuse, neglect, or financial exploitation of any vulnerable adult or facility resident. In some instances, the medical examiner's office will contact local staff to see if a report of abuse or neglect has been made on one of their clients. Supervisor and staff are to work with the medical examiner's office and provide them with the necessary information; however, reporter information is never divulged.

### ***Confidentiality***

Legal provisions concerning confidentiality have been established on both the state and federal levels. In federal law, provisions are contained in the Social Security Act and the Health Insurance Portability and Accountability Act 1996 (HIPAA). On the state level, provisions related to confidentiality of client information is contained in W. Va. Code §9-6-8 and in Chapter 200, Confidentiality, in the [Common Chapters Manual](#). Refer to [Adult Services Legal Requirements and Processes](#) for additional information pertaining to confidentiality and when to release information.

### ***Access by APS to Protected Health Information of Alleged Victims***

Under the federal regulations related to implementation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), disclosure of protected health information is permitted, with or without the alleged victim's consent, if the sharing of this information is related to reporting of abuse, neglect, or financial exploitation, or is necessary to comply with state requirements related to conducting APS investigations (See, 45 CFR § 164.512(c)(i)).

### ***Conflict of Interest***

To avoid any conflict of interest and ensuring optimal client services, the APS staff should inform their supervisor immediately upon discovering that a friend, relative, or current or former co-worker, and anyone with close ties to the worker has been assigned to them for investigation or as an ongoing case. Upon this disclosure the supervisor has the discretion to transfer the case to another worker (and in some instances to another county) and restrict the case for limited access. The supervisor will then be responsible for informing their Social Service Coordinator or Community Service Manager of this issue per regional protocol.

In addition, APS staff should not solicit or accept any monetary gain or gifts for their services to the client other than their salary and benefits paid by the DHHR.

## **2.3 Information Gathering**

During the intake process, information gathered must be as complete and thorough as possible. Whenever a report is received, if there is more than one allegation reported, all allegations are to be recorded separately within the intake on the allegations screen. The individual identified as the "alleged victim" in the intake process will become the "client" and will be reflected as such in the investigation and in the case areas. At a minimum, the following information must be gathered during the intake process and documented in CCWIS:

- Name(s) of alleged victim;
- County of incident;
- Current location of the alleged victim;
- Age and/or date of birth of the alleged victim;
- Address of the alleged victim's home;
- Phone number for the alleged victim;
- Directions to the home;
- Name, age, and relationship of alleged perpetrator (if applicable);
- Other individuals involved in or who have knowledge of the incident;
- Description of the alleged incident(s) and any resulting injuries including type of alleged abuse, neglect, or exploitation, where and when the incident occurred, location(s) of injuries, etc.;
- Physical and psychological description of the alleged victim;
- Name of reporter or indication that referral was made anonymously if the reporter is unwilling to give their name. If the reporter indicates that their name is not to be shared with others, this must be documented. To do this check the box in CCWIS on the reporter screen that the reporter wishes to remain anonymous.
- Relationship of the reporter to the alleged victim;

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- Identification of the reporter as a mandatory reporter, when applicable;
- If a mandatory reporter, the Centralized Intake worker should request that a written report be submitted;

The name of the reporter as well as any information that may identify the reporter to others is confidential and is not to be released except to certain parties such as the prosecuting attorney and law enforcement officials as authorized by state law. If the name of the reporter is requested, the APS worker will consult with their immediate supervisor who will consult with Assistant Attorney General assigned to APS.

In situations where the incident being reported involves self-neglect, the same person will be identified as both the alleged victim and the alleged perpetrator. In situations where referrals are received involving more than one household member as an alleged victim (i.e. both a husband and a wife), separate referrals for each individual are required. The two referrals would then be associated in CCWIS to show that there is a relationship between them.

### **2.4 Eligibility Criteria**

In order to be eligible to receive Adult Protective Services (APS) or Preventative Adult Protective Services (PAPS), the individual must meet certain criteria. These are set forth in the following sections.

#### ***Intake and Investigation Eligibility***

In order to be eligible to receive an APS intake and investigation, the individual need only meet the following criteria:

- Be 18 years of age or older, or an emancipated minor;
- Vulnerable or a facility resident; and,
- Reported to be the victim or experiencing threat of harm of abuse, neglect (including self-neglect), financial exploitation, or in an emergency situation.

If a referral is received that identifies the alleged perpetrator is under age 18 and is not an emancipated minor, the caregiver of the minor must be listed as the alleged perpetrator. If a minor, it will require child welfare involvement.

Whenever criteria are met and the intake is assigned for investigation, an investigation is to commence and be completed within a specified period of time (refer to [Section 2.5](#) Referral Disposition for detailed information).

The investigation of a report of abuse, neglect, financial exploitation, or an emergency situation involving a vulnerable adult or facility resident is not voluntary and must be brought to conclusion in all cases that are assigned for investigation. In the event a client has left the state, died, etc., an incomplete assessment can be completed in consultation with the supervisor.



## 2.5 Referral Disposition and Response Times

Centralized Intake is the decision-maker at the intake stage of the APS process. Centralized Intake's role includes: 1) ensuring that all referrals are appropriately considered to determine if the referral is to be assigned for an investigation or screened out, and 2) for those assigned for investigation, determination of the required response time for the initial contact based on the degree of risk indicated in the referral information. Screening of the referral is to be done promptly.

Centralized Intake will:

- Review the information collected at intake for thoroughness and completeness. If further clarification or information is required, Centralized Intake may contact the reporter;
- Identify the type of referral (“Assessment/Investigation Type”), and associate the institution or provider, as appropriate, on the referral acceptance screen in CCWIS. The type of referrals includes:
  - “In-Home” (i.e. client’s own home);
  - “Institutional” (i.e. nursing home, ICF/ID group home, Specialized Family Care homes, I/DD Waiver home, Assisted Living facilities, Adult Family Care, state operated mental health facilities, etc.); or
  - “Non-Residential” (i.e. day treatment, adult day care, home-health agency, hospice, sheltered workshop, etc.);
- Conduct a search in CCWIS to determine if other referrals/investigations/cases already exist for the identified client and associate the current referral to other referrals/investigations/cases as appropriate;
- Determine if the referral will be screened out or accepted for investigation. In determining whether to accept or screen out the referral, the Centralized Intake worker must consider:
  - The presence of factors which present a risk to the adult;
  - The information related to the alleged abuse, neglect, financial exploitation or emergency situation, the alleged victim, and the alleged perpetrator;
  - Whether there are recent or current referrals under investigation with identical allegations;
  - Whether the information collected appears to meet the definition of abuse, neglect, financial exploitation, or emergency situation; and,
  - The sufficiency of information in order to locate the individual.
- Accept all referrals for an investigation that appear to meet the definition of vulnerable adult and abuse, neglect, financial exploitation, or an emergency situation, based on the information provided, or are at risk of being abused, neglected, or financially exploited;
- Ensure notification of acceptance or screening out of the referral has been sent to mandated reporters; and,
- Make additional referrals, as appropriate (within and outside of the DHHR), if the referral was screened out.

In reports involving facility or agency settings, the critical factor in determining referral acceptance is whether or not the allegations reported meet the definition of abuse, neglect, financial exploitation, or an emergency situation. If they do, the referral is to be investigated even if the injury's origin is not known, the perpetrator is not known, or the alleged perpetrator is no longer employed by the agency. The referral may be screened out only if eligibility criteria is not met. For example, the report is a minor bruise or skin tear with no indication that the injury occurred as a result of abuse or neglect, then it would not be accepted for investigation. If the same injury is reported, but there is reason to believe it occurred as a result of abuse or neglect, then it would be accepted for investigation. Once accepted, Centralized Intake will determine the appropriate response time for the referral based on the information presented on the intake and assign for investigation. If the referral is screened out, Centralized Intake will document the basis for that decision, and ensure that additional referrals to other resources (within and outside of the DHHR) are made, if appropriate.

### ***Response Times***

For all referrals that are accepted for investigation, the investigation must be initiated within a maximum of 14 days of the date the referral is received by the agency. Initiation of the investigation means, at a minimum, face-to-face contact with the alleged victim. This face-to-face contact is to occur in the adult's usual living environment whenever possible and is to be documented in CCWIS as soon as possible. Depending on the degree of risk to the client's health, safety and well-being, contact with the victim may require a face-to-face contact in less than 14 days. No extension will be granted for the face-to-face contact beyond the assigned time frame. The following are the only options of response times upon accepting a referral for investigation:

- **Immediate Response: Within 24 hours:** This time frame will apply in cases where it is determined that based on the referral information, an emergency situation exists. An emergency is a situation or set of circumstances which presents a substantial and immediate risk of death or serious injury to a vulnerable adult. A face-to-face contact with the alleged victim must be made within 24 hours.
- **Within 72 hours:** This time frame will apply in cases where it is determined based on the referral information, an emergency situation does not currently exist, but circumstances are severe enough that without prompt intervention, an emergency situation could result. A face-to-face contact with the alleged victim must be made within 72 hours.
- **Within 14 days:** This time frame will apply in cases where it is determined that based on the referral information, an emergency situation does not currently exist and/or is not expected to develop without immediate intervention. A face-to-face contact with the alleged victim must be made within 14 days.

***Considerations in Determining Response Time***

To assist with the determination of the appropriate response time for initiation of an APS investigation, Centralized Intake should consider the following:

- The information reported contains an allegation that indicates the presence of imminent danger;
- The alleged victim has the physical, cognitive and emotional capacity to make decisions and independently act on them;
- The location of the alleged victim at the time the intake is received (whether or not the victim is in a location that can assure their safety, or victim's ability to remove themselves from danger if necessary);
- The likely effect of APS intervention in escalating the circumstances in the home/facility and the capacity of APS to remain with the situation once intervention is initiated;
- The nature of the alleged abuse, neglect, or financial exploitation indicates premeditation or bizarre behavior or circumstances;
- The alleged abuse, neglect, or financial exploitation is occurring at this moment;
- The alleged circumstances that exist could change rapidly;
- The alleged perpetrator's behavior is bizarre, out of control, or dangerous;
- The alleged victim or perpetrator will flee;
- The living arrangements are life threatening;
- The alleged victim requires medical attention;
- The caregiver is gone, and the alleged victim is without needed assistance and supervision;
- The alleged victim is capable of self-preservation or protection;
- The alleged victim is isolated socially or geographically;
- There are indications of family violence;
- The family is transient or new to the community;
- The adult is currently connected to any formal support system;
- There are any family or friends available for support;
- The caregiver(s) are physically, cognitively and emotionally able to provide needed care to the adult;
- There is a history of referrals or multiple current referrals;
- There are multiple injuries; and,
- The location of the injuries suggests more serious harm.

***After Determination of Response Time***

After a response time has been determined, document the decision in CCWIS indicating the selected response time and the date of this decision. Centralized Intake will then send the referral to the appropriate supervisor who will assign the referral to a worker to initiate the investigation. Centralized Intake will also ensure the notification of acceptance or screening out of the referral has been sent to mandated reporter. The APS supervisor will follow-up to ensure that the assigned worker adhered to the designated response time, and, ensure a

follow-up notification letter has been sent to the mandated reporter once the investigation has been completed.

In the event extenuating circumstances exist which prevent the APS worker from conducting a face-to-face contact with the alleged victim, they must document the reason(s) CCWIS concerning why the face-to-face contact cannot be made within the assigned time frame. In these situations, the worker must consult with the supervisor prior to the date/time the face-to-face is due. As part of this, the APS worker must document their efforts in the Contact screen to comply with the specified time frame and the reason(s) it was not met.

### ***Recurrent Referrals***

All referrals must be evaluated to determine if an emergency situation exists. There may be times when recurrent referrals are received. Recurrent referrals mean identical referrals involving an active case or a client who is currently or was recently (within the past 30 days) the subject of an APS investigation. Regardless of past contact with the client, each referral must be considered separately to determine if any additional action is required.

If recurrent referrals are received during a brief period of time that contains identical allegations, the decision is made by Centralized Intake to screen out the new referral and associate it in CCWIS with the previous referral or case. This option may only be considered if the allegations are identical. If there are differences in the allegations, a new referral is to be taken and, based on the details of the new referral, Centralized Intake is to make a decision regarding accepting or screening out the referral, independent of any other referral(s).

## **2.6 Referrals Involving Specific Situations**

There are certain situations where a referral is received that require additional action, a modified approach, or special considerations. These include referrals that involve the following situations:

- Violent crimes;
- An active mental health client;
- Financial exploitation;
- Nursing home, assisted living, group home and residential settings;
- Mental health and state operated long-term care facilities;
- A service agency (i.e. sheltered workshop, community mental health center, home health agency);
- An acute primary care hospital;
- Law enforcement agency;
- Receiving Adult Family Care services; or,
- Suspected Methamphetamine laboratories and/or use.

Specific requirements and/or actions required by the DHHR related to each of these situations are described in the following sections.

***Referrals Involving Violent Crimes***

Referrals that are received regarding a vulnerable adult, including a facility resident, who is the victim of a violent crime, including but not limited to aggravated assault, sexual assault, attempted murder, etc., shall be received by Centralized Intake. Centralized Intake will determine if the referral meets the definition of abuse, neglect, or financial exploitation as defined by W. Va. Code §9-6-1 and make a screening decision. Centralized Intake then will notify the county, who will make the violent crime referral to local law enforcement. If it is known that a violent crime is alleged when the referral is received, Centralized Intake should first request that the reporter call law enforcement directly to report the situation. Whether or not the reporter refuses or agrees to call law enforcement, the referral is to be reported immediately in either instance.

APS involvement in these types of cases is limited to those involving a vulnerable adult and facility residents. A worker involved in a situation that is under investigation by a law enforcement agency must proceed with caution. Any involvement by the worker is not to interfere with or jeopardize the investigation by law enforcement. Close coordination between the two agencies is essential. The nature and scope of APS involvement should be determined by law enforcement and/or the prosecuting attorney if either entity is involved in the case.

The responsibility of the APS worker in situations involving a violent crime is to work in cooperation with law enforcement to ensure the safety of the alleged victim while their investigation is being conducted. To ensure the safety of the worker, APS should not intervene or respond to an active/on-going violent crime scene or situation. Regardless if law enforcement investigates, initiation or intervention by APS should not exceed 14 days from the date the referral was received. The worker is also responsible to ensure the victim is safe and to secure safe placement for the victim immediately.

***Referrals Involving an Active Mental Health Client***

Referrals involving active clients of a mental health/community behavioral health center who are endangering themselves or others should be referred to the center where they are receiving treatment. While these individuals may need protection, the involvement of the mental health/behavioral health center is essential to the provision of appropriate services; however, if abuse, neglect, or financial exploitation is included in the report, APS is to complete the investigation for accepted referrals, in order to address the allegations (also see Referrals Involving a Service Agency for the requirements if the alleged perpetrator is a staff member of the Mental Health agency).

***Referrals Involving Financial Exploitation***

Referrals of a vulnerable adult or facility resident involving financial exploitation may be accepted for investigation if it appears it is presently occurring. Due to the nature of these investigations and difficulty receiving information related to financial exploitation, these investigations will be limited to 60 days with the option of an additional 30-day extension approved by the supervisor. As similar with violent crime referrals, APS should work with law

enforcement on financial exploitation referrals. For examples or signs of financial exploitation, refer to [Appendix C](#).

The involvement of APS in financial exploitation situations will depend upon a variety of factors, such as the amount of information that the worker will be able to obtain from financial institutions, insurance companies, credit card companies, health care providers, etc. If the allegations involve transfer of property or other documents that are on file at the courthouse, the worker should be able to obtain information from the local county courthouse as this information is a matter of public record. Financial institutions and their employees, broker dealers, and investment advisors may report suspected financial exploitation to APS. A broker dealer or investment advisor shall provide access of records to APS as part of a referral or upon request, according to W. Va. Code §32-6-601, *et seq.* If possible, the APS worker should obtain a Release of Information from the client to obtain any necessary information. If unsuccessful in obtaining a Release of Information from the client, the APS worker must make every effort possible to obtain relevant or pertinent information. If unable to obtain relevant or pertinent information, all efforts to obtain information must be documented and the reason given by the holder as to why the it was not produced. It may be necessary to consult with the Adult Services Legal Counsel if the holder of the information refuses to comply with the request. Under the W. Va. Code §39B-1-101, *et seq.*, the Uniform Power of Attorney Act, if a person suspects an agent of abuse, neglect, or financial exploitation a referral may be filed with APS. If the referral is accepted for investigation, APS can ask for an accounting of transactions made by the agent on behalf of the client. The agent must provide APS within 30 days the requested information or must provide in writing why they need an additional 30 days. If the agent fails to provide information within the allotted time frame, APS may file a petition with the court.

In instances where financial exploitation will be verified and substantiated, court action may be necessary. According to the West Virginia Rules of Practice and Procedure for Financial Exploitation Civil Proceedings, the Department may file a petition for a Financial Exploitation Protective Order. Workers should follow regional protocol to file this petition requesting the aforementioned documents.

In financial exploitation referrals involving scams, referrals should be made to West Virginia Attorney General's office at 304-558-1155.

### ***Referrals Involving Nursing Home, Assisted Living, Group Home, and Residential Settings***

Referrals on adults who reside in nursing homes, assisted living facilities, group homes, residential settings, and/or other privately-operated long-term care facilities shall be handled as follows. All complaints and referrals shall be acted upon in one of the following ways:

- Referrals that concern the general population of the facility rather than an individual (e.g. "food is not meeting dietary requirements") must be referred, in writing, to the Long-Term Care Unit in the Bureau of Medical Services, OHFLAC, and the Ombudsman. Information about the reporter is not to be shared as part of this notification. The reporter is to be encouraged to contact the appropriate agency to

- report the incident directly. If they refuse to make this report or it is unlikely or questionable as to whether the report will be made to the appropriate agency, Centralized Intake must document the information reported and forward the information to the appropriate agency;
- Referrals that are received alleging abuse, neglect, or financial exploitation of a resident by a staff person or a visitor require an investigation by APS. If there are multiple victims named in the complaint, a separate referral must be taken for each alleged victim;
  - Referrals that allege resident-to-resident abuse generally are considered to be behavioral issues and not considered to be appropriate for investigation by APS, unless the abuse, neglect, or financial exploitation is believed to have occurred as a result of action or failure to act on the part of the facility. This situation should be referred to the facility administrator or their designee to be addressed. If it is determined that there is or appears to be a pattern of this type of allegation in a facility, a referral to OHFLAC, Ombudsman, or other applicable regulatory body, or all, should be made.

For residents of any placement setting, discharge for non-payment of the resource amount is permissible; however, the facility is required to discharge to an appropriate setting that will meet the client's needs. Referrals that deal solely with past due accounts do not meet the criteria of abuse, neglect, financial exploitation, or an emergency situation and generally will be screened out, unless the referral indicates the resident is currently being exploited. The worker must not get involved in delinquent accounts and must focus on prevention of current and/or future financial exploitation. Whenever financial exploitation is substantiated that involves a nursing home, assisted living resident or a resident of a legally unlicensed home or a residential care community, the worker is to notify the Long-Term Care Ombudsman (except Group Homes), OHFLAC, law enforcement, prosecuting attorney and Medicaid Fraud. Whenever financial exploitation is substantiated that involves a resident of any other placement setting, the APS worker is to notify law enforcement, prosecuting attorney, OHFLAC, Medicaid Fraud, Bureau for Behavioral Health, Bureau for Medical Services or other appropriate regulatory agency.

### ***Referrals Involving State Operated Mental Health and Long-Term Care Facilities***

The DHHR has established a mechanism for addressing APS complaints and allegations that involve state operated mental health facilities and state operated long-term care facilities. A person(s) identified as a "Patient Advocate" is responsible for investigating all referrals received involving residents in state operated Mental Health facilities, regardless of the nature of the referral.

The following guidelines have been established to help determine the extent of involvement of APS in these state operated facilities:

- Referrals that allege a specific client has been the victim of neglect, abuse, or financial exploitation by a staff person;

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- Upon receipt of a complaint by APS involving a specific client in one of these types of settings, the worker must discuss the complaint with the facility administrator or their designee;
- Referrals that indicate abuse of a patient/resident by another patient/resident in general are to be considered behavioral management issues within the institution and should be screened out and referred to the facility administrator or their designee; however, if there is a question as to whether or not neglect on the part of the facility was a contributing factor to the allegations of abuse, the referral may be accepted for investigation;
- In any of the state operated facilities specified above, referrals that are general in nature and may concern the entire facility population should be referred to the facility administrator or their designee and forwarded, in writing, to the DHHR with attention to the Chief Operating Officer, or their designee, of the Office of Health Facilities, situations involving a long- term care facility are also to be referred to OHFLAC.

### ***Referrals Involving a Service Agency***

Referrals alleging that abuse, neglect, or financial exploitation occurred at a service agency (i.e. sheltered workshop, community mental health center, home health provider, day treatment program, etc.) and the report alleges that the perpetrator was a staff member of that service agency or a visitor, an investigation must be initiated. If more than one victim is named in the report, a separate referral must be completed for each alleged victim.

Allegations of client to client abuse in this type of setting are generally not considered to be appropriate for an APS investigation unless the abuse, neglect, or financial exploitation is believed to have occurred as a result of action or failure to act on the part of the service agency. These situations are to be referred to the agency administrator and other applicable regulatory board.

### ***Referrals Involving Acute Primary Care Hospital***

Referrals involving abuse, neglect, or financial exploitation by hospital personnel that occurred in an acute primary care hospital are not appropriate for an APS investigation. These are to be referred to the administrator of the hospital. Quality of care issues are to be referred to Quality Insights (previously named West Virginia Medical Institute), OHFLAC and/or Medicaid Fraud Control Unit. The reporter should be encouraged to contact these entities directly to make the referral. If the reporter is unwilling or unable to do so, the DHHR is to send a written referral after gathering all relevant intake information.

### ***Referrals Involving Law Enforcement or Correctional Facility***

Referrals involving a law enforcement agency are not appropriate for an APS investigation. These are to be referred to that agency's internal investigation office or the prosecuting attorney, who is the chief local law enforcement officer. The reporter should be encouraged to contact the agency's internal investigation office/prosecuting attorney directly to make the referral. If the reporter is unwilling or unable to do so, the DHHR is to send a written referral after gathering all relevant intake information.



### ***Referrals Involving Adult Family Care Recipients***

Since Adult Family Care (AFC) homes are certified by the DHHR, the APS worker must notify the appropriate Homefinder and Adult Service worker of an APS referral regarding AFC homes and/or providers. APS referrals involving adults who reside in an Adult Family Care home shall be handled as follows:

- To avoid a conflict of interest, it is recommended that the referral be assigned to another county rather than the resident county of AFC home for investigation. If that is not possible, it is then recommended that the worker conducting the APS investigation not be the same worker who also carries an active Adult Services case (Adult Residential, Guardianship or Health Care Surrogate);
- If the worker or supervisor is the reporter, the supervisor or an employee in that unit should not be assigned to the investigation. In these situations, the referral should be assigned to another APS worker;
- If the referral indicates that one or more residents of the AFC home may be in immediate danger, the DHHR will evaluate and respond by investigating and making appropriate referrals;
- Referrals that are received alleging abuse, neglect, or financial exploitation of a resident by a provider or a visitor require an investigation by APS. If there are multiple individuals named in the referral, a separate referral must be taken for each alleged victim; and,
- Referrals that allege client-to-client abuse are considered to be behavioral issues and therefore not considered to be appropriate for investigation by APS. Rather, these should be referred to the Homefinding supervisor. These referrals would not be accepted for APS investigation unless the abuse, neglect, or financial exploitation is believed to have occurred as a result of action or failure to act on the part of the AFC provider.

### ***Referrals Involving Suspected Methamphetamine Laboratories and/or Use***

Referrals involving a suspected methamphetamine lab or use should be referred to law enforcement as they should be the first responder. Law enforcement may request placement assistance if there is a vulnerable adult. If the APS worker discovers a methamphetamine lab or suspects that they have come across chemicals being used to make methamphetamine during a home visit or an investigation, the worker will leave the house, depart the immediate area, and contact their supervisor and law enforcement (see [Appendix A](#) for additional information relating to the Protocol for Methamphetamine Investigations).

## **Section 3 Investigation and Risk Assessment**

### **3.1 Introduction**

The Investigation and Risk Assessment is the gathering of required information to determine if alleged maltreatment of a vulnerable adult has occurred. It is extremely important that contact with and observation of the caregiver, alleged victim, alleged perpetrator, witnesses, collaterals, etc. in an APS investigation be accurately, carefully, and thoughtfully documented.

In the event the perpetrator is prosecuted as a result of a substantiated APS investigation, the worker will, in many cases, be the primary source of evidence for the court hearing. The information documented in the case record is critical since it may be used in the court's determination about the guilt or innocence of the perpetrator, whether the crime is a felony or a misdemeanor, and the severity of the sentence imposed.

When a referral is received and there is missing information, such as name, last known address, birth date, etc., and the worker learns any of this information at any time, this information must be documented in CCWIS.

### **3.2 Timeframes**

Timeframes for initiation of the Investigation and Risk Assessment are determined by Centralized Intake upon receiving the referral. It is critical that the APS worker complete a face-to-face contact within the assigned time frame. This contact is to be documented in CCWIS as soon as possible. Because of the critical nature of APS, it is essential that face-to-face contact with the alleged victim be made by the APS worker within the response time assigned. No extensions will be granted for the face-to-face contact beyond the assigned time frame. In very unique situations, extenuating circumstances may exist that prevent the APS worker from meeting the applicable timeframes for completion of the initial contact. When this occurs, the worker must document the reason the timeframe for the face-to-face contact could not be met.

#### ***Completion of Investigation and Risk Assessment***

The Investigation and Risk Assessment is to be completed within 30 days for abuse and neglect and 60 days for financial exploitation. In the rare situations when it is not possible to complete the full Investigation and Risk Assessment within this timeframe, the APS worker must request an extension. To request an extension, the APS worker must submit a request to the supervisor prior to expiration of the assigned response time. At a minimum, this request must clearly state the following:

- Explanation of why the assigned timeframe cannot be met;
- Statement of the extenuating circumstances that exist;
- Estimation of the amount of additional time required; and,
- Other relevant information.

Based on the information provided, the supervisor may approve or deny the extension request. If approved, the maximum period of time allowed shall not exceed 14 days.

### **3.3 Worker Safety**

Within the scope of duties, workers and other employees must take precautions to prevent harm to themselves. Before making client contact, workers should make ongoing assessments of situations based on the nature of the allegation(s) or changing case characteristics. The following are issues for workers and supervisors to consider before making field visits:

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- Are firearms or other weapons noted in the report or record?
- Is there a previous history of domestic violence or other violent behavior towards others?
- Is there a history of criminal activity, mental illness, substance abuse, and ritualistic abuse or cult practices?
- Is the family's geographic location isolated or dangerous and is there cell phone coverage in that location?
- Is the contact scheduled after normal working hours?
- Are there aggressive animals on or near the premises?
- Is there a "danger to worker" notification screen on the referral?
- Is there lack of available information?
- Does anyone in the home have an infectious disease or illness?

If the intake assessment reveals possible risk to the worker, the following could be considered as part of a personal safety plan:

- Call law enforcement or another staff person, or both, for accompaniment;
- Carry a cell phone;
- Use a state car rather than personal vehicle
- Carry personal safety equipment, such as a whistle or personal alarm;
- Carry personal protective equipment, such as mask and gloves;
- Conduct a criminal history check before making contact; and
- Consult with other informal sources, such as local law enforcement, previous social workers, collaterals, coworkers, or colleagues from other agencies.

During every interaction with clients you must:

- Always notify supervisor when going and anticipated time of being there through district's sign out protocol;
- Always practice good hygiene practices, such as washing hands or using hand sanitizer;
- Follow all current health guidelines recommended by CDC and local health department;
- Avoid wearing or carrying valuables into homes;
- Take only what is necessary into the home;
- Park in an area that would allow for worker to leave the residence quickly if necessary;
- Be cautious entering homes with large groups of people;
- Scan the home for other individuals and ask if anyone else is in the home;
- Do not invade personal space and never touch anyone in the home;
- Be aware of surroundings and identify potential safety risks;
- Do not allow a client to get between worker and the door;
- Maintain vehicle in good mechanical condition; and
- If worker feels unsafe, end the visit immediately and seek assistance. Leave immediately.

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- When getting in the vehicle remember to look in the rear-view mirror to ensure you are not being followed.

Despite precautions, threats, and other incidents may occur. Workers and other employees must immediately notify their supervisor, another supervisor in the office, or other person in the chain of command following an incident such as assault, a threat of harm to staff or family members, or property damage. The supervisor or designee will:

- Provide the opportunity to debrief and explore the possibility of staff receiving counseling or other services;
- When warranted, report to law enforcement and request restraining orders for individuals or offices;
- Report the incident to the supervisor and CSM;
- Any worker or other staff who suspect they have entered an area where methamphetamine is manufactured will exit the residence and the property immediately and call 911 to request law enforcement response to address the safety of the vulnerable adult;
- Any staff person suspected of methamphetamine exposure should consult their personal physician within two hours of exposure; and/or
- Any staff person suspected to have encountered highly contagious illnesses or diseases should contact their personal physician.

### **3.4 Procedure and Responsibilities During an Investigation**

Clients and alleged perpetrators have a right to be as educated and involved as possible in the decisions being made during an APS investigation. The more knowledgeable and invested individuals are during an investigation the more willing they are to accept intervention. The worker is entrusted with the responsibility to share information with the individual during key points throughout the intervention process, not just those concerning the investigation. It is also important to keep in mind that the way in which information is disclosed is important. An APS worker must balance the right of notification with concern for not compromising any criminal proceedings that may be initiated as a result of substantiated abuse, neglect, or financial exploitation.

The duties of the APS worker during the investigation include:

- Make a face-to-face contact in private with the alleged victim within the assigned time frame. If unable to do this, the worker must document the reasons in CCWIS;
- Provide the alleged victim their rights using the handout “Client Rights during the Adult Protective Service Process,” and briefly explain the content. This can be viewed in [Appendix E](#). The APS worker will clarify any questions that the client has during the assessment/investigation.
- If the alleged victim has a decision maker that is a guardian, conservator or an attorney-in-fact by a power of attorney that is in effect, the APS worker must review or attempt to review the most recent document and record their efforts in case contacts. The handout “Client Rights during the Adult Protective Service Process”

must be provided to them as well, but not required for a Health Care Surrogate or Medical Power of Attorney.

- Never reveal the identity of the reporter, except:
  - upon request by the prosecuting attorney of a substantiated referral;
  - upon request by law enforcement of a substantiated referral; or
  - under order of the court;
- Involve relevant individuals/service providers as needed throughout the APS process;
- Explain the reasons behind actions taken by the worker;
- Contact the alleged perpetrator(s) regarding the allegation(s) and all potential witnesses and collaterals;
- Identify themselves as a worker from the DHHR, and display state employee identification to the alleged victim and any other individuals to be interviewed;
- Give the alleged victim a brief verbal description of the abuse, neglect, or financial exploitation allegations. If permission to conduct the interview(s) is denied, the worker will explain to the alleged victim that the worker must discuss this situation with the supervisor. Once the supervisor has reviewed the situation, the supervisor or worker must contact Assistant Attorney General assigned to APS for consultation on how to gain access so that the alleged victim can be interviewed;
- Provide the alleged perpetrator with the handout “Alleged Perpetrator’s Rights during the Adult Protective Service Process,” and briefly explain the content. If the alleged perpetrator has a guardian/conservator or Uniform Power of Attorney that is in effect, the handout “Alleged Perpetrator’s Rights during the Adult Protective Service Process” must be provided to them as well. A copy can be viewed in [Appendix D](#). The worker is not required to provide this to the Health Care Surrogate or Medical Power of Attorney;
- If the alleged perpetrator refuses to be interviewed face-to-face, but opts for a telephone interview, the worker will request a mailing address, so the Alleged Perpetrator’s Rights can be mailed. If the alleged perpetrator refuses to provide a home mailing address, the worker will verbally explain the rights if the alleged perpetrator agrees. The worker will clarify any questions the alleged perpetrator has about their rights;
- Request a complete home mailing address from the alleged perpetrator explaining this is necessary for notification if the findings are substantiated. If the alleged perpetrator refuses to provide the worker with a complete home mailing address, the worker must explain that a notification letter will not be sent regarding the findings, if substantiated. The worker must also explain to the alleged perpetrator that the findings may affect future employment. The worker then must document in CCWIS if the alleged perpetrator refuses to provide a complete home mailing address. APS cannot not mail the notification letter to the alleged perpetrator’s place of employment, without written permission from the alleged perpetrator. If the alleged perpetrator refuses to be interviewed, the worker must inform them that the findings will be completed without their input. If the alleged perpetrator refuses to provide

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any information the worker may want to send them a certified letter as a means of verifying attempts were made to get their information on record.

- If it is known that the alleged perpetrator or victim has legal counsel, the worker must ask permission to continue the interview. If permission is granted, the worker will proceed with the interview. If permission is denied, the worker will discuss this with their supervisor and Assistant Attorney General assigned to APS, and still complete the Investigation and Risk Assessment as deemed appropriate.
- Attempt to privately interview all relevant individuals.

In a situation where the alleged abuse, neglect, or financial exploitation occurred in a county that is not the county of residence for the alleged victim, the investigation will be conducted in the county that the allegations occurred. In these instances, close coordination and cooperation will be required by workers from both counties.

The order in which interviews are conducted is important to ensure that the information obtained is as factual as possible. The recommended order for completing the interviews is as follows:

- Alleged victim;
- Witnesses who may be able to report about the incident;
- Other witnesses and/or collaterals;
- Alleged perpetrator(s); and,
- Reporter may be contacted if additional clarification/information is required at any time during the interview process.

It is preferable to obtain a written summary of the individual's account of the incident and the events surrounding it, from the alleged perpetrator and witnesses. These statements are usually obtained when completing an investigation when the maltreatment occurred in a facility setting. When the statement is completed, the individual should sign and date the statement after they have read it thoroughly, making and initialing any corrections they believe are needed to more accurately reflect their account of the incident.

All interviews with the alleged victim, witnesses and the alleged perpetrator are to be conducted face-to-face. The interview with the alleged victim **MUST** be completed face-to-face and must be done within the assigned time frame. All other interviews are to be completed as quickly as possible, within the 30-day period allowed for completion of the Risk Assessment (exceptions are Financial Exploitation investigations that are allowed 60 days for completion). Every attempt must be made to conduct these interviews face-to-face. If, after every possible attempt is made, a face-to-face interview with individuals, other than the alleged victim, is not possible, the interview(s) may be conducted by telephone. When a face-to-face interview is not possible (excluding the alleged victim), it must be documented in CCWIS. Each contact with the alleged victim and others must be documented in CCWIS as soon as possible.

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Typically, the APS worker will not need to interview a child. However, if there is a need to interview a child under the age of 18 and the child is not an emancipated minor, the APS worker will need the permission of the parents or guardian to interview the child. If there is concern in regard to the safety of the child, a referral is to be made to Child Protective Services immediately, by contacting Centralized Intake.

On those occasions that interviews cannot be completed because the alleged victim is in another county, a courtesy interview may be appropriate. In these instances, the supervisor from the county requesting the courtesy interview will contact the supervisor in the county where the alleged victim is located to arrange the interview. Once the courtesy interview is completed, the worker who conducted the interview must document the contact in CCWIS, as well as notify the county requesting the interview that the interview has been completed.

Written documents and information sources are to be reviewed after all interviews are completed. This review will generally only apply when a facility/service provider agency is involved. The review of written documentation should include things such as the following, as applicable:

- Client chart;
- Care plan;
- Flow books/daily observation log;
- Nurses notes/social service notes;
- Communication log;
- Physician's orders;
- Prescribed medications/medication log;
- Photos;
- Body audit;
- Incident report(s);
- Results of the provider's internal investigation of the incident; and,
- Others as applicable.

If the worker makes the initial contact and finds the alleged victim in an emergency situation requiring immediate action to ensure their safety, completion of the full investigation may need to be put on hold until the emergency situation is addressed. This may involve requesting either an Order of Attachment permitting the DHHR to do an emergency removal or an Order for Injunctive Relief in order to gain access to the alleged victim, if access is being denied by the caregiver or others, thereby preventing assessment of the condition of the alleged victim.

### **3.5 Information Gathering**

Once the referral is assigned to an APS worker, the Risk Assessment is to be initiated within the assigned time frame. Completion of the Risk Assessment involves gathering a variety of information about the client, their current status, whether or not the allegations of abuse, neglect, or financial exploitation can be verified, and if so, the details of the abuse, neglect,

or financial exploitation. Information is to be gathered by conducting a series of interviews with the client, caregiver (if applicable), alleged perpetrator, others having knowledge of the situation, and family members or other significant individuals. If it is clearly determined the client has mental capacity, does not reside in a facility, and requests the alleged perpetrator not be interviewed, the worker will need to staff this with their supervisor to determine if an incomplete assessment may be appropriate. When interviewing the alleged perpetrator in a facility setting and the individual is still employed, they must cooperate with the investigation. If the alleged perpetrator has been terminated by the facility, the APS worker must make every attempt to conduct the interview. In this instance, the alleged perpetrator, may or may not agree to be interviewed. If they refuse to be interviewed, this is to be documented in CCWIS.

In addition to gathering the below identified demographic information, several critical questions must be considered when completing the Risk Assessment and determining whether a case is to be opened for APS or PAPS upon completion of the investigation, or if the investigation will be closed without additional services. These include the following:

- Is the alleged victim safe or can their safety be arranged or assured through resources available to them? (Resources include financial, social, familial, etc.)
- Can any of the allegations presented in the referral, or identified during the investigation process, be verified?
- Does the alleged victim meet all APS or PAPS eligibility criteria?
- If the alleged victim has decision-making capacity, are they willing to accept services?
- If APS or PAPS will not be provided, are referrals to other resources needed?

Although the APS worker should make every effort to interview the alleged victim and obtain consent from their legal representative when necessary, the APS worker must nevertheless complete the Investigation and Risk Assessment in a timely manner. It is not required for the APS worker to obtain the permission of the alleged victim or their legal representative, if applicable, to complete the Investigation and Risk Assessment component. If the APS worker is met with resistance that cannot be resolved otherwise, the worker should pursue legal action upon consulting with their supervisor.

If at any time during the Investigation and Risk Assessment process, doubt arises regarding the emergent nature of the situation, the APS worker shall resolve the doubt in favor of the client's safety and immediately initiate face-to-face contact with the alleged victim. If the allegations are of a violent nature and the perpetrator is likely to be present, the worker is encouraged to conference with their supervisor to request that law enforcement accompany them to the home to complete the initial face-to-face contact (see [Section 3.3](#) Worker Safety for more information).

### ***Demographic Information***

Demographic information about the client, the client's family and unique circumstances is to be documented. The following list is not intended to be all-inclusive: This includes information such as:



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- Name;
- Address (mailing and residence);
- Date of birth/age;
- Household members;
- Other significant individuals;
- Legal representatives/substitute decision-makers, if applicable;
- Identification numbers (SSN, Medicaid, Medicare, SSA Claim, etc.);
- Gender identity;
- Ethnicity;
- Marital status;
- Advance directives in effect, if applicable; and,
- Directions to the current residence.

### ***Living Arrangements***

Documenting information about the client's current living arrangements should include information about where the client currently resides, such as the following:

- Client's current location (own home, relative's home, hospital, etc.);
- Is this setting considered permanent or temporary;
- Type of setting (private home, residential facility);
- Household/family composition;
- Physical description of residence (single family dwelling, duplex, townhouse, apartment, retirement community, foster home, group home, nursing facility, etc.);
- Interior condition of the residence;
- Exterior condition of the residence;
- Type of geographic area (rural, urban, suburban, etc.); and,
- Access to resources such as family/friends, transportation, shopping, medical care/services, social/recreational, religious affiliations, etc.

### ***Client Functioning***

Documenting information about the client's personal characteristics should include information about how the client's personal needs are currently met, including an assessment of their strengths, needs, and supports in areas, such as:

- Activities of daily living (ADLs);
- Whether or not their needs are currently being met and by whom;
- Caregiver functioning, if applicable;
- Ability to manage finances;
- Ability to manage personal affairs;
- Ability to make and understand medical decisions; and,
- Assessment of decision-making capacity.

### ***Physical/ Medical Health***

Documenting information about the client's current physical and medical conditions should include information about the physical condition and description of the client as observed by

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the APS worker during face-to-face contact, as well as information about the client's diagnosed health status. Included are areas such as:

- Observed/reported physical conditions of the client;
- Primary care physician;
- Diagnosed health conditions;
- Current medications;
- Durable medical equipment and supplies used/needed; and,
- Nutritional status.

### ***Mental/ Emotional Health***

Documenting information about the client's current and past mental health status should include information about how the client is currently functioning, their current needs, and supports, and their history of mental health treatment involvement, if applicable. Included are areas such as:

- Current treatment status;
- Current mental health provider, if applicable;
- Mental health services currently receiving;
- Medication prescribed for treatment of a mental health condition;
- Observed/reported mental health/behavioral conditions; and,
- Mental health treatment history.

### ***Financial Information***

It is important to document information about the client's resources and their ability to manage these independently or with assistance. Included are areas such as:

- Financial resources - type and amount;
- Other resources available to the client - non-financial (i.e. bonds);
- Assets available to the client;
- Health insurance coverage;
- Life insurance coverage;
- Pre-need burial agreements/ arrangements in effect, if applicable;
- Information about client's ability to manage their own finances;
- Outstanding debts or expenses;
- Court ordered obligation for child support or alimony;
- Whoever manages the client's finances or who has access to client's accounts; and,
- Benefits.

### ***Education/ Vocational Information***

Document information about the educational and vocational training the client has received or is currently receiving. This should include information such as:

- Last grade completed;
- Field of study;
- History of college attendance/graduation;
- History of special licensure/training; and,

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- Current educational/training needs.

### ***Employment Information***

Document information about the client's past and present employment, such as:

- Current employment status;
- Current employer;
- Prior employment history; and,
- Current employment needs.

### ***Military Information***

Documenting information about the client's military history, if applicable, should include information such as:

- Branch of service/dates of service;
- Type of discharge received;
- Service-related disability, if applicable; and,
- Veteran's eligibility for benefits (contact local veteran representative if necessary).

### ***Legal Information***

Documenting information about the client's current legal status should include information about all known legal representatives, and the specific nature/scope of that relationship. This should include information such as:

- Assessment of client's decision-making capacity by the APS worker;
- Information about legal determination of competence, if applicable;
- Information about efforts to have client's decision-making capacity formally evaluated;
- Individuals who assist the client with decision-making; and,
- Court/hearing information.

### ***Decision Making Capacity***

Based on the information gathered during the Investigation and Risk Assessment, the APS worker is to make a determination as to whether or not the client **appears** to have the capacity to make independent decisions on their own behalf and to act on these decisions to meet their needs. It is important to remember that poor judgment does not necessarily indicate incapacity. **The APS worker does not determine incapacity.** If the client's decision-making capacity is in question, the APS worker shall request that an evaluation be completed by a physician, a physician's assistant, an advanced practice registered nurse, or a qualified psychologist to further assess the adult's decision-making capacity. Documentation of the client's decision-making capacity must include information regarding a determination of incapacity, if applicable, or worker observations leading to this conclusion if there is no indication that there has been a determination.

### ***Assessment of Risk***

A critical component of the Risk Assessment process is determining whether or not the alleged victim is at risk of injury or harm. This determination is made based on the client's circumstances, reported on the referral and/or observed during the investigation and the availability/accessibility of potential supports and resources that could alleviate the risk. Examples of circumstances that may exist which could be an indicator of risk include the following:

- No established residence;
- Inadequate/substandard housing;
- Suicidal gestures/statements;
- Self-destructive behavior;
- Violent/physically aggressive:
- Misuse/abuse of alcohol and/or drugs;
- Behaviors that provoke a serious reaction from others (incontinence, wandering, excessive talking, repetitive speech, etc.);
- Peer relationships reinforce/promote problematic behaviors;
- Client's behavior is a threat to self or others;
- Family members are violent to each other; and,
- Lack of support system (formal and/or informal).

The above is not intended to be an all-inclusive list. Further, the presence of any one or combination of these in and of itself would not mean that risk is present in every case. It is essential to consider all of the client's circumstances in making a determination about the presence or lack of risk to the client. Example: the referral alleged there was no food in the house, but during the course of the investigation, the APS worker learned the client goes out for meals and receives Meals-On-Wheels. In this example, the allegations can be verified (no food in the house), but not substantiated because there is no abuse, neglect, or exploitation, as the client's needs are being met.

### **3.6 Corrective Action Plan**

Corrective Action Plans (CAP) are to be utilized when allegations of abuse, neglect, or financial exploitation have been substantiated, or when allegations have not been substantiated, but poor or inappropriate practice by the provider may have been discovered during the investigation process. The CAP is separate from the written notification that is required to be sent to the regulatory entities, prosecuting attorney, etc. whenever abuse, neglect, or financial exploitation has been substantiated in a facility setting.

When abuse, neglect, or financial exploitation has been substantiated, a CAP is required to assure the safety of the client. The worker must provide written notification to the facility administrator or provider within seven calendar days following the completion of the Risk Assessment. The CAP is to be completed by the facility or provider and must address all the issues identified that are contributing factors to the abuse, neglect, or financial exploitation. It must clearly identify the specific actions that are to be taken to alleviate the problems. It

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should also include who is responsible for carrying out each task, time frames for completion of each task, and other relevant information. The facility or provider must submit a CAP to the DHHR within 15 days following receipt of the Investigation Summary from the DHHR.

The APS worker is to review the CAP to determine whether or not the plan adequately addresses all problem areas identified. Upon approval by the DHHR of the CAP, a copy of the approved plan is to be forwarded to the appropriate regulatory office (see below list). In the event the facility or provider is unable or unwilling to submit a CAP that adequately addresses the identified problems, the prosecuting attorney and the appropriate regulatory body are to be advised of the facility's or provider's failure to provide an acceptable CAP. To ensure that the CAP submitted by a facility or provider has been adhered to, the APS worker will request notification from the facility or provider when the plan has been implemented. In most instances the CAP should be fully implemented or completed within 30 days following the date the CAP is approved. Upon receipt of notification that implementation has been completed, the APS worker will conduct a site visit to verify that the plan was implemented.

If the APS worker and the supervisor believe that the CAP submitted by the facility administrator or provider fails to adequately address the problems, the APS worker is to contact the facility administrator or provider to resolve the issues in question. This contact must be documented in CCWIS and written notification sent to the facility administrator or provider identifying the additional areas that must be addressed in the CAP. The facility administrator or provider has seven days from the receipt of follow up notification to submit another CAP for approval by the DHHR. Upon receipt of notification that implementation of the CAP has been completed, the APS worker will conduct another site visit to verify that the plan was implemented. If efforts to obtain an acceptable CAP from the facility administrator or provider are unsuccessful, a report describing the remaining concerns and recommendations must be submitted to the prosecuting attorney and appropriate regulatory board. Further action should be at the discretion of the prosecuting attorney.

When abuse, neglect, or financial exploitation has NOT been substantiated, a CAP is not routinely required. In this instance, the APS worker is to notify the facility administrator or provider of the outcome of the investigation. Finally, if abuse, neglect, or financial exploitation has not been substantiated and a Preventative Adult Protective Services (PAPS) case is going to be opened, a CAP may be requested by the APS worker for appropriate follow-up to correct the situation.

Facilities and the appropriate regulatory reporting board:

- Nursing Homes:
  - OHFLAC, Medicaid Fraud, Ombudsman, and Bureau for Medical Services Long-term Care Unit;
- Assisted Living and Registered or Unlicensed Homes:
  - OHFLAC, Ombudsman, and Medicaid Fraud;
- I/DD Waiver and ICF/ID Group Homes:

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- OHFLAC, Medicaid Fraud, Bureau for Behavioral Health Adult Division, and Bureau for Medical Services Long-Term Care Unit for ICF/ID Group Homes and Home and Community Based Service Unit for I/DD Waiver;
- Specialized Family Care Homes (Medley):
  - Specialized Family Care Homefinder, Medley Program Manager and Medicaid Fraud;
- Adult Family Care Homes:
  - Bureau for Children and Families Home Finding Unit and regional AFC Home Finding Supervisor.
- State Operated Mental Health or State Operated Long-Term Care Facilities:
  - OHFLAC, Ombudsman, Medicaid Fraud, Office of Health Facilities; and
- Legally Unlicensed Homes:
  - OHFLAC
- Non-residential Service providers (home health, homemaker agencies, behavioral health centers, sheltered workshop, etc.):
  - OHFLAC or the regulatory agency that licenses that entity, and Medicaid Fraud;
- Any individual receiving waiver regardless of setting: Intellectual/Developmental Disabilities (I/DD), Aged and Disabled (ADW), Children with Serious Emotional Disorders (CESD), Traumatic Brain Injury (TBI):
  - Home and Community Based Services Unit at Bureau for Medical Services and Medicaid Fraud

### 3.7 Short-Term Service Planning

As the final part of the Investigation and Risk Assessment, the APS worker is to develop a short-term Service Plan in most situations. The short-term Service Plan documents interventions to be provided during the investigative phase of the case and does not require signatures or agreement by the client or others. A short-term Service Plan must be completed if: 1) the case will be opened for any social service, or 2) the case will not be opened for any social service but there is some additional follow-up that is required in order to bring the investigation to resolution. Investigations that are to be closed with no case being opened typically would not require the full 30 days, except for financial exploitation which has 60 days to complete. In development of the short-term Service Plan, consideration is to be given to both the short and long-term planning, including planning for eventual closure of the APS intervention, as appropriate.

When the DHHR provides social services beyond the Risk Assessment, the short-term Service Plan is to briefly document the tasks that are to be accomplished in the immediate future. The plan should be of limited duration and should in no instance exceed 30 days. This plan will be in effect until the Comprehensive Assessment and regular Service Plan are completed upon opening an APS or PAPS case.

When the DHHR does NOT provide social services beyond the Risk Assessment, the short-term Service Plan is to document the tasks that will be accomplished prior to conclusion of

the investigation. A brief statement of each task is to be documented on the plan (i.e. referral for in-home services, home delivered meals, etc.). Specific information regarding (a) who was contacted, (b) when contact was made, and (c) the result of the contact is to be documented in CCWIS. In this situation, the short-term Service Plan will end at the point the assessment is approved by the supervisor and the investigation closed.

### **3.8 Conclusion of Investigation and Risk Assessment**

The final step in the investigation process is to determine whether or not the allegations of abuse, neglect, or financial exploitation have been substantiated, and if an APS or PAPS case is to be opened. The following requirements apply regarding disposition of APS investigations:

- Consider each allegation individually and determine whether or not, based on the information gathered, the allegation can be substantiated, according to the legal definition of abuse, neglect, or financial exploitation;
- If at least one allegation of abuse, neglect, or financial exploitation has been substantiated according to the legal definitions and the other criteria are met, the referral must be substantiated;
- If abuse, neglect, or financial exploitation has not been substantiated and the client is at risk of being abused, neglected, or exploited, then a PAPS case should be opened;
- Generally, if the client meets all the eligibility criteria, the case will be opened for APS services. Two instances where all eligibility criteria are met that an APS case may not be opened, include:
  - The client is in a facility, the verified abuse, neglect, or financial exploitation was limited to a perpetrator who is no longer employed with the facility; and,
  - The client has not been deemed to lack capacity and is not willing to accept services
- If allegations of abuse, neglect, or financial exploitation were substantiated, and it was not self-neglect, and an APS or PAPS case was not opened, required notifications must be sent. See [Section 3.11](#) Required Notifications for additional information;
- Any time an individual is opened in CCWIS for multiple case types, one of which is APS (i.e. APS and AFC, or APS and Guardianship), the APS case must be set up separate from any other case type. If there is an APS or PAPS case and the client needs a decision maker or adult residential placement, a Request to Receive Intake must be entered for the appropriate service needed. If it is determined that services will be provided, the appropriate case must be opened;
- When follow-up is requested by a reporter, the APS worker must follow-up with the reporter regarding the investigation; however, the only information the APS worker can give the reporter is to advise that appropriate action is being taken and that all information obtained during the investigation is considered confidential and may not be shared; and,
- Whenever the APS worker identifies a need that can be met through community resources, they must make appropriate referrals.

The Summary Box in CCWIS should only be a narrative of the investigation. It should not include detailed information as to who was interviewed or the contents of the interview.

### **3.9 Disposition of Investigation**

At the conclusion of the investigation and completion of the Risk Assessment, the APS worker will then submit the Risk Assessment, along with their recommendation about disposition of the investigation, to the supervisor for approval. The possible dispositions available are:

- Close the investigation and open an APS case;
- Close the investigation and open a PAPS case;
- Close the investigation and refer to other resources (internal/external to DHHR);
- Close the investigation with no additional action needed; or,
- Close the investigation as incomplete - in some instances it will not be possible to complete an investigation (death of alleged victim, alleged victim moved to another state, after all possible attempts the APS worker is unable to locate alleged victim, etc.).

The disposition shall be based on all the information gathered during the investigation and completion of the Risk Assessment. From this information, the APS worker will determine if the referral was substantiated or unsubstantiated. This determination shall be based on whether or not the applicable eligibility criteria have been met according to W. Va. Code §9-6-1, *et seq.* and APS Policy.

### **3.10 Penalties for Caregivers**

W. Va. Code §61-2-29 and §61-2-29b provides for criminal penalties for caregivers who, directly or indirectly, abuse, neglect or create an emergency situation, or financially exploit a vulnerable adult. Because of this, it is extremely important that contact with and observations of the caregiver in an APS investigation be accurately, carefully, and thoughtfully documented. In the event the perpetrator is prosecuted as a result of a substantiated APS complaint, the APS worker will, in many cases, be the primary source of evidence for the court hearing. The information documented in the case record is critical since it may be used in the court's determination about the guilt or innocence of the perpetrator, whether the crime is a felony or a misdemeanor, and the severity of the sentence imposed.

### **3.11 Required Notifications**

When an APS investigation is substantiated, the APS worker must send a Notification Letter to the Prosecuting Attorney and Law Enforcement provided in CCWIS. The letter populates information from the CCWIS Allegations Findings screen summary comments section. Information in these boxes should only be a narrative of the investigation, not detailed information. The reporter's name must not be revealed in this letter.

Any time a referral for APS involving a known perpetrator is substantiated (excluding self-neglect), the APS worker must provide written documentation to the following:



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- Prosecuting Attorney and Law Enforcement
  - Use the form letter titled “Notification to the Prosecuting Attorney” for the Prosecuting Attorney or the “Notification to Law Enforcement” for law enforcement for this purpose;
  - Include in the body of the notification letter a description of the allegation(s) and investigation findings, potential witnesses, and action being requested of the court or the prosecuting attorney;
  - The perpetrator’s name and address (if the abuse occurred in a facility, the perpetrator’s title and facility name is to be included), as well as a summary of the investigation. In addition, the APS worker must include the following:
    - Condition of the home;
    - Condition of the client;
    - What intervention has been attempted and the results;
    - What further intervention is needed to ensure the client’s safety (if removal from the home is being recommended, where the adult will be taken to, how they are to be transported, any applicable precautions, etc.); and,
    - Any other pertinent information.
- Perpetrator
  - To accomplish this, the supervisor must approve the Allegation Findings Screen;
  - Complete demographic information must be entered in CCWIS for the client;
  - Use the form letter titled “Notification to the Perpetrator”;
  - The letter must be signed by the worker, and a signed copy shall be uploaded into the File Cabinet before mailing to the perpetrator;
  - The letter will also notify the perpetrator of their right to appeal and the process to request a grievance;
  - A pre-hearing conference must be offered to the individual to attempt to come to a resolution;
  - If a resolution cannot be achieved and the individual wants to continue with the grievance, the appropriate grievance forms must be completed and forwarded to the appropriate hearings office in accordance with the grievance procedure outlined in Common Chapters, Chapter 700. Refer to Board of Review.

This letter is also automatically generated if all information is correct in CCWIS. If it is not automatically created, an Exception Report will be generated in FREDI for follow-up by the APS worker. The APS supervisor must check the FREDI report weekly, at a minimum.

Due to the legal nature of this letter, the content of the body of the letter must not be altered. This letter contains required information and has been approved by DHHR’s legal counsel. As such, CCWIS will only allow the worker to make changes to the perpetrator’s name and address. No other information can be altered.

Notification to the alleged perpetrator that allegations have not been substantiated may be sent to the alleged perpetrator, upon request from the alleged perpetrator. The alleged perpetrator must provide a complete name and mailing address and this information must be entered into CCWIS. This letter will not be automatically distributed and must be manually sent by the worker upon supervisory approval. This letter is available in CCWIS in the report section. The APS worker should not routinely send a letter to the alleged perpetrator when allegations have not been substantiated, but only upon request from the alleged perpetrator. The contact with the alleged perpetrator must be documented in CCWIS and a copy of the letter must be recorded in Document Tracking and saved in the Filing Cabinet, with a hard copy filed in the case record.

These agencies shall receive notification upon substantiations when the maltreatment occurred in the following:

- Residential Facility
  - Nursing home:
    - OHFLAC, Medicaid Fraud, Ombudsman, and Bureau for Medical Services Long-Term Care Unit
  - Assisted Living, and Registered/Unlicensed Homes:
    - OHFLAC, Ombudsman, and Medicaid Fraud;
  - I/DD Waiver and ICF/ID Group Homes:
    - OHFLAC, Medicaid Fraud, Bureau for Behavioral Health Adult Division, and Bureau for Medical Services Long-Term Care Unit, and I/DD Waiver homes are referred to Home and Community Based Services Unit at Bureau for Medical Services along with OHFLAC and Medicaid Fraud
  - State Operated Mental Health or State Operated Long-Term Care Facilities:
    - OHFLAC, Ombudsman, Medicaid Fraud, and Office of Health Facilities,
- Specialized Family Care homes (Medley):
  - Specialized Family Care Homefinder, Medley Program Manager, and Medicaid Fraud;
- Adult Family Care Homes:
  - Adult Family Care Homefinder, Regional Home Finding Supervisor, and Ombudsman
- Legally Unlicensed Homes:
  - OHFLAC
- Non-residential Service providers (home health, homemaker agencies, behavioral health centers, sheltered workshop, etc.):
  - OHFLAC or the regulatory agency that licenses that entity, and Medicaid Fraud;
- Any individual receiving waiver regardless of setting: Intellectual/Developmental Disabilities (I/DD), Aged and Disabled (ADW), Children with Serious Emotional Disorders (CESD), Traumatic Brain Injury (TBI):

- Home and Community Based Services Unit at Bureau for Medical Services and Medicaid Fraud

In addition, if it is determined that there is or appears to be a pattern of allegations involving resident rights issues in a facility, a referral to the applicable regulatory agency (i.e. Ombudsman and OHFLAC) shall be made.

When an investigation is substantiated and the decision is reversed, written notification must be sent to all individuals/entities that were previously notified of the substantiation and a copy filed in the client's record.

APS Referrals that have been substantiated and a subsequent record check is completed: All referrals prior to May 18, 2006 must be fully reviewed to determine investigation results of substantiated or unsubstantiated, as the finding screen may be inaccurate due to a CCWIS system change.

## **Section 4 Case Management**

### **4.1 Introduction**

Case management is the primary service provided by the DHHR for clients who have been opened for APS or PAPS. It consists of identification of needs, appropriate services and resources to address the identified needs, referral of the client to appropriate service agencies, and coordination of service delivery. It is important to note that APS/PAPS case management is voluntary on the part of the client, or on the part of their legally appointed representative. Case management cannot be forced upon an unwilling client who has not been determined to be incapacitated. Case management in all APS/PAPS cases are to be time limited. APS cases are not to exceed 12 months and PAPS are not to exceed 6 months. The end goal of case management for these cases is to link clients with appropriate supportive services. Once this is accomplished, the case is to be closed. Case management should only continue long enough for the worker to determine that the arranged services and supports are adequate to address the client's needs and to ensure that the abuse, neglect, or financial exploitation situation has been adequately remedied.

### **4.2 Comprehensive Assessment**

A Comprehensive Assessment must be completed for each individual whose case has been opened for APS or PAPS. In order to develop a detailed understanding of the client and their needs, the APS worker must conduct a face-to-face with the client and complete an assessment. Each individual contact is to be documented. Information gathered on the Risk Assessment screen will populate forward to the Comprehensive Assessment screen in CCWIS if it has been approved before the Case Connect screen, as well as information in the Client screens. Any information that was not gathered during the Risk Assessment phase or information that has changed since the Risk Assessment was completed must be documented on the appropriate screens in CCWIS.

### ***Time Frames***

A Comprehensive Assessment, including the development of the Service Plan, must be completed for each client who is opened for APS/PAPS. This assessment must be completed within 30 calendar days following the date the case is opened. If changes in the client's circumstances occur that would impact the information documented on the Comprehensive Assessment after it has been completed in the case, these changes are to be documented as a modification to the existing Comprehensive Assessment.

### ***Conclusion of Comprehensive Assessment***

When the Comprehensive Assessment is completed, all the information and findings are to be documented in CCWIS. The Service Plan, that was developed as a result of the assessment findings is then to be submitted by the worker and approved by the supervisor within 30 calendar days after the case is opened. Areas that were identified as problem areas on the Risk Assessment that have not been completely resolved are to be addressed on the Service Plan.

## **4.3 Service Plan**

Following completion of the Comprehensive Assessment, a Service Plan shall be developed to guide the provision of services. Service Planning must be primarily directed toward remedy of the identified abuse, neglect, or financial exploitation or alleviating the risk of abuse, neglect, or financial exploitation to the client. In developing a Service Plan, consideration should be given to the conditions that exist as well as the strengths and capabilities of the client and their family. Based on the circumstances that exist, it may also be appropriate to develop a plan to reduce risk and assure safety of the client. In addition to addressing the immediate issues, consideration is also to be given to long-term planning, including preparing for eventual closure of the APS intervention, as appropriate. Service needs are to be addressed in priority order, beginning with the most urgent issues.

Development of the Service Plan is to be based on the findings and information collected during the assessment processes (i.e. Investigation, Risk Assessment, Comprehensive Assessment, and Case Review) as well as any specific requirements set forth by order of the court. Based on the information gathered, goals must be identified and set forth in the Service Plan. These will provide the milestones for assessing progress and success in the implementation of the plan. The Service Plan provides a written statement of the goals and desired outcomes related to the conditions identified through the assessment processes. Each problem area included in the Service Plan for an APS/PAPS case must directly related to the APS/PAPS situation that exists.

Development of the Service Plan is to be a collaborative process between the worker, the client, and others, such as providers or the legal guardian. In addition, the principle of self-determination, which is critical in intervention with adults, extends to the client's right to decide with whom they associate and who should be included in service planning for them. Those individuals who are involved in the development of the Service Plan should also be involved in making modifications to the plan.

Document the details of the Service Plan in CCWIS, clearly and specifically delineating the plan components. After approval by the supervisor, a copy of the Service Plan is to be printed and required signatures obtained. Required signatures include the client or his/her legal representative and all other responsible parties identified in the Service Plan. The signed copy is then to be filed in the client record and its location documented in CCWIS. A copy of the completed Service Plan is to be provided to all of the signatories.

***Inclusion of the Incapacitated Adult in Service Planning***

Inclusion of incapacitated adults in the service planning process presents the APS worker with some unique challenges. Although determined to lack decision-making capacity, the client may have the capacity to participate in the development of the Service Plan and shall participate in its development as well as signing of the completed document. Some special considerations for the worker include the following:

- When there has been a legal determination that the client lacks decision-making capacity and has a court appointed representative, the representative must be respected as the spokesperson for the client and the representative's consent must be obtained in completion of the Service Plan. If the court appointed representative is the perpetrator in APS case and is unwilling or unable to take/permit the action(s) necessary to carry out the Service Plan, that individual shall not participate in development of the Service Plan nor shall they sign the completed document. In this situation, the Service Plan must address seeking a change in the client's legal representative;
- When the client has an informal representative (i.e. close relative or other long-term caregiver), this individual should be included in the service planning process and may sign the Service Plan. The relationship of the informal representative is to be documented in the client record;
- When the client appears to lack decision-making capacity, but does not have a court appointed or informal representative, the APS worker may complete the Service Plan without the client's consent and involvement if the primary goal in the plan is to obtain appropriate legal representation; and,
- When a client appears to have decision-making capacity and could benefit from intervention but is resistant, it is appropriate for the APS worker to try to overcome some of this resistance. Ultimately, however, a client with decision-making capacity has the right to refuse case management services. In this situation, a Service Plan would not be developed and the APS/PAPS case is to be closed.

***Determining the Least Intrusive Level of Intervention***

In the provision of services to adults, the principle is well established both in law and policy that the least intrusive means of intervention should always be used. When applying this principle to individual situations, there is some discretion in determining the appropriateness of the manner in which the DHHR intervenes in the life of the client and the level of care/assistance required in order to meet the client's needs.

Dedication to the principle of least intrusive intervention requires a commitment to the maximum level of self-determination by the client. The client and/or their court appointed representative need to be presented with options, educated about the benefits and consequences of each, and then permitted to make decisions. The Service Plan is used to document these choices and to ensure the integrity of the decision-making process.

It is important to clearly document the efforts made to assure the least intrusive level of intervention. In the event these efforts are unsuccessful, this fact and the reason(s) they were not successful must also be clearly documented in the case record. This becomes increasingly important if legal intervention becomes necessary.

### ***Required Elements***

The Service Plan must contain all the following components in order to assure a clear understanding of the plan and to provide a means for assessing progress:

- Specific criteria which can be applied to measure accomplishment of the goals;
- Specific, realistic goals for every area identified as a problem, including but not limited to those identified through the Risk Assessment process. This will include identification of the person(s) for whom the goal is established, person(s)/agency responsible for carrying out the associated task(s), identification of services, and frequency/duration of services;
- Specific tasks which will be required in order to accomplish the goal. These are tasks or activities that are designed to help the client progress toward achieving a particular goal and should be very specific and stated in behavioral terms. These tasks are typically short-term and should be monitored frequently; and,
- Identification of the estimated date for goal attainment. This is a projection of the date that the APS worker and the client expect that all applicable tasks will be achieved.

Other important considerations for the service planning process are:

- The client's real and potential strengths;
- Attitudes, influences and interpersonal relationships and their real or potential impact on implementation of the Service Plan;
- The circumstances precipitating involvement by the APS system; and,
- Levels of motivation.

### ***Developing a Plan to Assure Safety***

When it is determined through the assessment process that risk factors exist which compromise the safety of the adult, the identified problem areas must be addressed in the Service Plan. When developing a plan to assure safety of the client, it is important to involve them in the discussion of the behaviors which are problematic, options for managing the behaviors, and the formalization of a plan to address the behaviors and their cause(s). In situations where it is necessary to remove the adult from their home in order to assure their safety, the following should occur:

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- Identify the conditions that establish/support the need for out-of-home placement;
- Identify the recommended placement arrangement;
- Describe arrangements for visitation with family and friends, including any restrictions, if applicable; and,
- Describe the efforts that have been made to prevent out-of-home placement and the results of these efforts.

### ***Out-of-Home Placement Considerations***

Some clients may be unable to reside in their own home, even with the provision of supportive services. When this occurs, the APS worker must evaluate the client's circumstances and needs to assist in arranging the most appropriate, least restrictive placement alternative. Options to consider, in the order of least to most restrictive, include the following:

- Placement with a relative, friend, or other interested party (with or without supportive services);
- Adult Family Care;
- Specialized Family Care home;
- Assisted Living facility;
- I/DD Waiver home;
- ICF/ID group home; or
- Nursing Home.

### **4.4 Administrative Processes**

Refer to the [Adult Services Legal Requirements Procedures Policy](#) and [Substitute Decision Maker Policy](#) for information regarding administrative processes.

### **4.5 Exceptions to Policy**

In some circumstances exceptions to policy may be requested. Exceptions will be granted on an individual case-by-case basis and only in situations where client circumstances are sufficiently unusual to justify the exception; however, such exceptions are to be requested ONLY after other resources have been exhausted. In that event, requests must be submitted as a policy exception in CCWIS. The policy exception request is to be submitted by the APS worker to the supervisor. Upon supervisory approval, the request will be forwarded to the appropriate individual for final approval/denial. Policy exception requests must include:

- Explanation of why the exception is requested;
- Anticipated impact if the policy exception is not granted;
- Efforts to resolve the situation;
- Information supporting the request;
- The time period for which the exception is being requested; and,
- Other relevant information.

In an emergency situation, the request for a policy exception may be made to and approved by the Regional Adult Services Field Consultant, or if they are unavailable, the Regional Social

Services Program Manager, or designee, verbally. Once verbal approval is granted, the request for policy exception and all supporting information must be entered in CCWIS.

#### **4.6 Payments by DHHR**

Generally, the Bureau for Children and Families does not pay for services provided as a result of an APS case; however, there are certain situations when the DHHR may consider authorization of payment in APS cases. The following sections detail the specific requirements related to authorization of payment.

##### ***Court Ordered Payments - General***

DHHR may be ordered by the court to make payment on behalf of an APS or PAPS client. Whenever the DHHR is court ordered to pay for services or fees, the client's Service Plan must address the efforts being made to obtain/access resources for the client, so they may assume this responsibility. Additionally, the APS worker should object and state reasons for the objection when the DHHR is court ordered to pay for services, so their objections are noted in the court order. The APS worker will consult with their supervisor and follow regional protocol regarding contacting Assistant Attorney General assigned to APS.

In cases where the DHHR has been court ordered to make payment, the DHHR should only be considered when the client does not have or cannot use resources of their own to cover the costs. Whenever possible, the client is expected to use their resources when these exist or can be obtained. Additionally, part of the worker's responsibility is to inform the court of resources available or potentially available to the client that may be used for this purpose. When appropriate, the worker should also request that the court order address reimbursement to the DHHR by the client for the cost of services provided at such time as the client's resources become available (i.e. sale of real estate to generate funds to provide for the client's needs).

##### ***Court Ordered Payments – Required Procedures***

Payment by the DHHR of guardian ad litem fees is limited to APS cases involving the DHHR seeking an Order of Attachment. In these instances, the DHHR may be court ordered to pay the associated fees. Whenever the client does have resources to pay these fees, the APS worker is to request that the court require the client to assume financial responsibility for these costs.

If the DHHR is required by court order to pay guardian ad litem or other fees, the request for payment is to be submitted, in writing, to the appropriate Regional Adult Services Field Consultant for approval within six months of occurrence. Specifically, the attorney is to submit an invoice and required documentation to the APS worker. The worker reviews the material submitted to verify accuracy and completeness and then, upon approval by the supervisor, forwards the request for payment to the appropriate Regional Adult Services Field Consultant. Once approval is obtained, the payment request is to be forwarded to the Bureau for Children and Families, Finance and Administration for processing of the payment. In



addition to the written request, the following documentation must be provided by the worker:

- Cover memo stating that the client is an active recipient of APS;
- Court order which 1) has an embossed court seal, 2) has been signed by the judge, and 3) specifically states what costs the Bureau for Children and Families is required to pay; and,
- Itemized invoice that meets the following requirements:
  - Is on the guardian ad litem/provider's letterhead;
  - Contains the FEIN or social security number of the guardian ad litem/provider;
  - The total amount invoiced is identified and matches the amount specified in the court order;
  - The specific amount(s) invoiced shall not exceed the current rates established by the public defender's office; and,
  - In order to request reimbursement for this type of expense, it should be completed within six months after the hearing.

In addition, the APS worker may also open another case as a Request to Receive Intake for other services, such as Adult Residential placement, etc. (payment is to be made at the DHHR established rate). A Guardianship case may at times result from APS intervention. A separate guardianship case must be opened and the DHHR will not pay for court appointed counsel to the protected person in guardianship proceedings. This payment, by statute is to be paid from the estate or by the state Supreme Court (see W. Va. Code §44A-1-13 for further information). Fees related to the filing of a petition for guardianship may only be paid from a guardianship case. It cannot be paid out of an APS, Request to Receive Intake, or Health Care Surrogate case. It can be paid if the primary case type is Adult Residential if the secondary case type is Guardianship. A demand payment should be issued from the guardianship case within the six months of occurrence.

### ***Emergency Hospital/ Nursing Home Placement***

Occasionally, it becomes necessary to arrange for placement in a hospital or nursing home of an APS client for whom Medicaid eligibility has not yet been established. If the nursing home or hospital will not admit the client pending Medicaid approval and if there are no other available resources, the Bureau for Children and Families may authorize payment for the hospital or nursing home care for a brief period of time until Medicaid eligibility can be determined or other appropriate funds are obtained; W. Va. Code §9-6-6 permits payment by the DHHR in these instances. This option may be considered only under the following limited circumstances:

- When abuse, neglect, or financial exploitation has been substantiated;
- Prior to permanent placement, hospital admittance may be required to determine client's level of care. When it has been determined that the adult appears to meet nursing home eligibility criteria, worker will need to check to see if a Pre-Admission Screening-2000 (PAS-2000) has been approved within the past 60 days. If not, a PAS-2000 will have to be completed by a physician and approved by Kepro, the Administrative Service Organization (ASO) tasked with eligibility determination for nursing home and waiver services;

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- When there are no other available resources to assure the client's safety; and,
- When it is determined by the worker and their supervisor that this is the only way to ensure the victim's safety until permanent arrangements for their care can be made.

### Approval for Emergency Hospital/Nursing Home Placement

Placement of an active APS client in a hospital or nursing home at the DHHR's expense shall be considered only when all other options have been exhausted and this is being considered as a last resort to ensure the client's safety. Approval for payment of placement for an APS client must be obtained from the Regional Adult Services Field Consultant prior to placement. After verbal or written approval is obtained from the Adult Services Field Consultant, the APS worker must submit a Policy Exception request in CCWIS. All requests for payment by the DHHR for placement are to be time limited and, except in extraordinary circumstances, are not to exceed thirty days. Any time payment by the DHHR beyond the initial approved 30-day timeframe is necessary, a second Policy Exception request for an additional 30 days must be submitted with a detailed explanation of why an extension is needed. This request must be submitted prior to the expiration of the initial 30-day timeframe and payment should be requested within six months of approval. During this time, the APS worker needs to assist client with acquiring Medicaid. The initial and subsequent policy exception requests must include the following information, at a minimum:

- Client name;
- Explanation of why hospital/nursing home placement is needed;
- Amount of available financial resources;
- Other options explored/considered and reason(s) each was ruled out;
- Name of hospital/nursing home where client is to be placed;
- Length of stay at DHHR's expense being requested - except in extraordinary circumstances, not to exceed 30 days;
- Plans for arranging for alternate placement/securing alternate funding for placement;
- Whether an application for other resources have been made such as Medicare, Medicaid, Social Security, Veteran's benefits, private funds/benefits, etc.; and,
- Other relevant information.

There are two situations where it may not be possible to submit a verbal or written request and obtain a response from the Regional Adult Services Field Consultant prior to placement. These are:

- If the need occurs during non-work hours; and,
- If the need occurs during normal work hours but the emergency situation is so serious that immediate action must be taken.

In the first instance listed, the supervisor may temporarily grant approval with a verbal, and submit a written request for approval to the Regional Adult Services Field Consultant immediately upon return to the office. In the second instance listed, the supervisor may make a verbal request to the Regional Adult Services Field Consultant for payment of hospital/nursing home placement. If granted, the written request, including a description of

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the emergency situation that prompted the verbal approval, in addition to the information listed above, must be submitted to the Regional Adult Services Field Consultant upon the APS worker's return to the office.

If approval for the policy exception is granted, the worker must diligently seek an alternate payment source for the client's cost of care. Examples of this include, but are not limited to, facilitating a Medicaid application, determining the client's monthly income and assets and who is the appropriate individual to authorize payment to the hospital/nursing home. Depending on the circumstances, the worker may need to request change of payee to the nursing home or file a petition for the Sheriff to be appointed as Conservator in order to access client's income and/or assets. Also, during this 30-day time period, the worker must make getting an approved PAS-2000 a priority.

The role of the Regional Adult Services Field Consultant in these instances is for authorization of short-term payment for the emergency placement of an adult in the hospital or nursing home as a result of an APS investigation. Invoices from the hospital or nursing home for these placements will not be submitted to Finance and Administration for reimbursement until written documentation to support the invoice has been received by the Regional Adult Services Field Consultant.

### *Invoicing for Hospital or Nursing Home Placement*

To receive reimbursement for emergency hospital or nursing home placement of an APS client, the hospital or nursing home must submit an original invoice. The invoice must contain the following information, at a minimum:

- Client name;
- Name of facility;
- Signature of individual authorized by the facility to submit invoices;
- Statement of daily rate for room and board (not to exceed the approved Medicaid rate);
- Date(s) of service (except in extraordinary situations, should not exceed 30 days, dates of service on the invoice should match the dates reflected in the approved request for payment); and,
- Total amount due.

Invoices are to be submitted through the APS worker and their supervisor to the Regional Adult Services Field Consultant for approval and processing within six months of service. As part of this submission the APS worker is to prepare a cover memo that indicates the date that the Regional Adult Services Field Consultant approval was granted and the period of time that was covered by the approval.

### ***Special Medical Authorization***

Most adults who are served through APS will have or are eligible for some type of medical insurance coverage. If the client does not have coverage for necessary medical care

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(prescriptions and limited doctor visits), the APS worker must thoroughly explore all potential options for securing appropriate medical coverage, such as DHHR Income Maintenance Services (Medicaid), Social Security, community/civic organizations, family members, churches, Medicare, drug company assistance programs, samples from physicians, mental health agencies, health right clinics, etc. If, after this exploration, an active APS client requires medical services for limited doctor services, prescriptions, chux pads and disposable briefs, and does not have the resources available to obtain them, a Special Medical Authorization may be requested to cover the cost of eligible services at a rate not to exceed the current Medicaid rate. For clients that are 65 years of age or older, the Special Medical card will not cover any prescriptions that are covered under Medicare Part D, regardless of whether the client is enrolled in or receiving Medicare Part D; therefore, the Special Medical Card must not be issued for any prescriptions covered by Medicare Part D.

The Special Medical Authorization may be used to cover certain medical costs; however, all Medicaid eligible services are not necessarily covered by this authorization. The Special Medical Authorization is to be used to provide for limited doctor visits and prescriptions needed to treat an emergency or to prevent a medical emergency from occurring. Examples of costs that are typically covered are medication and limited doctor visits, chux pads and disposable briefs. Examples of costs not covered include emergency room, hospitalization, nursing home placement, psychiatric/behavioral health services/treatment, dental work, corrective eyeglasses, outpatient surgery, diagnostic testing, etc.

To request the Special Medical Authorization, the worker must prepare the request in CCWIS and submit it to the supervisor for review and approval. When requesting a Special Medical Authorization, the following information must be documented in CCWIS:

- Client's goal related to providing the requested services;
- List the specific service(s) payment is being requested for and the associated cost(s) (cannot exceed current Medicaid rate);
- Statement of verification that all potential resources have been explored and there are no other resources available to meet the cost;
- Anticipated duration of request (not to exceed thirty days);
- Name of provider;
- Client income amount and source; and,
- Any other relevant information.

Ideally this information should be documented in summary form as a contact, "other" type, in addition to documentation, as appropriate, in other areas of CCWIS (i.e. income information would also be recorded on Income screens; information related to goals would be documented on the Service Plan screens, etc.). In a situation where a client needs services from more than one vendor (i.e. an office visit with a physician and prescriptions from a pharmacy), a separate Special Medical Authorization request will be required for each vendor.

*If Approved*

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Once approved by the supervisor, the APS worker will print a copy of the authorization letter and review it to ensure the information is complete and accurate. Upon completion of this review, the authorization is to be saved in the CCWIS File Cabinet for the case and recorded in Document Tracking. Finally, the worker will furnish the authorization letter to the vendor(s) who will be providing the service.

Vendors need to be made aware there is generally a delay of about five working days between when the Special Medical Authorization is generated by the Bureau for Children and Families and when this information is received by the Bureau for Medical Services. Therefore, if the Special Medical Authorization is used immediately upon issuance, the vendor may need to wait a few days to submit the request for reimbursement, otherwise, Medicaid may not have received verification that the service has been authorized.

### *If Denied*

If request is denied, the APS worker may provide additional information and re-submit the request if the denial was based upon insufficient information; otherwise other alternate resources must be sought to cover the services requested.

It is important to note that if the APS case is closed and the Special Medical Authorization is still in effect, the worker must send written notification to the vendor, the client or their legal representative, and the Bureau for Medical Services advising them that the authorization is no longer in effect and the date on which coverage ends.

### ***Other Payments***

Other payments that may be considered emergent in nature may include, but are not limited to food, identification card, birth certificate, etc. Prior supervisory approval must be verbal and/or written. If granted, the policy exception must include a description of the emergency situation that prompted the verbal approval and must be submitted to the Regional Adult Services Field Consultant. If the policy exception is granted, the APS worker must diligently seek an alternate payment source for future client needs.

In the case of an out-of-state birth certificate, the APS worker can request their Financial Clerk to pay by check, and reimbursement will be made by the APS worker entering a demand payment.

## **4.7 Transfer of Cases between Counties**

Though the need for transfer of an APS case will be rare, there may be situations when it must be transferred from one county to another. Whenever it is necessary to transfer a case from one county to another, this is to be a planned effort with close coordination between the sending county and the receiving county. Here is an example of an APS case transfer: an APS client is placed in a nursing home in a different county from where the APS report was received and payment has been authorized under the case, and this payment is anticipated to go on for an extended period of time while benefits are applied for and approved.. After the original county has arranged for the placement and received initial authorization for

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payment of the nursing home placement, the APS case may be transferred to the county in which the nursing home is located.

The APS case is not to be transferred if the placement is a temporary arrangement (substance abuse treatment, inpatient psychiatric care, acute care hospital admission, etc.). In these instances, the originating county is to continue to carry the case. If there are times when it is a hardship for the county responsible for the case to maintain contact with the client as required, the supervisor may arrange with the Adult Services supervisor in the county where the facility is located to do a courtesy visit.

### ***Timing of Transfers***

It is recommended that case transfers be planned for the beginning or end of a month in order to minimize confusion related to payment, if applicable.

### ***Sending County Responsibilities***

When it is necessary to transfer an APS case from one county to another, the sending county is responsible for completing the following tasks:

- Prior to arranging or completing a transfer to a provider in another county, the sending supervisor must contact the supervisor in the receiving county to notify them that a client is being transferred to their county;
- Provide a summary about the client's needs (i.e. reason for the transfer, problems in other settings, disturbing behaviors, family and financial resources, insurance coverage, and legal representative(s), if applicable);
- Complete all applicable case documentation prior to case transfer;
- Immediately upon transfer of the client to the receiving county, send the updated client record paper and CCWIS to the receiving county; and,
- Notify the DHHR Family Support staff, the Social Security Administration office, and all other appropriate agencies of the client's change of address.

### ***Receiving County Responsibilities***

The receiving county is responsible for completing the following tasks in preparation for the transfer:

- Notify the DHHR Family Support staff of the client's arrival when the transfer is complete;
- Complete all applicable documentation; and,
- Assist with arranging or initiating any needed community resources.

When an APS case is transferred from one county to another, problems that arise during the first 30-day period following the transfer are to be addressed jointly between the counties. When this occurs, the receiving county may request assistance from the sending county. If such a request is received, the sending county is to work cooperatively with the receiving county to resolve the problem(s). The APS worker should maintain frequent contact during

this initial adjustment period to ensure a smooth transition. This will permit timely resolution of problems that may occur during this time.

#### **4.8 Case Review**

Evaluation and monitoring of the APS or PAPS case and the progress being made should be a dynamic process and ongoing throughout the life of the case. For APS and PAPS, frequent monitoring is essential since both are short-term services. In unique situations, it may not be possible to complete all necessary tasks to resolve the abuse, neglect, or financial exploitation, or risk within specified time frames. Should this occur, an extension must be requested by the APS worker to exceed the allowed time.

##### ***Timeframes***

The purpose of Case Review is to consider and evaluate progress made toward resolution of the abuse, neglect, or financial exploitation. Re-examination of the Service Plan is a primary component of the review process. The APS worker must consider issues such as progress made, problems or barriers encountered, effectiveness of the current plan in addressing the identified problem areas, and if modifications are needed.

##### ***Extensions***

In extenuating circumstances, it may be necessary to keep the APS case open beyond the maximum of 12 months or the PAPS case beyond the maximum of six months in order to resolve the abuse, neglect, or financial exploitation, or risk of abuse, neglect, or financial exploitation. Should an extension become necessary, the APS worker must request a policy exception to go beyond the maximum time frames. This request must be submitted prior to the end of the deadline for APS or PAPS case closure. If approved, the extension must be time limited. Policy exceptions will not exceed 30 days per request. If more time is needed, a second policy exception must be requested prior to the expiration of the original policy exception that was granted. A policy exception request must include the following, at a minimum:

- Explanation of why extension is being requested;
- Explanation of why required time frames cannot be met;
- Efforts to date to resolve the risk;
- Barriers encountered preventing completion of the plan within the allowed time frame;
- Duration of extension being requested;
- Plans to resolve the outstanding issues during the extension period, if granted;
- Anticipated impact if the policy exception is not granted; and,
- Other relevant information.

If the request for a policy exception is denied, the APS worker must proceed to case closure.

### ***Conducting the Review***

A formal review of the APS/PAPS case must be completed within applicable time frames and just prior to case closure. The review process consists of evaluating progress toward the goals identified in the current Service Plan. This requires the APS worker to review the Service Plan and have a face-to-face contact with the client and caregiver. Follow-up with other individuals and agencies involved in implementing the Service Plan, such as service providers, must also be completed. During the review process, the worker is to determine the following:

- Extent of progress made toward goal achievement;
- If the identified goals continue to be appropriate and, if not, what changes and/or modifications are needed;
- Barriers to achieving the identified goals; and,
- Other relevant factors.

### ***Documentation of Review***

At the conclusion of the review process, the APS worker must document the findings in CCWIS. This includes reviewing the Service Plan and end dating any goals that have been achieved or are to be discontinued or modified for some other reason(s). Goals that have not been end dated will be continued on the new Service Plan and additional goals may be added as appropriate. Documentation of each contact made in completion of the review is to be recorded as soon as possible.

When completed, the APS worker must submit the review and new Service Plan to the supervisor for approval. Once approved, the APS worker needs to secure all required signatures. Finally, the APS worker must provide a copy of the Service Plan to the client and to all signatories. The original signed Service Plan is to be filed in the client's case record.

## **Section 5 Case Closure**

### **5.1 Introduction**

A final assessment must be completed as part of the case review process prior to closure of the case. When completing the final assessment, the elements that led to opening of the APS or PAPS case should again be considered and evaluated based upon current information.

Upon completion, the APS worker must document the results of this assessment in CCWIS and submit to the supervisor for approval of recommendation for case closure. When the need for aftercare is identified, the APS worker and the client will work together to develop an aftercare plan, if requested by the client.

### **5.2 Purpose**

The decision to close the APS or PAPS case is to be determined through the case review process. At the point in time that the client is no longer at risk of abuse, neglect, or financial exploitation, the client appears to have mental capacity and requests closure, or upon death of the client, the worker is to recommend closure of the APS/PAPS case. Other services will continue as necessary, if appropriate. The review and the reason(s) for case closure are to be



documented in CCWIS. Upon completion of the review, the worker will send their recommendation and case review to the supervisor for approval. Once approved by the supervisor, the case is to be closed.

### **5.3 Purging of APS Records**

In accordance with W. Va. Code §9-6-8, case records of individuals who have received Adult Protective Services shall be destroyed 30 years following their preparation.

## **Section 6 Nondiscrimination, Grievance Procedure & Due Process Standards, Reasonable Modification Policies, and Confidentiality**

### **6.1 Nondiscrimination**

As a recipient of Federal financial assistance, the Bureau for Children and Families (BCF) does not exclude, deny benefits to, or otherwise discriminate against any person on the ground of race, color, national origin, disability, age, sex, sexual orientation, religion or creed in admission to, participation in, or receipt of the services and benefits under any of its programs and activities, whether carried out by BCF directly or through a contractor or any other entity with which BCF arranges to carry out its programs and activities .

This statement is in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (nondiscrimination on the basis of race, color, national origin) ("Title VI"), Section 504 of the Rehabilitation Act of 1973 (nondiscrimination on the basis of disability) ("Section 504"), the Age Discrimination Act of 1975 (nondiscrimination on the basis of age) ("Age Act"), regulations of the U.S. Department of Health and Human Services issued pursuant to these three statutes at Title 45 Code of Federal Regulations Parts 80, 84, and 91.

The Bureau for Children and Families shall not retaliate against, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, Section 504 or the Age Act, or because they have made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

In addition, BCF will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all BCF programs, services, and activities. For example, individuals with service animals are welcomed in Department of Health and Human Resources, Bureau for Children and Families, offices even where pets are generally prohibited.

In case of questions, or to request an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a BCF program, service, or activity, please contact:

WV DHHR: Children and Adult Services  
Contact Person: Health and Human Resources Specialist

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Telephone number: (304) 558-7980

The Department ensures that all parties involved in adult services programs have equal opportunities. All potential placement providers are afforded equal opportunities, free from discrimination and protected under the [American's with Disabilities Act](#) (ADA). The Department will not deny a potential placement provider the benefit of its services, programs, or activities due to a disability.

Under the American's with Disabilities Act it defines a person with a disability as:

“An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.”

The ADA does not specifically name all the impairments that are covered. The ADA does not allow a person to be discriminated against due to a disability in employment, state and local government activities, public transportation accommodations, telecommunication relay services, fair housing, air carrier access, voting accessibility or education. Some disabilities include; those persons with substance use disorders currently participating in a treatment option, physical disabilities which require auxiliary aides, and mental health conditions which are currently being successfully treated. It also addresses the civil rights of institutionalized people and architectural barriers that impact people with disabilities.

When making diligent efforts to locate and secure appropriate placement for vulnerable adults, a worker cannot discriminate against a potential placement provider based on a disability according to the American's with Disabilities Act (ADA) Title II. The Department shall determine if the potential placement for the vulnerable adult represents a direct threat to their safety. Safety threat decisions will be based on assessment of the individual and the needs of the adult, as safety always remains at the forefront of the determination of the best interest of a vulnerable adult, when placing an adult in anyone's home. This determination cannot be based on generalizations or stereotypes of individuals.

If a provider protected under the ADA is identified as an appropriate and best interest placement for a vulnerable adult they may, at some point, require services specific to their disability in order to preserve the placement. In such situations, consideration for services must be given if it is in the best interest of the vulnerable adult to preserve the placement. Any specific auxiliary aids or services should be determined by the adult services worker at no cost to the provider and should be considered on a case by case basis.

## 6.2 Grievance Procedure and Due Process Standards

It is the policy of the Bureau for Children and Families (BCF) not to discriminate on the basis of disability. BCF has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and/or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. These statutes prohibit discrimination on the basis of disability. In addition, the Bureau for Children and Families does not discriminate against individuals due to race, color, national origin, disability, age, sex, sexual orientation, gender identity or religion. Laws and Regulations, 28 C.F.R. Part 35 and 45 C.F.R. Part 84, may be examined by visiting <https://www.ada.gov/reg3a.html>.

Any person who believes they have been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for any Bureau for Children and Families official to retaliate in any way against anyone who files a grievance or cooperates in the investigation of a grievance.

### A. Procedure:

Grievance requests due to alleged discriminatory actions must be submitted to the Department of Health and Human Resources, Equal Employment Opportunity (EEO)/Civil Rights Officer, within 180 business days of the date the person filing the grievance becomes aware of the alleged discriminatory action. To file the grievance, the grievant must complete form [IG-CR-3](#) and mail to West Virginia Department of Health and Human Resources, Office of Human Resources Management, EEO/Civil Rights Officer, One Davis Square, Suite 400, Charleston, WV 25301. The grievant may also contact the WV DHHR, EEO/Civil Rights Officer, for more information.

WV DHHR: Office of Human Resource Management  
Contact Person: EEO/Civil Rights Officer  
Telephone number: (304)558-3313

A grievance must be in writing, containing the name and address of the person filing it. The grievance must state the problem or action alleged to be discriminatory and the remedy or relief sought.

EEO/Civil Rights Officer shall conduct an investigation of the grievance. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the grievance. EEO/Civil Rights Officer shall maintain the files and records of Bureau for Children and Families relating to such grievances.

The EEO/Civil Rights Officer shall issue a written decision on the grievance no later than 30 calendar days after its filing, unless the Coordinator documents exigent circumstances requiring additional time to issue a decision.

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The person filing the grievance may appeal the decision by contacting the U.S. Department of Health and Human Service, Office for Civil Rights.

The availability and use of this grievance procedure does not prevent a person from filing a private lawsuit in Federal court or a complaint of discrimination on the basis of disability with the:

Office for Civil Rights  
U.S. Department of Health & Human Services  
200 Independence Ave., S.W.  
Room 509F HHS Bldg.  
Washington, D.C. 20201  
800-368-1019 (voice)  
202-619-3818 (fax)  
800-537-7697 (TDD)  
[OCRComplaint@hhs.gov](mailto:OCRComplaint@hhs.gov) (email)

The Bureau for Children and Families will make appropriate arrangements to ensure that individuals with disabilities are provided reasonable modifications, if needed, to participate in this grievance process. Such arrangements may include, but are not limited to, providing interpreters for the deaf, providing taped cassettes of material for the blind, or assuring a barrier-free location for the proceedings. The EEO/Civil Rights Officer will be responsible for such arrangements.

### **B. Grievances Regarding the Adult Services Worker or Casework Process**

At any time that the Bureau for Children and Families (BCF) is involved with a client, the client (adult or child), or the counsel for the adult or child has a right to express a concern about the manner in which they are treated, including the services they are or are not permitted to receive.

Whenever client, or counsel for adult has a complaint about Adult Services or expresses dissatisfaction with Adult Services the worker will:

- Explain to the client the reasons for the action taken or the position of the BCF which may have resulted in the dissatisfaction of the client.
- If the situation cannot be resolved, explain to the client his/her right to a meeting with the supervisor.
- Assist in arranging for a meeting with the supervisor.

The supervisor will:

- Review all reports, records and documentation relevant to the situation.
- Determine whether all actions taken were within the boundaries of the law, policies and guidelines for practice.
- Meet with the client.

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- If the problem is regarding substantiated allegations, provide the client with the form IG-BR-29 CPS/APS, which is located on the Board of Review intranet site.
- Assist the client with completing the IG-BR-29 CPS/APS, if requested.
- If contacted by telephone, staff may complete the form.
- Submit the form immediately to the Regional Program Manager, Adult Services Consultant, or their designee for review.
- If the decision is to uphold allegations findings, the form shall be sent to the Board of Review at [dhroigbore@wv.gov](mailto:dhroigbore@wv.gov) immediately.

For more information on Grievance Procedures for Social Services please see Common Chapters Manual, Chapter 700, and Subpart B or see WV Code §29A-5-1.

Note: Some issues such as the decisions of the Circuit Court cannot be addressed through the Grievance Process. Concerns about or dissatisfactions with the decisions of the Court including any approved Case plan must be addressed through the appropriate legal channels.

### 6.3 Reasonable Modification Policy

#### **A: Purpose:**

In accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA), the Bureau for Children and Families (BCF) shall not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. The BCF shall make reasonable modifications in Adult Services program policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless BCF can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

#### **B: Policy:**

The Bureau for Children and Families is prohibited from establishing policies and practices that categorically limit or exclude qualified individuals with disabilities from participating in the Adult Services program.

The Bureau for Children and Families will not exclude any individual with a disability from the full and equal enjoyment of its services, programs, or activities, unless the individual poses a direct threat to the health or safety of themselves or others, that cannot be mitigated by reasonable modifications of policies, practices or procedures, or by the provision of auxiliary aids or services.

The Bureau for Children and Families is prohibited from making Adult Services program application and retention decisions based on unfounded stereotypes about what individuals with disabilities can do, or how much assistance they may require. The BCF will conduct individualized assessments of qualified individuals with disabilities before making Adult Services application and retention decisions.

The Bureau for Children and Families may ask for information necessary to determine whether an applicant or participant who has requested a reasonable modification has a

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disability-related need for the modification, when the individual's disability and need for the modification are not readily apparent or known. BCF will confidentially maintain the medical records or other health information of Adult Services program applicants and participants.

The Bureau for Children and Families upon request, will make reasonable modifications for qualified Adult Service program applicants or participants with disabilities unless BCF can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

BCF must consider, on a case-by-case basis, individual requests for reasonable modifications in its Adult Services program, including, but not limited to, requests for substitute caregivers, respite caregivers, more frequent support from a case worker, additional classroom and/or online training, mentorship with an experienced foster/adoptive parent, note takers, and other auxiliary aids and services.

The Bureau for Children and Families will not place a surcharge on a particular qualified individual with a disability or any group of qualified individuals with disabilities to cover the cost of measures, such as the provision of auxiliary aids and services or program accessibility, that are necessary to provide nondiscriminatory treatment required by Title II of the ADA and Section 504.

To address any violations of this Reasonable Modification Policy, consult the Bureau for Children and Families Grievance Procedure. To request reasonable modifications, or if you have questions, please contact:

WV DHHR: Children and Adult Services  
Contact Person: Health and Human Resource Specialist  
Telephone number: (304) 558-7980

## **APPENDIX A Protocol for Methamphetamine Investigations**

The following policy is designed to outline the process for response to methamphetamine laboratories and homes suspected of meth use when vulnerable adults are involved. While the dangerous nature of responding to methamphetamine laboratories requires some very different responses by APS, and may seem contrary to the usual practices, many of the usual policies and procedures that apply across Adult Services will remain the same. In the following policy, special attention will focus on the unusual requirements in methamphetamine laboratory situations, while referring back to existing policy when appropriate.

- **A Protocol for Methamphetamine Investigations**

Those who make methamphetamine often use methamphetamine, making them prone to violence. It is a powerful stimulant and produces physiological changes similar to the fight or flight response. Methamphetamine use can cause aggression, paranoia, depression and irritability, making the user's behavior unpredictable. Methamphetamine users will often use weapons, explosive traps and surveillance equipment to protect and keep their operations secret. The term "methamphetamine laboratory" is used as a broad term in this policy to define any type of set-up and combination of chemical used to make methamphetamine. The lab can be very professional using professional chemistry equipment (very rare) or it can be composed of twenty ounce soda pop bottles, gas cans, Mason jars, plastic tubing and milk jugs (more common in this area).

If the referral comes from law enforcement it should be considered a confirmed methamphetamine laboratory. It would be rare that a referral with these allegations would not be accepted for investigation. The intake worker will gather the following information specific to the plans of the reporting law enforcement officer:

- Is the officer currently at the home and needing immediate assistance from APS?
- If the police are anticipating a visit to the home in which they will be arresting individuals and dismantling a lab, at what time do they anticipate needing assistance from APS?
- Where is the vulnerable adult now? Does the law enforcement officer anticipate that vulnerable adults will be in the home at the time of the planned police visit, if police are not already at the home?
- Is there a briefing meeting planned prior to the police visit where they are requesting that an APS worker be present: If so, when and where?
- Has there been prior law enforcement involved with this family?

Law enforcement should contact other appropriate law enforcement investigators as necessary. If the report only alleges exposure to a methamphetamine laboratory and there are no other allegations, the report will generally be accepted for assessment if there are vulnerable adults in the home.

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If APS receives a report from someone other than law enforcement of vulnerable adults living in or present where the methamphetamine laboratory was located or were otherwise endangered by exposure to the drug, its ingredients, its by-products or waste, a report will generally be accepted if there are vulnerable adults in the home.

The worker will follow the same procedures for intake as other reports of suspected adult abuse, neglect or financial exploitation.

The worker shall also gather other specific information relating to methamphetamine laboratories that includes but is not limited to:

- Specific description of condition of the house fires: Safety hazards?
- Proximity of the lab to the home, in the home, in a shed in the back yard?
- Are vulnerable adults present when the drug is being cooked?
- High frequency of visitors to the home?
- Drug paraphernalia?
- Chemicals?
- Surveillance equipment?
- Booby traps?
- Description of adult substance abuser (paranoia, abnormal patterns, aggression, tweaked);
- Have the police ever been to the home?
- Where are the vulnerable adults at time of report?
- Any other relevant information.

Whether the report is screened out or accepted for assessment, APS must make an immediate oral and subsequent written report of that information to the appropriate local law enforcement agency within 48 hours after receipt of the information. When deciding whether the report is accepted for assessment of abuse and/or neglect, Centralized Intake will consider the following:

- Where is the laboratory in relation to the vulnerable adult?
- Are individuals, including the vulnerable adult smoking/using methamphetamine in the home?
- Is the product being brought into the home?
- Are chemicals accessible to the vulnerable adult?
- Has the vulnerable adult been injured by the chemicals?
- Is the reporter aware of the vulnerable adult being present during a “cook”?
- Is the reporter doubtful or certain of the presence of a methamphetamine laboratory?
- Are there any other allegations of abuse and/or neglect?

Upon acceptance of an APS report which includes a methamphetamine laboratory, APS must cooperate with the law enforcement agency or agencies in planning any initial contact if contact has not already been made with the family by law enforcement. APS workers should not respond to a suspected laboratory site without the presence of law



enforcement. All methamphetamine laboratory reports require contact with law enforcement for assistance regardless of whether they are suspected or confirmed. When advance notice is possible, the APS worker responding to the scene must attend the law enforcement briefing held prior to responding to the suspected or confirmed laboratory site. The APS worker must document any reasons for delay in initiating the investigation. If the APS worker cannot obtain law enforcement assistance (due to refusal by local law enforcement agency) for the initial home visit, the worker will not go alone to the home but will consult with their supervisor for the appropriate protocol.

Be aware that one social worker alone may not be able to do everything that need to be completed at the initial contact in an APS investigation regarding vulnerable adults who have been exposed to methamphetamine. While one social worker may be assigned to the referral, it is recommended that the supervisor enlist other workers and support staff to assist with the initial response, so someone is available to assist with finding a placement for the vulnerable adult or evaluating the need to file a Petition of Attachment if the vulnerable adult is not willing to go to a safe place.

If APS workers are not able to meet mandated time frames for initiation because of coordinating with law enforcement, it must be documented in the record. Documentation must reflect who the APS worker spoke with from law enforcement and the reason for the delay in initiating the referral. Documentation must reflect that the social worker spoke with his/her supervisor regarding the delay in initiating the investigation.

The assigned worker shall meet or arrive with law enforcement at the suspected laboratory site, if possible. The worker shall identify themselves to all agencies that have responded to the scene. The local law enforcement agency should take the lead at the laboratory site. At no time should APS staff enter a methamphetamine laboratory location during the time that law enforcement is processing the site. Preferably, the APS worker will not enter the location at all. The worker should assess/interview the vulnerable adult after the adult has left the enclosed physical structure of the laboratory area and are outside the physical structure. Privacy for the assessment/interview must be maintained to the extent possible. The worker must ask the law enforcement officer for copies of the pictures that are taken at the site to be used in the abuse/neglect case, for evidentiary purposes. Of particular interest, are pictures of chemicals next to food items that vulnerable adults usually eat such as cereal, granola bars, candy, fruit, etc. and chemicals in the refrigerator next to juice, soda, milk, fresh vegetables, etc. Also of interest are pictures of chemicals that are within reach or in close proximity of the vulnerable adult or are in the adult's room or sleeping area.

Law enforcement should be responsible for securing the area, gathering physical evidence and removing the vulnerable adult to outside the home if they are in the home at the time of the initial contact. The worker shall obtain information concerning the general conditions of the home from law enforcement's photos and observations. At this point, the information obtained from law enforcement and others at the scene would be used

to complete the Risk Assessment along with other information the social worker has gathered. The main focus for the APS worker is the safety of the vulnerable adult and removal to a safe place or evaluating the need to file a Petition of Attachment if the vulnerable adult is not willing to go to a safe place.

If Behavioral Health/Substance Abuse responds to the scene, they should be responsible for assessing the vulnerable adult's current state of mind and assessing for substance abuse regarding the caretaker and others in the home. The APS social worker must coordinate with Behavioral Health to obtain the results of their assessments. This information must also be included in the Risk Assessment or the Contact Screen.

- **Vulnerable Adult(s) in the Home at the Time of the First Contact**

If there is a confirmed laboratory with vulnerable adults present, the adult may need to go through a decontamination process facilitated by law enforcement/EMS or other public health agency staff, as assessed by the on-scene responders. If the adult is decontaminated at the scene, the APS worker must advocate for the vulnerable adult to receive the least invasive, but most effective decontamination process with special attention being paid that the vulnerable adult is not humiliated or frightened further by the decontamination process. If EMS is present as a first responder team member, EMS should be available to evaluate the vulnerable adult's immediate medical needs and transport the vulnerable adult to the hospital for emergency medical treatment, if needed. If possible, the vulnerable adult should be decontaminated before leaving the scene. Decontamination is done by giving the vulnerable adult a fresh change of clothing (not the clothing that came out of the house where the methamphetamine was being manufactured) and having the vulnerable adult shower using soap and water (no baths). This must be done as soon as possible after removing the vulnerable adult from the laboratory site with respect to the vulnerable adult's sense of modesty and without alarming the vulnerable adult. If the vulnerable adult appears to be in medical distress (breathing problems, unconsciousness, etc.), the APS worker must call 911 and have the vulnerable adult transported to the hospital for emergency medical treatment as soon as possible, or the APS worker will evaluate the need to file a Petition of Attachment if the vulnerable adult is not willing to go for medical treatment (EMS personnel will usually make the decision for the vulnerable adult if they are not willing to go for medical attention and are in medical distress). The APS worker should assess the need to accompany the vulnerable adult to the hospital to ensure that the necessary medical treatment is received.

The APS worker shall assume the primary role for transfer of the vulnerable adult at the scene to a safe place once law enforcement has removed them from the home. If the vulnerable adult refuses the worker's assistance with transfer to a safe place, the APS worker must evaluate the need for a Petition of Attachment and document all attempts to get the vulnerable adult to a safe place. Once the vulnerable adult is in the appropriate placement, the worker must fully apprise the vulnerable adult(s) or caretaker of the need for any follow-up medical treatment recommended at the medical assessment. The APS

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worker must further emphasize the importance of obtaining the correct follow-up treatment for the vulnerable adult.

Facilitating an immediate medical assessment may include gathering the vulnerable adult's medical history and arranging transportation by ambulance or other means. Please be aware that this medical examination may take several hours, and the client may need to be fed.

If deemed necessary, the adult shall be assessed by a physician for any immediate health or safety concerns. The physician shall screen the adult for drug and chemical exposure to receive any necessary treatment and gather evidence. This screening may include, but is not limited to obtaining a urine sample within 12 hours of removal from laboratory site, taking the vulnerable adult's vital signs, liver and kidney functioning tests, baseline electrolytes, CBC, physical exam, etc. The APS worker should request laboratory results, as well as any other medical documentation for the client's case record.

Be aware that if DHHR is not the Guardian or Health Care Surrogate, the APS social worker cannot give permission or sign for medical treatment for the vulnerable adult. In West Virginia, physicians have the authority to treat adults without permission in certain extreme emergency situations. The method of payment is limited to any medical coverage the client has at the time of treatment, or if the medical facility is willing to treat this as an emergency/indigent situation.

When the vulnerable adult is removed from the contaminated site, none of their belongings may be removed from the home and taken with them to their new placement. An exception to this may be necessary medication or medical equipment that may be decontaminated by wiping off with soap and water. APS may consider having items or having access to such items as toothbrushes, hairbrushes, pajamas and other necessary clothing, etc. available to replace some of the incapacitated adult's belongings. APS may also consider having latex gloves and disposable wipes available for the APS worker's safety. If the media arrives at the scene, please be mindful of the incapacitated adult and their exposure to the cameras and reporters. The vulnerable adult should be protected from media exposure to the extent possible.

The worker shall also be responsible for initiating an assessment for risk and attempting to locate safe housing/placement for the vulnerable adult, if needed.

The worker must provide the person assuming care of the vulnerable adult with a description of what the vulnerable adult has been exposed to, any medical treatment the vulnerable adult has received, any follow-up appointments the vulnerable adult has by observing the adult for symptoms that requires medical care and the name and number of the APS worker and supervisor to call if the caregiver has concerns.

Whether there is a confirmed laboratory in the home or not, the APS worker shall continue with the investigation based on any other allegations of abuse, neglect or dependency that may have been alleged in the referral.

- **Vulnerable Adults Not in the Home at the Time of the First Contact**

If a vulnerable adult is not in the home at the time of the initial contact, the APS worker must attempt to locate them and assess their health, safety and wellbeing. All attempts at locating the vulnerable adult must be documented. The adult may not need to be decontaminated if they have been out of the home for 72 hours, but they should be examined by their physician. If the vulnerable adult is at a day treatment program, etc., the risk is minimal that they may have contaminated other adults or day treatment personnel because most of the chemicals dissipate in the air once the vulnerable adult is out of the area where the laboratory is located.

- **Ongoing Investigation**

If law enforcement and their County Prosecuting Attorney's Office make a decision regarding any charges to be filed, APS shall cooperate with this process to the extent allowed by West Virginia Code by sharing information and testifying in court, if necessary.

The worker shall make contact within 48 hours with the vulnerable adult and caregiver to determine how the adult is doing and if there are any medical follow-up needs. This time frame is necessary because of assuring any medical needs are met and because at this time the effects of long-term exposure to methamphetamine are unknown. Any necessary evaluations need to be scheduled as quickly as possible to ascertain and obtain the appropriate services needed for the vulnerable adult.

The APS worker shall coordinate a joint interview of the vulnerable adult and law enforcement within 48 hours, if not completed at the initial contact and if necessary. The vulnerable adult must be interviewed using a general protocol that screens for all types of abuse and neglect. Vulnerable adults who live in a home where methamphetamine is used are often subjected to neglect, physical abuse and/or sexual abuse. At the initial contact, the vulnerable adult's medical evaluation, safety and needs take priority. This time frame is necessary to assure that the adult is interviewed quickly and to gather as much information as is needed to make an informed decision regarding safety, abuse, neglect or dependency.

- **Social Work Safety**

Methamphetamine laboratories are most dangerous when they are operational. Please be advised if the APS worker enters a home for any reason and discovers strong indications of a methamphetamine laboratory, the worker must leave immediately and report to their supervisor and local law enforcement by phone while at a safe distance from the home. All allegations, whether contained in the original report or uncovered during the course of the investigation, shall be documented in the case record. The APS worker must not confront the caretaker or others in the home about their suspicions.

Most people who manufacture methamphetamine use it. Methamphetamine is a powerful stimulant and can cause aggression, paranoia, depression and irritability. Methamphetamine user's behaviors are unpredictable. They often have access to weapons. They also may use booby traps and explosives to protect their laboratories. The APS worker will return with appropriate law enforcement officers to address the allegations of the methamphetamine laboratory with the caretakers and others in the home. It is also important to understand that a "cook" that is interrupted is extremely dangerous and volatile. The process needs to be completed in order to avoid an explosion or fire. The APS worker must find an excuse to get out of the home as quickly as possible, such as "I just stopped by for a minute to see how you were doing because I was in the area for another appointment." The APS worker must never use sense of touch or smell to try to identify chemicals or unknown substances.

If after being in the home or laboratory site, the APS worker begins to have headaches, burning eyes, difficulty breathing, etc., medical attention should be sought immediately. The APS worker may also have come into contact with chemicals or toxins that could contaminate others. This contamination may not be obvious, so some precautions are necessary. Place any clothes worn at the lab site into a paper bag until they can be washed. The clothes should be washed separately on the hottest setting. Rewash a second time and air dry outside the home, not in the dryer. Run the washer once empty to clean it thoroughly. Shoes should be washed with the clothes if possible or wiped clean with soap and hot water. The social worker should shower in very warm, but not hot water and use lots of soap. Clean the tub/shower thoroughly afterwards.

- **Placement Provider Preparation and Safety**

It is imperative that the placement providers are given as much information concerning what the vulnerable adult has been exposed to, what medical treatment the adult has received and any follow-up appointments the vulnerable adult will need to attend. The APS worker will need to provide the placement provider with the vulnerable adult's known health status at the time of placement. The placement provider also needs to be given instructions for decontamination to reassure themselves regarding their risk of contamination and what symptoms to look for in the vulnerable adult. Place any clothes worn by the vulnerable adult into a paper bag until they can be washed. The clothes should be washed separately on the hottest setting. Rewash a second time and air dry outside the home, not in the dryer. Run the washer once empty to clean it thoroughly. Shoes should be washed with the clothes if possible or wiped off with soap and hot water. The vulnerable adult should shower in very warm, but not hot water and use lots of soap. Clean the tub/shower thoroughly afterwards. The APS worker must reassure the placement provider that their risk of exposure is minimal since the client has either been decontaminated or assessed to not need decontamination prior to placement.

Because some effects of chemical exposure can develop slowly, the placement provider must seek immediate medical attention if they notice the client experiencing:

- Headache;
- Drowsiness;
- Unusual movements like tremors, shaking, jumpiness, agitation or seizures;
- Difficulty breathing, wheezing, coughing or poor color;
- Fever;
- Hallucinations or mental confusion; and,
- Any other unusual symptom that seems severe.

It is also likely that the circumstances of the discovery of the illegal methamphetamine laboratory and removal have been traumatic for the vulnerable adult. In addition, the vulnerable adult may have been subjected to neglect, physical and/or sexual abuse. It is important for the placement provider to ensure that the client has a warm, stable environment and to understand the emotional reactions that may follow.

● **Protocol for APS Investigation Involving Meth**

- If the APS worker discovers a meth lab or suspects that they have come across chemicals being used to make meth during a home visit or abuse/neglect investigation, the worker will leave the house, depart the immediate area and contact their supervisor and law enforcement;
- The worker will remain away from the home until after law enforcement has responded to the worker's call and secured the home and the people inside;
- The worker will return to the scene and accompany law enforcement as appropriate;
- The worker will facilitate appropriate, safe placement of the vulnerable adult, or evaluate the need to file an Order of Attachment
- The worker will arrange for decontamination of the vulnerable adult at the site, if possible. Worker will provide clean clothing and wipes for the client to use, if possible. If this is not possible on-site, worker will arrange for this as soon as possible after leaving site if not taking client straight to a hospital;
- The worker will arrange for transportation of the client to a safe place or nearest hospital emergency department (please call ahead to the hospital):
  - Items from the drug site are left on site and not taken with the vulnerable adult, with the exception of necessary medication or medical equipment, which must be decontaminated;
  - Transport vehicle should have protective gear for occupants. Examples include blankets or plastic to cover the seat. If the client cannot be decontaminated on site, wrap a blanket around the individual prior to placing them in the transport vehicle.
  - The transport vehicle will need to be decontaminated after transporting the vulnerable adult.
- Advise placement provider of immediate needs of the client as a result of meth contamination:
  - The client is not allowed to bring anything with them from the contaminated site (clothing, personal belongings, food, etc.). An exception

- to this may be necessary medication or medical equipment that may be decontaminated by wiping off with soap and hot water. Medication that is in an enclosed container may be taken with the adult; and,
- Follow-up medical care needs to be scheduled and completed.

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## **APPENDIX B      Financial Services Modernization Act**

The Financial Services Modernization Act passed in 1999 (often known as the Gramm-Leach-Bliley Act or GLBA). The GLBA contains strong privacy protection. It requires notification to customers before disclosures of their records and an opportunity to disapprove the proposed disclosure. However, Section 502(e) of the GLBA contains exceptions to this privacy protection. Three are relevant to state reporting programs:

- (e)(3)(B) permits disclosure “to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability.”
- (e)(5) permits disclosure, “to the extent specifically permitted or required under other provision of law...to law enforcement agencies...or for an investigation on a matter related to public safety”.
- (e)(8) permits disclosure “to comply with Federal, State or local laws, rules, and other applicable legal requirements.”

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## **APPENDIX C      Signs of Financial Exploitation**

The signs of financial exploitation may be subtle or blatantly obvious. This is not intended to be an all-inclusive list:

- Numerous cash withdrawals from a vulnerable adult's checking account in a short period of time, especially if inconsistent with previous spending habits;
- Signatures on checks, wills, powers of attorney or other documents that look forged, unusual or suspicious;
- Several checks that are used out of numerical order;
- Reports by the vulnerable adult or collaterals (i.e. friends, neighbors, relatives Senior Citizens Center, banks, etc.) that funds are missing from his or her account;
- Someone forcing, pressuring, or coercing the vulnerable adult into withdrawing large sums of cash from checking or savings accounts;
- A vulnerable adult applying for several new credit cards;
- An unexpected increase in ATM or credit card usage by a vulnerable adult;
- A vulnerable adult failing to understand recently completed financial transactions;
- A vulnerable adult making unusual changes to bank accounts;
- Having credit card statement sent to someone other than the vulnerable adult who is named on the account;
- Unexpected or unexplained changes by a vulnerable adult in account beneficiaries, property titles, deeds or other ownership documents;
- A vulnerable adult refinancing a mortgage;
- Abrupt and unexpected changes in a will, trust, power of attorney, or other legal document;
- A vulnerable adult who is unexpectedly and uncharacteristically unkempt, forgetful, disoriented;
- A vulnerable adult who is unexpectedly not meeting their financial obligations such as food, utilities, rent, mortgage payments, and/or medical expenses (health care or long-term care expenses, etc.);
- Substandard care being provided or bills unpaid despite the availability of adequate financial resources;
- Isolation
- Lack of knowledge about major financial issues;
- Sudden appearance of previously uninvolved relatives claiming their rights to a vulnerable individual's affairs and possessions; and,
- Provision of services that are not necessary.

## **APPENDIX D      Rights During an APS Process**

### **Client's Rights During an APS Process**

The West Virginia Department of Health and Human Resources, Adult Protective Services is mandated by the State Code of West Virginia §9-6-2 to conduct an investigation when a report of adult abuse, neglect or financial exploitation is received. When you are involved in an Adult Protective Services (APS) investigation or a case is open for APS services, there are certain rights you need to know about.

Some of those rights include:

- The right to object to someone coming into your home without your permission to conduct an investigation. If you refuse a face to face interview, law enforcement will be contacted for assistance and court intervention may be necessary to complete the investigation.
- The right to have certain information about you that APS has in their records kept private and confidential.
- The right to discuss the situation with the Adult Services Supervisor if you have concerns with the manner in which the investigation was conducted.
- The right to refuse APS services, unless deemed incompetent by a court of law, and the right to know what may happen if you refuse; however, the APS worker is mandated by West Virginia Code to conduct the investigation.
- The right to have a decision made about you, free from discrimination because of your age, race, color, sex, mental or physical disability, religious creed, national origin or political beliefs.
- You may have the right to request certain help for you if you have disabilities as defined by the Americans with Disabilities Act, when they are needed to help you with any hearing, vision or speech impairments during the APS process.
- The right to know if there will be an open Adult Protective Services case.

Please keep this list in a safe place where you can find it. If you have any questions in regard to your rights, you may contact your worker or the Adult Services Supervisor. They are available to clarify any questions about your rights.

Worker's Name/ Telephone Number: \_\_\_\_\_

Supervisor's Name/ Telephone Number: \_\_\_\_\_

## **Alleged Perpetrator's Rights During an APS Process**

The West Virginia Department of Health and Human Resources, Adult Protective Services is mandated by the State Code of West Virginia Code §9-6-2 to conduct an investigation when a report of adult abuse, neglect or financial exploitation is received. When you are involved in an Adult Protective Services (APS) investigation, there are certain rights you need to know about.

Some of those rights include:

- The right to object to someone coming into your home without your permission to conduct an investigation.
- The right to have certain information about you that APS has in their records kept private and confidential.
- The right to discuss the situation with the Adult Services Supervisor if you have concerns with the manner in which the investigation was conducted.
- The right to file a grievance if you disagree with a substantiated allegation.
- The right to have fair and reasonable decisions made about you, free from discrimination because of your age, race, color, sex, mental or physical disability, religious creed, national origin or political beliefs.
- You have the right to request certain help for you if you have disabilities as defined by the Americans with disabilities Act, when they are needed to help you with any hearing, vision or speech impairments during the APS process.
- The right to know if the allegations against you as an alleged perpetrator were substantiated, if you provide the Department of Health and Human Resources with a complete mailing address.

Worker's Name/ Telephone Number: \_\_\_\_\_

Supervisor's Name/ Telephone Number: \_\_\_\_\_

**APPENDIX E Notification Letter**

**West Virginia Department of Health and Human Resources  
Bureau for Children and Families**

DISPOSITION OF REFERRAL/INVESTIGATION REPORT

Disposition of Referral

Referral number:

Name of Client Referred:

Date Received:

Address:

Action taken: \_\_\_\_\_ Referral Assigned for Investigation  
\_\_\_\_\_ Referral Not Assigned for Investigation

Worker Assigned, if applicable:

Explanation (if not assigned): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Disposition of Investigation

\_\_\_\_\_ Investigation Completed on  
\_\_\_\_\_ Investigation Not Completed due to Extenuating Circumstances

Remarks:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Worker: \_\_\_\_\_ Date: \_\_\_\_\_

**This information is confidential. It is provided to persons mandated to report by §9-6-9 or §49-2-804 of the West Virginia Code.**