

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

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

Department of Human Services, Administrative Services Division and Director's Office 407  
Agency and Division Administrative Rules Chapter Number  
Jennifer Bittel 250 Winter St NE, Salem, OR 97301 (503) 947-5250  
Rules Coordinator Address Telephone

to become effective [ August 5, 2010 ] through [ January 31, 2011 ].  
Date upon filing or later A maximum of 180 days including the effective date

Definition Correction in Abuse Reporting and Protective Services in Community Programs and Facilities Rules  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

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

AMEND: OAR 407-045-0260

Stat. Auth.: ORS 179.040 & 409.050

Other Auth.: House Bill 2442 (2009), Chapter 444 (2007 Oregon Laws)

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460 & 443.705-443.825

**RULE SUMMARY**

The Department of Human Services is amending these rules to correct a scrivener's error in the definition of "Neglect" found at 407-045-0260(1)(e)(A). The current rule states, "Neglect includes, active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that creates a risk of significant harm or results in harm to the adult." The correct language and legal standard is "...significant risk of harm."

Temporary rules are available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>.  
For hardcopy requests, call: (503) 947-5250.

  
Authorized Signer

Kym Gasper, Authorized Signer  
Printed name

8/5/10  
Date

\*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. ARC 940-2005

Secretary of State

**STATEMENT OF NEED AND JUSTIFICATION**

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

Department of Human Services, Administrative Services Division and Director's Office

407

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

The temporary amendment of OAR 407-045-0260.

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

**Abuse Reporting and Protective Services for Adults with Developmental Disabilities or Mental Illness**

Statutory Authority: ORS 179.040 & 409.050

Other Authority: House Bill 2442 (2009), Chapter 444 (2007 Oregon Laws)

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460 & 443.705-443.825

Need for the Temporary Rule(s):

The Department of Human Services is amending these rules to correct a scrivener's error in the definition of "Neglect" found at 407-045-0260(1)(e)(A). The current rule states, "Neglect includes, active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that creates a risk of significant harm or results in harm to the adult." The correct language and legal standard is "...significant risk of harm."

Documents Relied Upon, and where they are available:

House Bill 2442 (2009), available at: <http://www.leg.state.or.us/09reg/measpdf/hb2400.dir/hb2442.en.pdf>; Chapter 444 (2007 Oregon Laws), available at: [http://www.leg.state.or.us/bills\\_laws/](http://www.leg.state.or.us/bills_laws/); and OAR 407-045-0250 to 407-045-0370, available at: [http://www.sos.state.or.us/archives/rules/OARS\\_400\\_407/407\\_045.html](http://www.sos.state.or.us/archives/rules/OARS_400_407/407_045.html).

Justification of Temporary Rule(s):

This error correction will correct any potential prejudice or errors in any findings of abuse by neglect, and will make the definition of "neglect" in the corrected section consistent with the definition of "neglect" found in another section of the rule.

The Department finds that failure to act promptly will result in serious prejudice to the public interest, the Department, accused persons, and alleged victims of abuse. The definitions of "neglect" must be consistent within the rule. This rule needs to be adopted promptly to correct any potential prejudice or errors that might arise by applying an incorrect legal standard in the definition of neglect.

  
Authorized Signer

Kym Gasper, Authorized Signer

Printed name

8/5/10

Date

**CHAPTER 407  
DEPARTMENT OF HUMAN SERVICES,  
ADMINISTRATIVE SERVICES DIVISION AND DIRECTOR'S OFFICE**

**DIVISION 45  
OFFICE OF INVESTIGATIONS AND TRAINING**

**Abuse Reporting and Protective Services in Community Programs and Community  
Facilities**

**407-045-0260**

**Definitions**

As used in OAR 407-045-0250 to 407-045-0370, the following definitions apply:

- (1) "Abuse of an adult with developmental disabilities" means:
  - (a) "Abandonment" including desertion or willful forsaking by a person who has assumed responsibility for providing care, when that desertion or forsaking results in harm or places the adult at risk of serious harm.
  - (b) Death of an adult caused by other than accidental or natural means or occurring in unusual circumstances.
  - (c) "Financial exploitation" including:
    - (A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an adult.
    - (B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out.
    - (C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an adult.
    - (D) Failing to use the income or assets of an adult effectively for the support and maintenance of the adult. "Effectively" means use of income or assets for the benefit of the adult.
  - (d) "Involuntary seclusion" means the involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult. Involuntary seclusion may include placing restrictions on an adult's freedom of movement by restriction to his or her room or a specific area, or restriction from access to ordinarily accessible areas of the facility, residence, or program, unless agreed to by the

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Individual Support Plan (ISP) team included in an approved Behavior Support Plan (BSP) or included in a brokerage plan's specialized support. Restriction may be permitted on an emergency or short term basis when an adult's presence would pose a risk to health or safety.

- (e) "Neglect" including:
  - (A) Active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that creates a **significant** risk of ~~significant~~ harm or results in actual harm to an adult. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult
  - (B) Failure of a caregiver to make a reasonable effort to protect an adult from abuse.
- (f) "Physical abuse" means:
  - (A) Any physical injury by other than accidental means or that appears to be at variance with the explanation given for the injury.
  - (B) Willful infliction of physical pain or injury.
  - (C) Physical abuse is presumed to cause physical injury, including pain, to adults otherwise incapable of expressing pain.
- (g) "Sexual abuse" including:
  - (A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315.
  - (B) Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language including requests for sexual favors. Sexual harassment or exploitation includes but is not limited to any sexual contact or failure to discourage sexual contact between an employee of a community facility or community program, provider, or other caregiver and an adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome physical sexual contact and other physical conduct directed toward an adult.
  - (C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver. Sexual abuse does not

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mean consensual sexual contact between an adult and a paid caregiver who is the spouse or partner of the adult.

- (D) Any sexual contact that is achieved through force, trickery, threat, or coercion.
  - (E) Any sexual contact between an adult with a developmental disability and a relative of the person with a developmental disability other than a spouse or partner. “Relative” means a parent, grandparent, children, brother, sister, uncle, aunt, niece, nephew, half brother, half sister, stepparent, or stepchild.
  - (F) As defined in ORS 163.305, “sexual contact” means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.
- (h) “Wrongful restraint” means:
- (A) A wrongful use of a physical or chemical restraint, excluding an act of restraint prescribed by a licensed physician, by any adult support team approved plan, or in connection with a court order.
  - (B) “Wrongful restraint” does not include physical emergency restraint to prevent immediate injury to an adult who is in danger of physically harming himself or herself or others, provided only that the degree of force reasonably necessary for protection is used for the least amount of time necessary.
- (i) “Verbal abuse” includes threatening significant physical harm or causing emotional harm to an adult through the use of:
- (A) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule.
  - (B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.
  - (C) A threat to withhold services or supports, including an implied or direct threat of termination of services. “Services” include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an adult.

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- (D) For purposes of this section, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance, or sight if gestured, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard.
  - (E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.
  - (j) An adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall for this reason alone not be considered subjected to abuse.
- (2) “Abuse of an adult with mental illness” means:
- (a) Death of an adult caused by other than accidental or natural means or occurring in unusual circumstances.
  - (b) “Neglect” including:
    - (A) Active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that results in actual harm or significant mental injury to an adult. “Services” include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult.
    - (B) Failure of a caregiver to make a reasonable effort to protect an adult from abuse.
  - (c) “Physical abuse” means:
    - (A) Any physical injury by other than accidental means or that appears to be at variance with the explanation given for the injury.
    - (B) Willful infliction of physical pain or injury.
    - (C) Physical abuse is presumed to cause physical injury, including pain, to adults otherwise incapable of expressing pain.
  - (d) “Sexual abuse” including:
    - (A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315.

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- (B) Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language including requests for sexual favors. Sexual harassment or exploitation includes but is not limited to any sexual contact or failure to discourage sexual contact between an employee of a community facility or community program, provider, or other caregiver and an adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome physical sexual contact including requests for sexual favors and other physical conduct directed toward an adult.
  - (C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver. Sexual abuse does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse or partner of the adult.
  - (D) Any sexual contact that is achieved through force, trickery, threat, or coercion.
  - (E) As defined in ORS 163.305, “sexual contact” means any touching of sexual or other intimate parts of a person or causing such person to touch sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.
- (e) For the purpose of section (2) of this rule, the following definitions apply:
- (A) “Employee” means an individual who provides a program service or who takes part in a program service and who receives wages, a salary, or is otherwise paid by the program for providing the service.
  - (B) “Program staff” means an employee or individual who, by contract with the program, provides a service and who has the applicable competencies, qualifications, and certification, required by the Integrated Services and Supports Rule (ISSR) (OAR 309-032-1500 to 309-032-1565) to provide the service.
  - (C) “Provider” means a qualified individual or an organizational entity operated by or contractually affiliated with a community mental health program, or contracted directly with the Department of Human Services’ (Department) Addictions and Mental Health Division (AMH) for the direct delivery of mental health services and supports.
  - (D) “Volunteer” means an individual who provides a program service or who takes part in a program service and who is not an employee of the program and is not paid for services. The services must be non-clinical unless the individual has the required credentials to provide a clinical service.

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- (E) In addition to the definitions of abuse in section (2)(a) through (d), abuse also has the following meanings for employees, program staff, providers, and volunteers:
- (i) “Abandonment” including desertion or willful forsaking by an individual who has assumed responsibility for providing care when the desertion or forsaking results in harm or places the adult at a risk of serious harm.
  - (ii) “Financial exploitation” including:
    - (I) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an adult.
    - (II) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out.
    - (III) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an adult.
    - (IV) Failing to use the income or assets of an adult effectively for the support and maintenance of the adult. “Effectively” means use of income or assets for the benefit of the adult.
  - (iii) “Involuntary Seclusion” means the involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult. Involuntary seclusion may include placing restrictions on an adult’s freedom of movement by restriction to his or her room or a specific area or restriction from access to ordinarily accessible areas of the facility, residence, or program unless agreed to by the treatment plan. Restriction may be permitted on an emergency or short term basis when an adult’s presence would pose a risk to health or safety.
  - (iv) “Neglect” including active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that creates a significant risk of harm to an adult or results in actual harm or significant mental injury to an adult. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult.

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- (v) “Verbal abuse” includes threatening significant physical harm or causing emotional harm to an adult through the use of:
    - (I) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule.
    - (II) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.
    - (III) A threat to withhold services or supports, including an implied or direct threat of termination of services. “Services” include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an adult.
    - (IV) For purposes of this section, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance or sight, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard.
    - (V) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.
  - (vi) “Wrongful restraint” means:
    - (I) A wrongful use of a physical or chemical restraint excluding an act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730.
    - (II) Abuse does not include physical emergency restraint to prevent immediate injury to an adult who is in danger of physically harming himself or herself or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.
- (~~F~~) An adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall for this reason alone not be considered subjected to abuse.
- (3) “Abuse Investigation and Protective Services Report” means a completed report.

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- (4) “Adult” means an adult who is 18 years of age or older who:
- (a) Has a developmental disability and is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; or
  - (b) Has a mental illness and is receiving services from a community program or facility.
  - (c) Receives services from a community program or facility or care provider which is licensed or certified by or contracts with the Department; and
  - (d) Is the alleged abuse victim.
- (5) “Adult protective services” means the necessary actions taken to prevent abuse or exploitation of an adult, to prevent self-destructive acts, and to safeguard an allegedly abused adult’s person, property, or funds.
- (6) “Brokerage” or “Support service brokerage” means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 411-340-0120(1)(a) to (g) associated with planning for and implementation of support services for an adult with developmental disabilities.
- (7) “Caregiver” means an individual or facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.
- (8) “Community facility” means a community residential treatment home or facility, community residential facility, adult foster home, community residential training home or facility, or a facility approved by AMH for acute care services or crisis respite.
- (9) “Community program” means the community mental health or developmental disabilities program as established in ORS 430.610 to 430.695.
- (10) “Designee” means the community program.
- (11) “Department” means the Department of Human Services.
- (12) “Inconclusive” means there is insufficient evidence to conclude the alleged abuse occurred or did not occur by a preponderance of the evidence. The inconclusive determination may be used only in the following circumstances:
- (a) After diligent efforts have been made, the protective services investigator is unable to locate the person alleged to have committed the abuse, or cannot locate the alleged victim or another individual who might have information critical to the investigation; or

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- (b) Relevant records or documents are unavailable, or there is conflicting or inconsistent information from witnesses, documents, or records with the result that after the investigation is complete, there is insufficient evidence to support a substantiated or not substantiated conclusion.
- (13) “Law enforcement agency” means any city or municipal police department, county sheriff’s office, the Oregon State Police, or any district attorney.
- (14) “Mandatory reporter” means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an adult has suffered abuse, or that any individual with whom the official comes in contact while acting in an official capacity has abused an adult. Pursuant to ORS 430.765(2), psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 20.295.
- (15) “Not substantiated” means the preponderance of evidence establishes the alleged abuse did not occur.
- (16) “OIT” means the Department’s Office of Investigations and Training.
- (17) “Provider agency” means an entity licensed or certified to provide services, or which is responsible for the management of services to clients.
- (18) “Public or private official” means:
  - (a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor, or podiatrist, including any intern or resident;
  - (b) Licensed practical nurse, registered nurse, nurse’s aide, home health aide, or employee of an in-home health services organization;
  - (c) Employee of the Department, county health department, community mental health or developmental disabilities program, or private agency contracting with a public body to provide any community mental health services;
  - (d) Peace officer;
  - (e) Member of the clergy;
  - (f) Licensed clinical social worker;
  - (g) Physical, speech, or occupational therapist;
  - (h) Information and referral, outreach, or crisis worker;

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- (i) Attorney;
  - (j) Firefighter or emergency medical technician; or
  - (k) Any public official who comes in contact with adults in the performance of the official's duties.
- (19) "Substantiated" means that the preponderance of evidence establishes the abuse occurred.
- (20) "Unbiased investigation" means an investigation that is conducted by a community program that does not have an actual or potential conflict of interest with the outcome of the investigation.

Stat. Auth.: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460 & 443.705-443.825