

## CHAPTER 10: ADULT PROTECTIVE SERVICES

10.1. **POLICY STATEMENT.** (IDAPA 15.01.02.020)(7-1-98)

1. The ICOA is charged by statute to provide APS services to ensure:
  - A. The vulnerable adult population in Idaho is protected from abuse, neglect, and exploitation.
  - B. Protective services shall be provided that are the least restrictive to personal freedom and ensure the maximum independence of individuals served.
  - C. In protecting the vulnerable adult population, APS IS also intended to provide assistance to care giving families experiencing difficulties in maintaining functionally impaired relatives in the household.

10.2. **ADULT PROTECTION SERVICES.** (IC 67-5011) Adult protection services for vulnerable adults shall be administered through the commission. Adult protection services are specialized social services directed toward assisting vulnerable adults who are unable to manage their own affairs, carry out the activities of daily living or protect themselves from abuse, neglect or exploitation. Provision of services may be accomplished by contracting with each of the commission's local area agencies on aging. For the purposes of implementing the provisions of this section, the commission (AAAs) shall assume all responsibilities cited in chapter 53, title 39, Idaho Code, entitled "Adult Abuse, Neglect and Exploitation Act."

10.3. **ADMINISTRATIVE REQUIREMENTS.** (IDAPA 15.01.02.021)

1. In accordance with Section 67-5011, Idaho Code, the ICOA shall administer APS through contracts with Area Agencies on Aging.
  - A. **Staffing.** (ICOA) Each Provider shall provide sufficient staffing to respond to APS complaints within the statutory time frames set forth in Section 39-5304 (2), Idaho Code.
  - B. **Employee Qualifications.** (ICOA) Each Provider shall adhere to standards set forth in rule for the education and licensing of AP program employees, including requirements for the AP Supervisor, AP Worker and Supportive Services Technician.
  - C. **Program Reporting and Records.** (ICOA) All Provider APS programs shall comply with the ICOA's requirements for reporting and investigative documentation, and shall utilize standardized forms provided by the ICOA.
  - D. **Conflict of Interest.** (ICOA) APS program employees and their immediate families shall not hold a financial interest in agencies, organizations and entities providing care for vulnerable adults.
  - E. **Program Reviews.** (ICOA) The ICOA shall conduct on site program reviews of the AAA APS programs upon prior notice, and at reasonable intervals determined by the ICOA.

10.4. **PROVISION OF SERVICE REQUIREMENTS.** (IDAPA 15.01.02.022) In accordance with Section 67-5011, Idaho Code, each Provider shall assume all responsibilities cited in Title 39, Chapter 53, Idaho Code.

1. **Direct Provision of Service.** Area Agencies on Aging shall administer APS as a direct service or may sub-contract the service to another Provider at the sole discretion of the Administrator.
  - A. **Contracts.** Each Provider shall administer APS pursuant to contracts delineating the duties and obligations of each APS program.
  - B. **Court Visitors.** APS staff shall not serve as a court appointed visitor in a guardianship or conservatorship proceeding involving a proposed ward who is or has been the alleged victim in an APS investigation. (4-6-05)

10.5. **DECLARATION OF POLICY.** (IC 39-5301A)

1. It is the intent of the Adult Abuse, Neglect and Exploitation Act to:
  - A. Authorize the fewest possible restrictions on the exercise of personal freedom and religious beliefs consistent with a vulnerable adult's need for services and
  - B. Empower vulnerable adults to protect themselves.
2. The legislature recognizes that vulnerable adults:
  - A. Sometimes experience difficulties managing their own affairs.
  - B. Are unable to protect themselves from abuse, neglect or exploitation.
  - C. Often, cannot find others who are able or willing to provide assistance.
3. The commission is directed:
  - A. To investigate allegations of abuse, neglect, self-neglect or exploitation involving a vulnerable adult,
  - B. To make appropriate referrals to law enforcement, and
  - C. To arrange for the provision of necessary services.
  - D. Further the commission shall honor a vulnerable adult's freedom of choice and right to self-determination.
  - E. When it becomes necessary for the commission to assist a vulnerable adult:
    1. Actions shall be tempered by the requirements of due process and must place the fewest possible restrictions on personal freedom.
  - F. Services provided under this act are also intended to provide assistance to caregiving families experiencing difficulties in maintaining functionally impaired relatives in the household.
4. In the process of carrying out its adult protection responsibilities, the commission is directed to make effective use of multidisciplinary services available through any and all public agencies, community-based organizations, and informal resources.

10.6. **ADULT PROTECTION PROCEDURES.** (OAA Section 721 (b)(3)) ensuring the coordination of services provided by area agencies on aging with services instituted under the State adult protection service program, State and local law enforcement systems, and courts of competent jurisdiction;

1. **Duty to Report Cases of Abuse, Neglect or Exploitation of Vulnerable Adults.** (IC 39-5303)
  - A. Any physician, nurse, employee of a public or private health facility, or a state licensed or certified residential facility serving vulnerable adults, medical examiner, dentist, ombudsman for the elderly, osteopath, optometrist, chiropractor, podiatrist, social worker, police officer, pharmacist, physical therapist, or home care worker who has reasonable cause to believe that a vulnerable adult is being or has been abused, neglected or exploited shall immediately report such information to the commission or contractors.

Provided however, that nursing facilities defined in section [39-1301\(b\)](#), Idaho Code, and employees of such facilities shall make reports required under this chapter to the department.

When there is reasonable cause to believe that abuse or sexual assault has resulted in death or serious physical injury jeopardizing the life, health or safety of a vulnerable adult, any person required to report under this section shall also report such information within four (4) hours to the appropriate law enforcement agency.

- B. Failure to report as provided under this section is a misdemeanor subject to punishment as provided in section [18-113](#), Idaho Code. If an employee at a state licensed or certified residential facility fails to report abuse or sexual assault that has resulted in death or serious physical injury jeopardizing the life, health or safety of a vulnerable adult as provided under this section, the department shall also have the authority to:
1. Revoke the facility's license and/or contract with the state to provide services;
  2. Deny payment;
  3. Assess and collect a civil monetary penalty with interest from the facility owner and/or facility administrator;
  4. Appoint temporary management;
  5. Close the facility and/or transfer residents to another certified facility;
  6. Direct a plan of correction;
  7. Ban admission of persons with certain diagnoses or requiring specialized care;
  8. Ban all admissions to the facility;
  9. Assign monitors to the facility; or
  10. Reduce the licensed bed capacity.
- Any action taken by the department pursuant to this subsection shall be appealable as provided in [chapter 52, title 67](#), Idaho Code.
- C. Any person, including any officer or employee of a financial institution, who has reasonable cause to believe that a vulnerable adult is being abused, neglected or exploited may report such information to the commission or its contractors.
- D. The commission and its contractors shall make training available to officers and employees of financial institutions in identifying and reporting instances of abuse, neglect or exploitation involving vulnerable adults.
- E. Any person who makes any report pursuant to this chapter, or who testifies in any administrative or judicial proceeding arising from such report, or who is authorized to provide supportive or emergency services pursuant to the provisions of this chapter, shall be immune from any civil or criminal liability on account of such report, testimony or services provided in good faith, except that such immunity shall not extend to perjury, reports made in bad faith or with malicious purpose nor, in the case of provision of services, in the presence of gross negligence under the existing circumstances.
- F. Any person who makes a report or allegation in bad faith, with malice or knowing it to be false, shall be liable to the party against whom the report was made for the amount of actual damages sustained or statutory damages in the amount of five hundred dollars (\$500), whichever is greater, plus attorney's fees and costs of suit. If the court finds that the defendant acted with malice or oppression, the court may award treble actual damages or treble statutory damages, whichever is greater.
2. **Exemption from Duty to Report – Limited Application of Exemption.** (IC 39-5303A)
- A. The requirements set forth in section [39-5303](#), Idaho Code, pertaining to the reporting of instances of abuse, neglect or exploitation of a vulnerable adult to the commission or the department shall not apply to situations involving resident-to-resident contact within public or private health facilities or state licensed or certified facilities which serve vulnerable adults, except in those cases involving sex abuse, death or serious physical injury that jeopardizes the life, health or safety of a vulnerable adult or repeated resident-to-resident physical or verbal altercations, not resulting in observable physical or mental injury, but

constituting an ongoing pattern of resident behavior that a facility's staff are unable to remedy through reasonable efforts.

- B. This exemption applies only to reports involving resident-to-resident abuse that are to be directed to the commission or the department pursuant to section [39-5303](#), Idaho Code. This exemption shall not limit any other reporting obligation or requirement whether statutory or otherwise.

**3. Reporting Requirements, Investigation, Emergency Access. (IC 39-5304(1))**

- A. When a report is required pursuant to this chapter, such report shall be made immediately to the commission or appropriate contractor.

Provided however, that nursing facilities defined in section [39-1301\(b\)](#), Idaho Code, and employees of such facilities shall make reports required under this chapter to the department.

If known, the report shall contain:

1. The name and address of the vulnerable adult; the caretaker; the alleged perpetrator;
2. The nature and extent of suspected abuse, neglect or exploitation; and
3. Any other information that will be of assistance in the investigation.

**4. Investigative Requirements. (IDAPA 15.01.02.031)**

- A. **Review of Allegations.** Upon receipt of a report of abuse, neglect, or exploitation the AP Provider shall conduct a review of the allegations of such report to determine whether:

1. The report was required to be made to the ICOA or its contractors pursuant to Section [39-5303](#), Idaho Code; (3-30-01)
2. An emergency exists; and (3-30-01)
3. In cases involving resident-to-resident contact reported pursuant to Section [39-5303\(A\)](#), Idaho Code, determine whether the case involves the sexual abuse, death, or serious physical injury jeopardizing the life, health, or safety of a vulnerable adult, or involves repeated physical or verbal altercations between residents, not resulting in observable physical or mental injury, but constituting an ongoing pattern of resident behavior that a facility's staff is unable to remedy through reasonable efforts. (4-6-05)

- B. **Need for Investigation.** If, based on its review, the Provider determines that a report involves a nursing facility defined in Section [39-1301\(b\)](#), Idaho Code, and was required to be made to the department pursuant to Section [39-5303](#), Idaho Code, the Provider shall immediately refer the report to the department.

1. If, based on its review, the Provider determines that a report involving resident-to-resident contact was exempted from reporting by Section [39-5303A](#), Idaho Code, no further investigation need be conducted on such report. The Provider shall investigate all other reports.

- C. **Vulnerability Determination.** Upon investigating a report, each Provider shall determine whether an alleged victim is vulnerable as defined in Section [39-5302](#), Idaho Code.

1. If the alleged victim is determined to be vulnerable as defined in Section [39-5302](#), Idaho Code, the Provider shall continue the investigation.
2. If the alleged victim is not vulnerable as defined in Section [39-5302](#), Idaho Code, the case shall be closed; however, the Provider may refer the complaint to:
  - a. Information and Assistance,
  - b. Case Management,
  - c. The Ombudsman,

- d. Law enforcement
  - e. Or other appropriate entity for investigation and resolution. (5-3-03)
- D. **Assessment of Alleged Victim.** An alleged victim’s vulnerability and associated risk factors shall be determined through the ICOA approved standardized assessment forms. Initial interviews and assessments of an alleged victim shall be conducted by the Provider.
- E. **Investigative Determinations.** The Provider shall make one (1) of two (2) investigative determinations upon completion of an APS investigation:
1. Substantiated. A report of abuse, neglect, or exploitation of a vulnerable adult by another individual is deemed substantiated when:
    - a. Based upon limited investigation and review, the Provider perceives the report to be credible.
      1. A substantiated report shall be referred immediately to law enforcement for further investigation and action.
      2. Additionally, the name of the individual against whom a substantiated report was filed shall be forwarded to the department pursuant to Sections 39-5304(5) and 39-5308(2), Idaho Code, for further investigation.
      3. In substantiated cases of self-neglect, the Provider shall initiate appropriate referrals for supportive services with the consent of the vulnerable adult or his legal representative.
    2. Unsubstantiated. The Provider shall close the case if a report of abuse, neglect, or exploitation is not substantiated. If a report is unsubstantiated, but the Provider determines that the vulnerable adult has unmet service needs, the Provider shall initiate appropriate referrals for supportive services with consent of the vulnerable adult or their legal representative.
- F. **Protective Action Plan.** Upon substantiating a report of abuse, neglect or exploitation of a vulnerable adult, the Provider shall develop and implement a Protective Action Plan.
- G. **Caretaker Neglect.** In investigating a report of caretaker neglect, the Provider shall:
1. Take into account any deterioration of the mental or physical health of the caregiver resulting from the pressures associated with care giving responsibilities that may have contributed to the neglect of the vulnerable adult.
    - a. In such cases, the Provider shall make every effort to assist the primary caregiver in accessing program services necessary to reduce the risk to the vulnerable adult.
    - b. In APS cases in which family members are experiencing difficulties in providing twenty-four (24) hour care for a functionally impaired relative, the Provider shall make appropriate referrals to available community services to provide needed assistance.
- H. **Adult Protective Services and Ombudsman Coordination.** The Providers shall ensure that APS staff and the Ombudsman program maintain a written agreement establishing local cooperative protocols in the investigation of complaints.
- I. **Confidentiality.** All records relating to a vulnerable adult and held by a Provider are confidential and shall only be divulged as permitted pursuant to Sections 39-5307, 39-5304(5), and 39-5308, Idaho Code.
5. **Reporting Requirements, Investigation, Emergency Access.** (IC 39-5304(2-5))
- A. If the allegations in the report indicate that an emergency exists, the commission or contractor must initiate:
    1. An investigation immediately, and

2. Initiate contact with the alleged vulnerable adult within twenty-four (24) hours from the time the report is received.
  3. All other investigations must be initiated within seventy-two (72) hours from the time the report is received.
- B. The investigation shall include:
1. A determination of the nature, extent and cause of the abuse, neglect, or exploitation,
  2. Examination of evidence and
  3. Consultation with persons thought to have knowledge of the circumstances and identification, if possible, of the person alleged to be responsible for the abuse, neglect or exploitation of the vulnerable adult.
- C. Where no emergency exists, the commission or contractor may determine, based on the review of the report and any initial inquiries, that an interview with the vulnerable adult is not necessary to the investigation.
1. If the commission or contractor determines that an interview is necessary,
    - a. The preferred method of interviewing is by means of a personal visit with the vulnerable adult in the adult's dwelling.
    - b. Alternatively, the interview may occur in the local office of the commission or contractor, or by telephone conversation, or by any other means available to the commission or contractor.
    - c. Decisions regarding the method of conducting any interview will be within the discretion of the commission or contractor.
- D. Upon completion of an investigation, the commission or contractor shall prepare a written report of the investigation.
1. The name of the person making the original report or any person mentioned in the report shall not be disclosed unless those persons specifically request such disclosure or unless the disclosure is made pursuant to the commission's duty to notify law enforcement as required in section [39-5310](#), Idaho Code, to a request to law enforcement for emergency access, a court order or hearing.
  2. If the abuse, neglect, or exploitation is substantiated to have occurred in a state certified or licensed facility, a copy of the findings shall be sent to the licensing and certification office of the department.
  3. If the commission or contractor determines that a report is unsubstantiated and that no other law has been violated, all records related to the report shall be expunged no later than three (3) years following the completion of the investigation.
- 6. Inspections – Right of Entry. (IC 39-5305)**
- A. Upon receiving information that a vulnerable adult is alleged to be abused, neglected, or exploited, the commission or contractor shall cause such investigation to be made in accordance with the provisions of this chapter as is appropriate.
1. In making the investigation, the commission or contractor shall use its own resources and may enlist the cooperation of peace officers.
  2. In an emergency any authorized commission employee or contractor shall enlist the cooperation of a peace officer to ensure the safety of the vulnerable adult, and they shall receive the peace officer's assistance.
  3. Assistance in an emergency may include entry on private or public property where a vulnerable adult is allegedly subject to abuse, neglect or exploitation, and the removal and transportation of the vulnerable adult to a medical facility, care-providing facility, or other appropriate and safe environment.

- B. In a nonemergency, any peace officer may cooperate with an authorized commission employee or contractor in ensuring the safety of a vulnerable adult who has been abused, neglected or exploited, including a vulnerable adult living in a condition of self-neglect. Assistance shall only be provided with the consent of the vulnerable adult or his legal representative.
  - C. For the purposes of implementing or enforcing any provision of this chapter or any rule authorized under the provisions of this chapter, any duly authorized commission employee or contractor may, upon presentation of appropriate credentials at any reasonable time, with consent or in an emergency, enter upon any private or public property where a vulnerable adult allegedly is subject to abuse, neglect, or exploitation.
  - D. All inspections and searches conducted under the provisions of this chapter shall be performed in conformity with the prohibitions against unreasonable searches and seizures contained in the fourth amendment to the constitution of the United States and article I, section 17, of the constitution of the state of Idaho. The state shall not, under the authority granted in this chapter, conduct warrantless administrative searches of private property except with consent, or in an emergency.
  - E. If consent to entry is not given, a commission employee or contractor with the assistance of the county prosecutor may obtain, and any magistrate or district judge is authorized to issue a search warrant upon showing that probable cause exists to believe a vulnerable adult is subject to abuse, neglect or exploitation. Upon request of a commission employee or contractor, a peace officer shall serve the search warrant.
7. **Supportive Services and Disclosure.** (IC 39-5306)
- A. If there is substantiated abuse, neglect, or exploitation of a vulnerable adult, the commission or contractor has the responsibility to assist the adult in obtaining available services.
    - 1. **Supportive Services Plan.** (ICOA) If determined necessary to reduce risk to a vulnerable adult, in substantiated cases and as part of a PAP, the AP worker shall refer the case to Case Management for the development and implementation of an SSP with the consent of the vulnerable adult or his legal representative.
  - B. If the commission or contractor develops a plan of supportive services for the vulnerable adult, the plan shall provide for appropriate supportive services available to the vulnerable adult that are least restrictive to personal freedom and shall provide encouragement for client self-determination and continuity of care.
  - C. If the vulnerable adult does not consent to the receipt of reasonable and necessary supportive services, or if the vulnerable adult withdraws consent, services shall not be provided or continued.
    - 1. **Documentation of Client Consent.** (ICOA) A vulnerable adult's consent, refusal to grant consent, or withdrawal of consent to an SSP shall be documented in the client case record.
  - D. If the commission or contractor determines that a vulnerable adult is an incapacitated person, as defined in section [15-5-101](#)(a), Idaho Code, mentally ill as defined in section [66-317](#), Idaho Code, or developmentally disabled as defined in section [66-402](#), Idaho Code, the commission or contractor may petition the court for protective proceedings, appointment of a guardian or conservator and such other relief as may be provided by [chapter 5, title 15](#), Idaho Code, and chapters 3 and 4, [title 66](#), Idaho Code.
  - E. An employee or contractor of the commission shall not be appointed the guardian or conservator of a vulnerable adult unless the commission employee or contractor has a spousal or familial relationship with the vulnerable adult.

8. **Case Closure.** (IDAPA 15.01.02.032.01)
  - A. Case Closure. The Provider shall close a case under the following circumstances:
    1. The Provider shall close a substantiated case upon a determination that an initiated PAP, or law enforcement involvement has successfully reduced the risk to the vulnerable adult.
    2. The Provider may close a substantiated case when the vulnerable adult refuses or withdraws consent to receive services, or upon a determination that the Provider has implemented all measures available to reduce risk but has been unable to reduce risk.
    3. A case shall be closed if the Provider determines that an allegation has been made in bad faith or for a malicious purpose.
9. **Suspense File.** (IDAPA 15.01.02.032.02)
  - A. Suspense File. Closed cases shall be maintained in a suspense file until formal action is completed by law enforcement and/or the courts in the following instances:
    1. Cases referred by the Provider to law enforcement for criminal investigation and prosecution as determined necessary by the law enforcement agency. (5-3-03)
    2. Cases referred by the Provider for guardianship/conservatorship proceedings. (5-3-03)
10. **Access to Records.** (IC 39-5307)
  - A. Any person, department, agency or commission authorized to carry out the duties enumerated in this chapter shall have access to all relevant records, which shall be subject to disclosure according to [chapter 3, title 9](#), Idaho Code, and shall only be divulged with the written consent of the vulnerable adult or his legal representative. No medical records of any vulnerable adult may be divulged for any purpose without the express written consent of such person or his legal representative, or pursuant to other proper judicial process. (Forms Packet: FO.AD.03. Release of Information)
11. **Interagency Cooperation.** (IC 39-5308)
  - A. In performing the duties set forth in this chapter, the commission or contractor may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions and local health directors, and may utilize any other public or private agencies, groups or individuals who are appropriate and who may be available. Interagency cooperation shall include the involvement, when appropriate, of law enforcement personnel, department personnel, medical personnel, and any other person or entity deemed necessary due to their specialized training in providing services to vulnerable adults. Interagency cooperation may also include access to client information necessary for the provision of services to vulnerable adults.
  - B. The commission shall provide to the department on at least a quarterly basis a listing of all alleged perpetrators against whom an allegation of adult abuse, neglect or exploitation has been substantiated. Upon request, all available supportive information shall be provided to enable the department to conduct criminal background checks and other required investigations. (Forms Packet: RP.AP.02. AAA Substantiated Case Report)
  - C. The department shall provide to the commission or contractor any report received under this chapter from a nursing facility defined in section [39-1301\(b\)](#), Idaho Code, or an employee of such facility.
  - D. The commission or contractor shall provide the department with any report received under this chapter involving allegations of abuse, neglect or exploitation occurring in a nursing facility as defined in section [39-1301\(b\)](#), Idaho Code.

- E. The commission, contractors and the department shall use interagency staffing when necessary and share client and facility information necessary to provide services to vulnerable adults.
12. **Coordination of Services.** (IC 39-5309) Subsequent to the authorization for the provision of reasonable and necessary emergency and support services, the commission or contractor shall initiate a review of each case at reasonable intervals over a reasonable period of time as the commission or contractor deems necessary based upon the circumstances in each individual case to determine whether continuation or modification of the services provided is warranted. A decision to continue the provision of such services should be made in concert with appropriate personnel from state agencies, departments, service providers and others, and shall comply with the consent provisions of this chapter.
13. **Effect of Actions Taken Pursuant to the Natural Death Act.** (IC 39-5311) Any action taken by a physician or health facility pursuant to an agreement with a vulnerable adult in accordance with the provisions of [chapter 45, title 39](#), Idaho Code, shall not be construed to constitute abuse, exploitation, or neglect, so long as it is consistent with the withholding or withdrawal of artificial life-sustaining procedures from a qualified patient.
14. **Rules.** (IC 39-5312) The director of the Commission shall have the authority to adopt, promulgate and enforce such rules as he deems necessary in carrying out the provisions of this chapter subject to the provisions of [chapter 52, title 67](#), Idaho Code.