

TITLE 8 SOCIAL SERVICES
CHAPTER 11 ADULT PROTECTIVE SERVICES
PART 3 ADULT PROTECTIVE SERVICES INVESTIGATIONS

8.11.3.1 ISSUING AGENCY: Aging and Long-Term Services Department - Adult Protective Services Division.
[8.11.3.1 NMAC - Rp, 8.11.3.1 NMAC, 6/1/2010]

8.11.3.2 SCOPE: Adult protective services employees and the general public.
[8.11.3.2 NMAC - Rp, 8.11.3.2 NMAC, 6/1/2010]

8.11.3.3 STATUTORY AUTHORITY: Adult Protective Services Act, Section 27-7-1 et seq. NMSA 1978, as amended; Public Health Act, Section 24-1-5L, as amended; Employee Abuse Registry Act, Section 27-7A-1 et seq. NMSA 2005; Uniform Health-Care Decisions Act, Section 27-7A-1 et seq. NMSA 1995, as amended; Residential Abuse and Neglect Act, Section 30-47-1 et seq. NMSA 1990, as amended; Aging and Long-Term Services Department Act, Section 9-23-1 et seq.
[8.11.3.3 NMAC - Rp, 8.11.3.3 NMAC, 6/1/2010]

8.11.3.4 DURATION: Permanent.
[8.11.3.4 NMAC - Rp, 8.11.3.4 NMAC, 6/1/2010]

8.11.3.5 EFFECTIVE DATE: June 1, 2010, unless a later date is cited at the end of a section.
[8.11.3.5 NMAC - Rp, 8.11.3.5 NMAC, 6/1/2010]

8.11.3.6 OBJECTIVE: To establish guidelines for the provision of adult protective services investigations.
[8.11.3.6 NMAC - Rp, 8.11.3.6 NMAC, 6/1/2010]

8.11.3.7 DEFINITIONS:

A. “Ability to consent” means an adult’s ability to understand and appreciate the nature and consequences of proposed protective services or protective placement, including benefits, risks and alternatives to the proposed services or placement and to make or communicate an informed decision.

B. “Abuse” means:

(1) knowingly, intentionally or negligently and without justifiable cause, inflicting physical pain, injury or mental anguish;

(2) the intentional deprivation by a caregiver or person of the services necessary to maintain the mental and physical health of an adult;

(3) sexual abuse including criminal sexual contact, incest and criminal sexual penetration.

C. “Administrative review” means a review of the department’s records of a substantiated case for abuse, neglect or exploitation by the division director or the director’s designee to determine if the notification process was performed and if the standard of preponderance of evidence was met in substantiating the allegation(s). An administrative review is not an administrative hearing before a hearing officer.

D. “Adult protective services (APS) attorney” is the attorney that represents the department in actions pursuant to the Adult Protective Services Act and federal and state constitutional, statutory and case law.

E. “Aggrieved person” means a person against whom a substantiation of abuse, neglect or exploitation has been substantiated. This does not include self neglect.

F. “Appropriate referral” is a report of adult abuse, neglect or exploitation received by the department which falls within the department’s mandate to investigate.

G. “Assessment” means a process of completing structured and non-structured interviews to acquire an understanding of an adult’s situation to determine if immediate protection or placement may be required.

H. “Care facility” means a hospital; skilled nursing facility; intermediate care facility; care facility for the mentally retarded; psychiatric facility; rehabilitation facility; kidney disease treatment center; home health agency; ambulatory surgical or outpatient facility; home for the aged or disabled; group home; adult foster care home; private residence that provides personal care; sheltered care or nursing care for one or more persons; adult day care center; boarding home; adult residential shelter care home; and any other health or resident care related facility or home but does not include a care facility located at or performing services for any correctional facility.

- I.** “**Caretaker**” means a facility, provider or individual that has assumed the responsibility for the care of an adult.
- J.** “**Case disposition**” means, upon completion of an investigation, whether to provide protective services for the purpose of alleviating or preventing further adult abuse, neglect or exploitation and ongoing risk to the incapacitated adult.
- K.** “**Decisional capacity**” means an adult’s ability to understand and appreciate the nature and consequences of proposed protective services or protective placement, including benefits, risks and alternatives to the proposed services or placement and to make or communicate an informed decision.
- L.** “**Department**” is the aging and long-term services department.
- M.** “**Emergency**” means an adult is living in conditions that present a substantial risk of death or immediate and serious physical harm to the adult or others.
- N.** “**Exploitation**” means an unjust or improper use of an adult’s resources for another’s profit or advantage, pecuniary or otherwise.
- O.** “**Incapacitated adult**” means any adult with a mental, physical or developmental condition that substantially impairs the adult’s ability to provide adequately for the adult’s own care or protection.
- P.** “**Investigation**” means a systematic fact finding process, initiated within a prescribe timeframe, with the goal of gathering all information relevant to the making of a determination as to whether the alleged maltreatment occurred and assess whether the incapacitated adult remains at risk, has decisional capacity and if protective services are necessary to remediate risk.
- Q.** “**Investigation determination**” means whether adult abuse, neglect or exploitation is substantiated or unsubstantiated.
- R.** “**Neglect**” means the failure of the caretaker of an adult to provide for the basic needs of the adult such as clothing, food, shelter, supervision and care for the physical and mental health for that adult. Neglect includes self neglect.
- S.** “**Orientation**” means the degree to which a person is cognizant of the:
- (1) “time” of day, date, month and year;
 - (2) “place” meaning that the adult knows where he is;
 - (3) “person” meaning that the adult knows who he is and who other people are;
 - (4) “purpose” means that the adult knows the reason for the visit from the APS worker.
- T.** “**Preponderance of evidence**” means the general standard of proof in civil cases. To support the finding, 51 percent or more of the relevant collected evidence must support that finding, determining it to be more likely than not.
- U.** “**Protected adult**” means an adult for whom a guardian or conservator has been appointed or other protective order has been made or an abused, neglected or exploited adult who has consented to protective services or protective placement.
- V.** “**Reporting person**” means a person who makes a referral to adult protective services staff about a situation of alleged abuse, neglect or exploitation of an elderly person or an adult with a disability.
- W.** “**Self neglect**” means an act or omission by an incapacitated adult that results in the deprivation of essential services or supports necessary to maintain the incapacitated adult’s minimal mental, emotional or physical health and safety.
- X.** “**Severity standard**” means the determination of the severity of the substantiated complaint of abuse, neglect or exploitation for non-licensed health professionals based on the application of the severity standards in section 8.11.6 NMAC, Adult Protective Services Employee Abuse Registry.
- Y.** “**Staffing**” means conferences to internally review investigation progress and timelines, service needs and plans for the completion of the investigation.
- Z.** “**Substantiation**” means a determination, based upon a preponderance of collected and assessed credible information, that the abuse, neglect or exploitation of an incapacitated adult has occurred.
- AA.** “**Substantiated registry referral**” means a substantiated complaint that satisfies the severity standard for referral of the employee to the registry.
- BB.** “**Unlicensed facility**” means a facility, such as an assisted living home, which operates without a license from the department of health.
- CC.** “**Unsubstantiated**” means that the information collected during the investigation does not support a finding that the vulnerable adult was abused, neglected or exploited.
[8.11.3.7 NMAC - Rp, 8.11.3.7 NMAC, 6/1/2010]

8.11.3.8 PURPOSE OF ADULT PROTECTIVE SERVICES INVESTIGATION: The adult protective services investigation collects and assesses information related to the following:

- A. whether the incident(s) of adult abuse, neglect or exploitation more likely than not occurred;
- B. whether the adult remains at risk for continuing abuse, neglect or exploitation;
- C. the need for additional protective services; and
- D. the need for coordination of appropriate and available short-term services for incapacitated adults

who have suffered abuse, neglect or exploitation.
[8.11.3.8 NMAC - Rp, 8.11.3.8 NMAC, 6/1/2010]

8.11.3.9 ELIGIBILITY: The department shall investigate allegations of abuse, neglect or exploitation of incapacitated adults by an individual, program or care facility without regard to family income. Services provided by adult protective services are intended for incapacitated adults. Only citizens and legal residents are eligible for services beyond an investigation or emergency services. Homelessness, in and of itself, does not constitute abuse, neglect or exploitation.

[8.11.3.9 NMAC - Rp, 8.11.3.9 NMAC, 6/1/2010]

8.11.3.10 RIGHT TO REFUSE AN INVESTIGATION: An investigation may be terminated at the request of the referred adult after a determination is made by the adult protective services investigator, in consultation with the adult protective services supervisor, that the alleged victim appears to have the “ability to consent” and therefore, is able to refuse an investigation.

[8.11.3.10 NMAC - Rp, 8.11.3.10 NMAC, 6/1/2010]

8.11.3.11 PROVISION OF SERVICES DURING THE INVESTIGATION: If, during the course of an investigation, the department determines that an adult who is incapacitated is in need of services, the department may provide short-term services using the least restrictive intervention necessary, with the consent of the person or surrogate decision maker or pursuant to a court order.

[8.11.3.11 NMAC - Rp, 8.11.3.11 NMAC, 6/1/2010]

8.11.3.12 INTAKE AND ASSIGNMENT: The department is responsible for providing the public the means for making referrals at all times. Every appropriate referral is assigned to an adult protective services investigator for investigation in a reasonable timeframe determined by the department. Upon receipt of a referral alleging abuse, neglect or exploitation of an adult in a care facility, the department notifies any of the state agencies which hold an interest in the licensing, certification or monitoring of the care facility.

[8.11.3.12 NMAC - Rp, 8.11.3.12 NMAC, 6/1/2010]

8.11.3.13 INITIATING, INVESTIGATING, ASSESSING, DOCUMENTING, SERVICE PLANNING, STAFFING AND MAKING A DETERMINATION: In accordance with department procedures, every case accepted by adult protective services shall be initiated, investigated, assessed, documented and staffed pursuant to this part. A determination of “substantiated” or “unsubstantiated” shall be made and, when appropriate, services will be offered to the incapacitated adult.

A. The department proceeds as follows:
(1) the department visits the residence of the referred adult(s) when investigating alleged abuse, neglect or exploitation;
(2) the department cannot enter a home without the permission of the resident;
(3) if the department is denied access to the home of an alleged victim, law enforcement or the adult protective services attorney may be contacted to assist in gaining access pursuant to APS Act 27-7-19.D NMSA 1978.

B. Anyone willfully interfering with an investigation of adult abuse, neglect or exploitation is guilty of a misdemeanor and subject to a civil penalty of not more than \$10,000 per violation pursuant to APS Act 27-7-19.F.NMSA 1978.

C. The department conducts interviews with those individual(s) who potentially have knowledge of the alleged abuse, neglect or exploitation.

D. The department provides the following information to individuals being interviewed:

- (1) the purpose of the department’s contact;
- (2) if the person being interviewed is alleged to be the victim or perpetrator;

(3) the department's intent to maintain confidentiality except when it becomes necessary to inform or collaborate with the district attorney, courts, law enforcement officials or other appropriate agencies in accordance with the Adult Protective Services or Resident Abuse and Neglect Acts and other statutes; and

(4) their right to refuse to participate in the investigation.

E. The department establishes reasonable timeframes to complete investigations and collects evidence, records observations and other information that may be used in substantiating or un-substantiating the allegations in the report.

F. The department has the authority to intervene, when necessary, including emergency removal, initiating court petitions and providing short-term services when funds are available.

G. The department creates documentation on each case, staffs each case with an adult protective services supervisor and, when appropriate, creates a service plan.

H. The department uses a preponderance of evidence to make a determination in every case and substantiates or un-substantiates every allegation.

I. The department will notify the alleged perpetrator(s) of the determination of the case by mail. In the event the allegation is substantiated, the perpetrator may request an administrative review of the case within 10 days of the receipt of the letter in accordance with this part. Based upon the facts and circumstances of the investigation, the department need not send a letter in all cases of substantiated self neglect.

[8.11.3.13 NMAC - Rp, 8.11.3.13 NMAC, 6/1/2010]

8.11.3.14 CONFIDENTIALITY OF INVESTIGATION RECORDS: Investigations completed by the department are confidential and are only released as allowed for by NMSA 1978 section 27-7-9. The department cooperates with the domestic violence homicide review team through the New Mexico Crime Reparations Act to the extent allowed by law. During an emergency, the department may release limited information, on a need to know basis, as allowed by law.

[8.11.3.14 NMAC - Rp, 8.11.3.20 NMAC, 6/1/2010]

8.11.3.15 NOTIFICATION OF AND THE RESULTS OF AN INVESTIGATION:

A. The department shall notify the alleged victim and the alleged perpetrator that an investigation has been initiated and that notification shall be documented in the case notes. The department has the option of notifying the reporting person if the case has been accepted or not accepted for investigation.

B. Unless otherwise provided for in this section, the department shall notify the alleged victim and perpetrator.

C. The department shall notify the perpetrator in writing of the department's substantiation of abuse, neglect or exploitation, the legal and factual basis for the substantiation and the aggrieved person's right to appeal the substantiation in accordance with 8.11.1.17.NMAC.

[8.11.3.15 NMAC - Rp, 8.11.3.21 NMAC, 6/1/2010]

8.11.3.16 ADMINISTRATIVE REVIEW:

A. An aggrieved person may request an administrative review of a decision made by the division regarding a substantiation of abuse, neglect or exploitation in accordance with the provisions set forth in this section. Administrative reviews are not available on any action that is currently or was previously the subject of a lawsuit.

B. Requests for administrative reviews must be made in writing to the adult protective services division director within ten calendar days of receipt of the letter of substantiation. The division director or their designee, may reverse the substantiation any time before the scheduled review.

C. Notification of substantiation, request for administrative reviews and administrative review process.

(1) Requests for administrative reviews must be made in writing to the adult protective services division director within ten calendar days of the receipt of the letter of substantiation. The division director or their designee may reverse the substantiation anytime before the scheduled review.

(2) Within 30 days of the receipt of the request for administrative review, the division notifies the aggrieved person requesting the administrative review of the time and date of the review, which may be no later than 60 days from the date of the request.

(3) The person conducting the review shall be neutral and have no direct involvement with the investigation or substantiation.

(4) The person conducting the administrative review issues a written decision within 30 days of the review, giving the reasons why the substantiation, by preponderance of evidence, is substantiated or reversed. The written decision is mailed to the aggrieved party and placed in the case record.

(5) The decision by the person conducting the administrative review is final and non-appealable except as otherwise provided for by the law.

[8.11.3.16 NMAC - N, 6/1/2010]

8.11.3.17 EMPLOYEE ABUSE REGISTRY: The department abides by all the terms of the aging and long-term services department Employee Abuse Registry, 8.11.6 NMAC and the department of health Employee Abuse Registry 7.1.12 NMAC.

[8.11.3.17 NMAC - N, 6/1/2010]

HISTORY OF 8.11.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 8/22/86.

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 6/18/87.

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 9/18/90.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 8/22/86.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 1/29/87.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 6/18/87.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 9/18/90.

SSD 10.2.0, Social Services for Adults - General Guidelines, filed 8/22/86.

SSD 10.2.0, Social Services for Adults - General Guidelines, filed 9/18/90.

History of Repealed Material:

8.11.3 NMAC, Adult Protective Services Investigations (filed 4/14/03) repealed 6/1/2010.

Other History:

SSD 10.2.0, Social Services for Adults - General Guidelines (filed 9/18/90) was renumbered, reformatted, amended and replaced by 8.11.3 NMAC, Adult Protective Services Investigations, effective 4/30/03.

8.11.3 NMAC, Adult Protective Services Investigations (filed 4/14/03) was replaced by 8.11.3 NMAC, Adult Protective Services Investigations, effective 6/1/2010.