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Rule R510-302. Adult Protective Services.

As in effect on May 1, 2011

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R510-302-1. Purpose.

This rule clarifies the responsibilities of Adult Protective Services.

R510-302-2. Authority.

This rule is authorized by Sections 62A-3-106.5 and 62A-3-302.

R510-302-3. Principles.

(1) Adult Protective Services shall respect the lifestyle that is knowingly and voluntarily chosen by the vulnerable adult.

A vulnerable adult with capacity to consent has the right to self-determination.

(2) All services provided are voluntary unless court ordered.

(3) All services provided should be the least restrictive possible.

(4) All services provided shall be community-based unless community-based services are unavailable.

(5) Adult Protective Services shall encourage a vulnerable adult's family and community to take responsibility for providing necessary services.

(6) Adult Protective Services shall coordinate and cooperate with other agencies to protect vulnerable adults.

(7) Adult Protective Services shall treat vulnerable adults and others in a courteous, dignified and professional manner.

R510-302-4. Definitions.

(1) All definitions found in Title 62A Chapter 3 are incorporated by reference.

(2) Activities of Daily Living means the ability to: take a full body bath or shower, including transfer in and out of the bath or shower; tend to personal hygiene needs, including care of teeth, dentures, shaving, and hair care; put on, fasten and take off all clothing, and select appropriate attire; walk without supervision or cues, including using a walker or cane; use steps or ramps; use toilet or commode, including transferring on and off toilet, cleansing self, changing pads, and caring for colostomy or catheter in appropriate manner; transfer without supervision or devices in and out of a bed or chair; and the ability to feed oneself, prepare food on a plate, drink from a cup and/or use necessary adaptive devices.

(3) Instrumental Activities of Daily Living means the core life activities of independent living, including using the telephone, managing money, preparing meals, doing housework, remembering to take medications, providing for ones necessities, and obtaining services.

(4) Conservator means an individual or agency appointed by a court in accordance with Section 75-5-401, et seq.

(5) Guardian means an individual or agency appointed by a court in accordance with Section 75-5-303, et seq.

(6) Incapacitated Person is as defined in Section 75-1-201(18).

(7) Intentionally is as defined in Section 76-2-103(1).

(8) Knowingly is as defined in Section 76-2-103(2).

(9) Lifestyle Choice means the way of life knowingly and voluntarily preferred or selected by a person who has capacity to consent.

(10) Limited Capacity means that a person's ability to understand and communicate regarding the nature and consequences of decisions concerning the adult's person or property is limited in one or more, but not all, functional areas, or during identified times of day, due to an mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause.

(11) Long-term care facility is as defined in Section 62A-3-202.

Protective intervention funding means payments made to the vulnerable adult, family, or caregiver or other provider that will alleviate or resolve a protective need.

(12) Protective Need means a need resulting from or related to the abuse, neglect, or financial exploitation of a vulnerable adult.

(13) Protective Supervision means an APS service offered to reduce or resolve a vulnerable adult's protective need.

(14) Recklessly is as defined in Section 76-2-103(3).

(15) Respite Care means a time-limited period of relief from care giving responsibilities paid to a respite care provider or individual from Protective Intervention Funds.

(16) Service Plan means a document created by the caseworker for an approved Short Term Service Case that includes a goal, objectives, methods, and progress reviews to resolve the protective needs identified in an Adult Protective Services investigation, and which implements recommendations of the case review committee.

(17) Short-term protective services include but are not limited to crisis intervention, emergency shelter, protective supervision, respite care, supported living services, short-term intervention funding, or monitoring the vulnerable adult's money-management.

(18) Short-Term intervention funding means short-term payments made to the vulnerable adult, family, or caregiver or other provider, during a short-term service case for goods or services other than for Respite care or Supported Living, that will alleviate or resolve a protective need.

(19) Supported Living means short-term payments made to individuals or providers that enable the vulnerable adult to remain in his or her own home or in the home of a relative.

R510-302-5. Records.

(1) Adult Protection case files shall be securely maintained.

(2) An Adult Protection case file shall include all records relating to an investigation performed by Adult Protective Services, and may include an adult protection report, capacity assessment, allegation assessment, risk assessment, service plan recommendations and service plans, case activity record, correspondence, agreements, authorizations, medical and psychological records, financial records, police reports, photographs, video recordings, audio recordings, court documents, and legal documents.

(a) Short-term service case files may include in addition to the above items: client eligibility documents, information releases, correspondence, Assessments, disbursement requests, records of Protective Intervention payments, and service plan documents.

(3) An Adult Protection case file shall document services needed by and provided for each vulnerable adult client.

(4) Case Review Committee recommendations will be documented in the case record.

(5) If a vulnerable adult dies after a referral is received, the investigator shall complete a report in compliance with DHS Policy and Procedures 05-02.

R510-302-6. Adult Protective Services Intake.

(1) Referrals may be submitted to APS Intake Office via written or telephonic means from any person who has reason to believe that a vulnerable adult has been abused, neglected, or exploited in the State of Utah.

(2) All referrals shall be evaluated by APS Intake to determine whether APS shall investigate the allegation.

(3) APS shall investigate all allegations of abuse, neglect, or exploitation of a vulnerable adult in the State of Utah except as follows:

(a) Allegations involving non-serious incidents of abuse, neglect or exploitation in a long-term care facility shall be referred to the long-term care ombudsman program in accordance with Section 62A-3-201, et seq.

(i) Non-serious incidents are incidents between residents over the age of 60 in which there are no injuries that require medical attention, and in which the facility has taken all reasonable steps to protect residents from future harm.

(4) APS shall notify the Department of Health and the Local Long-term Care Ombudsman when a referral involves a long-term care facility.

(5) APS may submit a referral that involves a Division employee or other potential conflict of interest to the DHS Office of Services Review for investigation.

(6) APS shall not accept a referral that does not involve an allegation that a vulnerable adult may have been or is being abused, neglected, or exploited.

(7) APS shall not accept or investigate a referral that involves the abuse, neglect, or exploitation of a vulnerable adult on an Indian Reservation unless a written agreement between APS and tribal authorities is in effect and grants APS authority to investigate.

(a) APS may refer a case that involves the abuse, neglect, or exploitation of a vulnerable adult on an Indian Reservation to federal or tribal authorities.

(8) APS shall not accept or investigate a referral that identifies no current abuse, neglect, or exploitation but anticipates that abuse, neglect, or exploitation may occur in the future.

R510-302-7. Investigation.

(1) The assigned investigator shall review the referral received from APS Intake and determine whether:

- (a) there is an allegation of abuse, neglect or exploitation;
- (b) the alleged victim is a vulnerable adult;
- (c) the alleged victim has the capacity to consent;
- (d) the alleged victim has a legal guardian or conservator; and
- (e) an emergency exists.

(2) The investigator shall initiate the investigation and make a face-to-face visit with the alleged victim.

(a) The investigator shall seek the consent of the vulnerable adult to provide services if the vulnerable adult has the capacity to consent.

(b) The investigator shall seek the consent of the vulnerable adult's legal guardian to provide services if the vulnerable adult does not have the capacity to consent.

(c) The investigator may seek a court order to provide services in the absence of consent from the vulnerable adult or the vulnerable adult's legal guardian.

(3) The investigator may not enter the home of a vulnerable adult unless the vulnerable adult, legal guardian, or caretaker consents, except as described in subsection (a) below.

(a) The investigator may enter the home of a vulnerable adult if exigent circumstances exist to protect the vulnerable adult from imminent harm.

(b) The Investigator may contact persons who may have information regarding the vulnerable adult's circumstances and to obtain information necessary to investigate allegations of abuse, neglect, or exploitation.

(4) The investigator shall evaluate the extent of the alleged victim's mental and/or physical impairment, whether the alleged victim is a vulnerable adult, and whether any impairment substantially impacts activities of daily living.

(5) The investigator shall interview the alleged perpetrator unless:

(a) specifically requested not to do so by law enforcement officers in order to avoid impeding an ongoing criminal investigation or proceeding;

(b) interviewing the alleged perpetrator would likely endanger any person;

(c) prior to interviewing the alleged perpetrator, the allegation is found to be without merit;

(d) an alleged victim with capacity terminates the APS investigation;

(e) APS is unable to locate the victim;

(f) the alleged victim died before the investigation started;

(g) the alleged perpetrator is unknown; or

(h) the alleged perpetrator has declined the interview.

(6) The Investigator shall, based on all information obtained during the investigation, determine:

(a) whether each allegation of abuse, neglect, and exploitation identified by the referent is supported, inconclusive, or without merit; and

(b) whether each allegation of abuse, neglect, and exploitation identified during the investigation is supported, inconclusive, or without merit.

(7) When the investigator has reason to believe a drug lab may be located at an investigative site, the investigator will contact law enforcement agencies and not enter the site until the local health department determines it is safe to do so.

(a) Law enforcement agencies may be asked to assess and secure a vulnerable adult's immediate safety, facilitate the vulnerable adult's exit from the lab site, and arrange for emergency transportation to the hospital for decontamination.

(8) The investigator may obtain an administrative subpoena when the following circumstances apply:

(a) the vulnerable adult lacks the capacity to consent;

(b) the vulnerable adult's legal guardian refuses to consent;

(c) the custodian of the records or items pertinent to an investigation refuses to allow access to those records or items without a subpoena; and

(d) the information sought is necessary to investigate allegations of abuse, neglect or exploitation or to protect the alleged victim.

(9) An administrative subpoena form shall include a list that specifically identifies the documents or objects being subpoenaed.

(a) An administrative subpoena is not valid until signed by the Director or Regional Director.

(b) The investigator shall document all items received as a result of the subpoena.

(10) The Investigator shall determine whether the vulnerable adult has an unmet protective need.

(a) If an unmet protective need exists, the investigator shall refer the vulnerable adult and the vulnerable adult's legal guardian to available community resources and services to resolve the protective need.

(b) If an unmet protective need exists, the investigator or Supervisor may request a review by the Case Review Committee to determine if Short-Term Services may help to resolve the protective need.

(c) APS shall not facilitate the placement of a vulnerable adult who lacks capacity to consent with an unlicensed caregiver.

(d) APS may contact the family of a vulnerable adult and inform the family that the vulnerable adult requires alternate living arrangements in an environment that is safe and meets the vulnerable adult's protective needs.

(e) APS may, but is not required to, seek or facilitate the placement of a vulnerable adult with a licensed caregiver.

(f) Protective Intervention Funds may, in the sole discretion of APS, be made available to the vulnerable adult, family caregiver or other provider to alleviate or resolve a protective need, and must directly benefit the vulnerable adult.

(i) One-time payments may be made for medications, medical treatment, or medical equipment or supplies not covered by insurance or other medical coverage; transportation; minor repairs or modifications; rent; food; or clothing, or other needs that directly benefit the vulnerable adult to alleviate or resolve a protective need.

(ii) Payments may be made to a service provider or individual for approved Short-term services for Respite care, Supported living, or for short-term intervention funds.

R510-302-8. Income Eligibility.

(1) There are no income eligibility requirements for an APS investigation of allegations of abuse, neglect, or exploitation.

(2) There are no income eligibility requirements in order to receive short-term protective supervision services.

(3) There are no income eligibility requirements in order to receive Protective Intervention Funds to resolve a situational crisis or an immediate protective need.

(4) Short-term protective services may only be provided to a vulnerable adult who is the victim of abuse, neglect, or exploitation.

(5) Short-term protective services may only be provided in accordance with the terms of a service plan consented to and signed by the vulnerable adult or the vulnerable adult's legal guardian, or pursuant to court order. An updated service plan will be signed at each case review.

(6) A vulnerable adult shall meet income eligibility requirements in order to receive short-term protective services other than protective supervision services, including respite care, supported living, short-term intervention funding, protective payee services, and other services approved by the APS Director or regional director.

(a) For purposes of eligibility for short-term protective services, "family" includes an adult, the adult's spouse, and their natural children under age 18, who are residing in the same household.

A person living under the care of someone other than their spouse is considered a one-person family.

(b) In determining whether a vulnerable adult meets income eligibility requirements for short-term protective services, family assets shall be disclosed and evaluated.

(i) Family assets include the fair market value of stocks, bonds, certificates of deposit, notes, savings and checking accounts, inheritance, capital gains, or gifts, which can be readily converted to cash.

(ii) A client's income and deductions will be used to determine the client's adjusted gross income to determine the client's eligibility status.

(iii) Monthly gross income includes the total monthly income received by an individual from earnings, military pay, commissions, tips, piece-rate payments, and cash bonuses; net income from self-employment; Social Security Pensions, SSI, Survivor's Benefits, and Permanent Disability Insurance payments; dividends, interest, income from estates or trusts, net rental income or royalties, net income from rental of property, receipts from boarders or lodgers; pensions, annuities; unemployment compensation; strike benefits; worker's compensation; alimony, child support, money received as specified in a divorce or support decree; Veterans' pensions or subsistence allowances; and other regular (three out of six months) financial assistance.

(iv) Monthly gross income does not include per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims; net proceeds received from the sale of a primary residence or an automobile; money borrowed; insurance payments in

excess of incurred costs that must be paid from the settlement; the value of the coupon allotment under the Food Stamp Act; the value of USDA donated foods; the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act; any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; earnings of a child (under 18 years of age) residing in the home; payments for energy assistance and weatherization HEAT program; housing subsidies paid by the Federal government; payments or grants received due to natural disaster; educational loans, grants, or scholarships to any undergraduate student for educational purposes that is made or insured by the U.S. Commissioner of Education (BEOG; SEOG; NDSL; Guaranteed Student Loans; SSIG; and PELL Grants); payments to participate in a service learning program, such as College Work-Study or University Year for Action; and that portion of any other loan, grant, or scholarship which is conditioned upon school attendance, actually used for tuition, books, fees, equipment, special clothing needs, transportation to and from the school, and the child care services necessary for school attendance.

(v) The expenses that shall be deducted in determining adjusted gross income are limited to medical expenses (including Medicaid spend-down and insurance); storage expenses; child support paid, including money paid for house payments, rent, etc. as specified in a divorce or support decree; the dollar amount of first mortgage/rental payment over 25% of monthly countable income (not counted for Foster Care); and fees paid for other programs and protective services.

(vi) The sum of all family assets shall be divided by the number of family members, and if that amount exceeds \$4,000 per family member, then the value over \$4,000 shall be prorated over twelve months, and the resulting amount shall be added to the monthly countable income.

(vii) Eligibility status must be verified annually and within 30 days of any family member's increase in assets.

(viii) A client's adjusted gross income for income tax purposes is not the same as the adjusted gross income for service eligibility purposes.

(ix) All family assets and expenses shall be supported with current bank records, check stubs, and other verifiable records. Documentation must clearly indicate the name of the applicable family member.

R510-302-9. Protective Need Intervention.

(1) If protective services are needed and the vulnerable adult has the capacity to consent, the Investigator will work with the vulnerable adult to identify options to alleviate the protective need. If a vulnerable adult lacks the capacity to consent to protective services and has no legal guardian, the Investigator may:

- (a) request a multi-disciplinary case staffing;
- (b) contact the vulnerable adult's family;

(c) contact mental health professionals or physicians;

(d) contact agencies, organizations or services available to meet the vulnerable adult's protective need; or

(e) contact the Office of the Public Guardian.

(2) The Investigator may provide short-term counseling or crisis intervention to assist the vulnerable adult in obtaining services or benefits relating to the abuse, neglect, or exploitation.

(3) The Investigator may request Protective Intervention Funding to alleviate the vulnerable adult's protective need.

(a) Emergency shelter placements may be made for up to 30 days within a twelve-month period for a vulnerable adult who has been abused, neglected, or exploited only if:

(i) the vulnerable adult's circumstances require immediate alternate living arrangements in a safe environment;

(ii) the vulnerable adult or legal guardian consents to the emergency shelter placement or a court order authorizes the placement;

(iii) the vulnerable adult does not meet the eligibility requirements for shelter under the Family Violence program; and

(iv) the emergency shelter has all required current licenses and certifications.

R510-302-10. Short Term Intervention.

(1) A short-term services Case Review Committee shall monitor and review short-term services.

(a) The Case Review Committee will consist of the primary worker, supervisor or designee, and two other region workers. The Committee may include other APS and community or agency individuals when determined necessary by the Case Review Committee.

(b) The Case Review Committee shall oversee the progress made towards resolution of the protective need.

(c) The Case Review Committee may recommend that short-term services are initiated, extended, or terminated.

(d) The Case Review Committee may recommend community referrals or alternative actions.

(e) The Case Supervisor may approve or deny Short-Term Services recommended by the Case Review Committee.

(2) Short-Term Services may only be provided under the following conditions:

(a) Short-term services are voluntary and shall not be implemented without the written consent of the vulnerable adult or the vulnerable adult's legal representative.

(b) Every short-term service case shall include a protective supervision service.

(c) Protective Intervention funds for Short-term services shall not be disbursed without the approval of the APS supervisor or regional director.

(d) Respite Care funds may not be used for caring for other members of the family, performing extensive household tasks, or transportation.

(e) Respite Care may be provided in the vulnerable adult's home, a caregiver's home, or in a licensed facility.

(f) Supported Living Payments may be made to providers to enable the vulnerable adult to remain in his own home or in the home of a relative, and may include short-term supervision, transportation, assistance with shopping, training or assistance with activities of daily living.

(g) Payments for Short-Term Services may not be made until a case has been approved by the Case Review Committee and Services voluntarily agreed to in writing by the vulnerable adult, his or her guardian, or approved by court order.

R510-302-11. Protective Payee Services.

(1) Protective Payee Services are available only to a vulnerable adult who has been approved for this service prior to May 5, 2008.

(2) Protective Payee Services include money management skills for individuals without a legal guardian.

(a) The protective payee will review the vulnerable adult's financial account and allocate, with the vulnerable adult (if able to participate) funds for the vulnerable adult's basic needs, such as food, clothing, shelter, medical care, and other costs of care or special needs.

(b) If the vulnerable adult has income remaining after all basic costs are paid, it shall be placed in the vulnerable adult's trust account.

(c) The protective payee will provide the vulnerable adult with a monthly copy of the account ledger.

(3) Protective Payee Services shall be documented in accordance with standard accounting practices.

(4) Protective Payee Services shall cease if the vulnerable adult withdraws consent unless otherwise required by court order.

(5) Protective Payee Services shall cease if another person provides protective payee services.

(6) Protective Payee Services shall cease if the vulnerable adult has minor children residing in the home for whom he has legal responsibility and for whom any type of financial assistance is received.

(7) When Protective Payee Services are terminated due to the death of the vulnerable adult, the vulnerable adult's remaining expenses, including burial expenses, shall be paid from the account and the funding agencies shall be notified of the vulnerable adult's death. Any remaining funds shall be distributed in accordance with State law.

R510-302-12. Termination of Short-Term Protective Services.

(1) A vulnerable adult has no entitlement or right to short-term protective services.

(2) Protective Services may be terminated by the vulnerable adult or APS at any time.

(3) Protective Services shall be terminated when:

(a) the vulnerable adult is no longer in immediate danger of abuse, neglect or exploitation;

(b) a vulnerable adult who voluntarily accepted services requests that those services be terminated;

(c) recommended by the Case Review Committee;

(d) the court terminates an order requiring APS to provide services;

(e) the vulnerable adult is receiving protective services from other persons or agencies;

(f) the vulnerable adult's behavior is abusive or violent and constitutes a threat;

(g) the vulnerable adult no longer meets the eligibility requirements for services;

(h) the vulnerable adult refuses to comply with the service plan;

(i) there is insufficient funding to pay for the service;

(j) the vulnerable adult moves out of State; or

(k) the vulnerable adult dies.

(4) When APS terminates Short-Term protective services, a letter will be sent to the vulnerable adult stating the case is going to be terminated and the reason for termination.

(a) The letter shall state that termination becomes effective 10 days from the date the letter was sent unless the vulnerable adult requests an administrative

review of the reason for the termination and to decide if the services should be reinstated or alternative services may be available.

(b) In Protective Payee Short-Term Service cases, the letter to the vulnerable adult shall be copied to the agency providing funding (income) for the vulnerable adult.

(5) Upon the death of a vulnerable adult, the following procedures should be followed:

(a) The family of the vulnerable adult will be contacted to arrange for the burial.

(b) If the family is unable to pay for the burial, APS may suggest a list of other resources to pay burial expenses, such as relatives, religious organizations, insurance, and the County Commission.

(c) If no one accepts responsibility, APS will make contacts to arrange burial, however APS shall not pay for the burial.

(d) APS shall notify SSA, VA, or other sources, of entitlement benefits if APS is acting as the vulnerable adult's protective payee.

(e) APS shall complete a Deceased Client Report form in accordance with DHS policy 05-02.

KEY

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