AX CA ESSENTIAL RECORDS

DIVISION: (Required Field)	Program and Policy
DOCUMENT TYPE: (Required Field)	Manual
MEDIA:	**Select Media**
TOPIC: (Required Field)	Manual Revision
DOCUMENT TITLE:	Manual G Chapter: 30
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DAN NUMBER:	**Select DAN Number**
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06/06/2017

CHAPTER 30 - ADULT PROTECTIVE SERVICES

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CHAPTER 30 - ADULT PROTECTIVE SERVICES
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30.00 DEFINITION (WAC 388-15-120)

Adult protective services are those services provided to prevent, correct, improve or remedy the situations of adults who are neglected, abused or exploited or whose living conditions or life style is such that they are endangering their own health or safety or that of others.

Services include counseling with the individuals and their friends and relatives, arranging for alternate living arrangements, assisting in the location of medical care, legal services and other community services, such as volunteer services. Homemaker or chore services may be provided as appropriate, or advocacy to assure receipt or preservation of rights and entitlements due to adults at risk.

30.14 ELIGIBILITY

Any individual who needs Adult Protective Services as described in the Title XX service plan may receive the appropriate service, regardless of recipient status or level of gross income. Where supportive services such as chore service or homemaker services are part of the protective service plan, individuals must meet income criteria for the particular service or have recipient status.

30.20 GOALS

Protective services to adults may be provided to meet the following goals; however, only one goal may be pursued at any one time. Goals may be changed at any appropriate time, and the goal change reflected in a revision of the DSHS 14-140(X) Primary Recipient Form. Since, in all likelihood the services directed at the new goal will also change, a revision of DSHS 14-141(X) Social Service Record will probably be necessary.

1. Preventing or Remedying Neglect, Abuse or Exploitation.

   That is, intervening in situations where relatives or other persons may be exploiting an adult by depriving him of his physical needs or subjecting him to physical or mental abuse.

   a. Activities to accomplish this goal may consist of any of the following:

      (1) Counseling with relatives or friends to remedy or improve conditions which result in abuse, neglect or exploitation of adults.

(2) Counseling with individuals engaged in abusing, neglecting or exploiting adults in order to enable them to correct their behavior.

(3) Responding to complaints received from Operations Review, Nursing Care Consultants or community people regarding misuse of patient or resident funds, in SNFs, ICFs or CCFs, and intervening on the client's behalf with facility operators.

(4) Responding to complaints received from Nursing Care Consultants, relatives or community people concerning neglect or mistreatment of adults in facilities and taking appropriate action which may include replacement of the individual or in extreme cases, the actual closing of a CCF or Family Home.

(5) Arranging for individuals to move to alternate living situations as necessary.

(6) Assisting the individual to secure remedial medical care.

(7) Assisting the client to secure mental health service, including cooperation with mental health professionals in the community or mental health service representatives from the state hospitals.

(8) Arranging for guardianship or other legal assistance, or protective or representative payment.

(9) Contacting law enforcement officials as appropriate.

b. See also Chapter 18.34 regarding complaints.

2. Preventing or Reducing Inappropriate Institutional Care.

That is, providing or arranging for homemaker services, chore service, volunteer services or other services which will enable an individual to remain in his own home under safe and sanitary conditions, or alternately arranging for protective care in a community-based facility, such as a Family Home for Adults or Congregate Care Facility (CCF).

a. Activities to accomplish this goal may consist of any of the following:

(1) Responding to complaints concerning individuals living in unsafe and hazardous conditions and intervening in the situation as appropriate.

(2) Providing chore services to correct unsanitary conditions.

(3) Providing homemaker service to enable the adult to learn skills which will maintain his health and safety.

(4) Arranging for friendly visiting or daily phone calls.

(5) Helping client find alternate living.

(6) Helping secure assistance of relatives and friends.

(7) Arranging for home delivered meals.

(8) Placing the individual where appropriate and desirable in a community-based facility, such as a family home for adults or CCF.

3. Securing Referral or Admission for Institutional Care.

That is, when no other alternative is appropriate, placing the individual in an Intermediate Care Facility or Skilled Nursing Facility or arranging for his admission in a mental hospital or school for the retarded.

a. Activities to accomplish this goal may consist of any of the following:

(1) Placement in an ICF or SNF.

(2) Referring the individual to BDD case service staff for services which are expected to result in his admission to a school for the retarded.

(3) Working with mental health professionals and mental health service representatives to secure, when necessary, an individual's involuntary or voluntary commitment to a mental hospital.

30.30 CENTRAL REGISTRY FOR ABUSE OF MENTALLY RETARDED ADULTS

1. Mandatory Reporting - Immunity From Civil Liability.

a. A practitioner of the healing arts, professional school personnel, registered or licensed nurse, social worker, psychologist, pharmacist, or employee of the Department as defined in RCW 26.44.020, shall report as required by RCW 26.44.030 abuse or neglect of a mentally retarded adult as defined by RCW 26.44.020 (12) and WAC 388-16-505 (11).

b. The report shall be made orally and, upon request, in writing to the proper law enforcement agency, or the Department:

(1) Directly to law enforcement or the Department by the individual specified in subsection 1. above, or

(2) Indirectly, by causing a report to be made through the person in charge (or his designee) of the institution, organization, school or department with which the specified individual is accociated.

c. Any other person who has reasonable cause to believe that a retarded adult has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the Department.

d. A report to the Department shall be made directly to the Department's ESSO.

e. Law enforcement agencies or the Department shall investigate the possible abuse or neglect of a mentally retarded adult. If the adult meets the Bureau of Developmental Disabilities definition of mental retardation (See Chapter 38), he shall be referred to D.D. case services. If he does not, the ESSO shall offer adult protective services. A report to the appropriate agency providing service shall be made as per section 30.30 1. (b) and section 33.30 2.

f. Any person participating in good faith in the making of a report pursuant to this section or testifying as to alleged abuse or neglect of a mentally retarded adult, in a judicial proceeding shall, in doing so be immune from any liability arising out of such reporting or testifying under any law of this state or its political subdivisions.

2. Information to Be Reported.

Information to be reported shall include the following, if known:

a. The name, address and age of the mentally retarded adult;

b. The name and address of the mentally retarded adult's parents, stepparents, guardians or other persons having custody of the mentally retarded adult;

c. The nature and extent of the mentally retarded adult's injury or injuries;

d. The nature and extent of the physical neglect of the mentally retarded adult;

e. The nature and extent of the sexual abuse;

f. Any evidence of previous injuries, including their nature and extent, and

g. Any other information which may be helpful in establishing the cause of the mentally retarded adult's death, injury or injuries and the identity of the perpetrator or perpetrators.

3. Acceptance of Reports.

a. The ESSO shall accept a complaint or referral concerned with nonaccidentally inflicted physical and/or emotional abuse, neglect or exploitation of a mentally retarded adult from any source, including one made anonymously.

b. Complaints shall be investigated and if substantiated, the adult shall receive protective services either from BDD or ESSO service staff.

4. Notification - Substantiation.

a. The Department shall notify the parents, stepparents, guardians or other persons having custody of the mentally retarded adult or other person alleged to be the abuser that the Department has received a report alleging condition(s) specified in 3. above unless the report is for information purposes only because the situation has been resolved by law enforcement or by the courts. The identity of the person making the report to the Department shall not be revealed unless that person has given permission to do so.

b. Unless the report was for information purposes only, as specified in subsection (a), the parent or parent surrogate or other alleged abuser as specified above, shall be provided the opportunity to supply information about the allegation and his situation. This person's response about the allegation and his situation, including a written statement if any, shall be a part of the Department's case record.

c. The person, if available, shall be informed of the placement of his name as an abuser in the central registry and advised of his right to a fair hearing in accordance with Chapter 388-8 WAC.

d. The Department shall determine if there is a factual basis for the report, unless the report is already substantiated or is for information purposes only.

(1) A report which contains facts about the state or condition of the mentally retarded adult amounting to abuse made by any person under a mandatory duty to report shall be considered substantiated and must be reported to the central registry. The substantiation of the identity of the alleged abuser shall be considered separately.

(2) Regardless of source, a report in which the facts support the conclusion(s) is to be considered substantiated. If the report is substantiated and falls within the definition of what is to be reported to the central registry, it must also be reported to the central registry. The parent or parent surrogate or other suspected/alleged perpetrator, if available, shall be notified that the information has been forwarded to the central registry.

5. Central Registry - Definition - Duty to Maintain.

a. The "central registry" means a system of centralized storage and retrieval of case information in all substantiated instances reported to the Department of nonaccidentally inflicted death, physical injury or injuries (abuse), physical neglect or sexual abuse of a mentally retarded person of any age.

b. The Department shall:

(1) Maintain the central registry required by RCW 26.44.070 at Olympia for the statewide accumulation of substantiated information on abuse of mentally retarded adults;

(2) Adopt rules and regulations as necessary in maintaining the central registry;

(3) Consider records in the central registry confidential and make them available only to prosecuting attorneys, county sheriffs, local police departments, coroners or medical examiners, and to Departmental ESSOs, physicians and their designees or licensed hospitals.

c. In addition, any other professional person, agency or organization approved by the Secretary of DSHS with a demonstrated need and which agree to abide by the confidentiality provisions of RCW 26.44.070 will also be eligible to receive central registry information.

6. Purpose (Effective 7/29/72).

a. Obtain accurate information of the incidence of the abuse and neglect of mentally retarded persons of all ages;

b. Make case information available in usable form on request to those persons and agencies specified in 5. (b) (3) above.

7. Storage and Retrieval of Information.

a. Storage - Reports to be included in the central registry shall be submitted by the Department's Economic and Social Services Offices. Prior to forwarding the reports to the central registry

the ESSO shall follow the notification and substantiation procedure in section 4. above. The DSHS 2-142 is used to report to the Central Registry.

Retrieval - A person or agency as defined in 5. (b) (3) may contact protective services in the ESSO in person, by telephone or letter to request information. The ESSO contacts the central registry in Olympia, secures the information and makes it available to the eligible person or agency. The person or agency may contact the central registry directly, request the information and if eligible to receive it, the central registry makes the information available.

8. Information - Release - Dissemination - Expungement.

a. Information provided from the central registry and from case records to the requesting persons and agencies as defined in 5. (b) (3) shall not be further disseminated or released and shall be respected as confidental.

b. Information which may be released from the ESSO case record as per RCW 26.44.070 is listed in 2. above. Release of other information must be considered under the provision of WAC 388-48-010 through 388-48-100. The following information after substantion shall be reported by the Department's ESSO to the central registry and, if reported, shall be available from the central registry:

(1) The name of the "known" perpetrator, or the "suspected" perpetrator or whether the perpetrator is "unknown";

(2) The name, place of birth and age of the mentally retarded adult;

(3) Whether the abused is mentally retarded;

(4) Date of incident;

(5) Substantiated incident(s) of nonaccidentially inflicted:

(a) Death,

(b) Physical injury or injuries,

(c) Physical neglect,

(d) Sexual abuse,

(e) Mental injury (abuse, and/or neglect)

(6) The name and code number of the ESSO which has additional information;

(7) The social service case number; and

(8) The title and telephone number of the ESSO person to contact.

b. Reports in the central registry shall be expunged and sealed, if after six years from the date of the last filed report, there have been no subsequent reports about the mentally retarded adult and/or the alleged perpetrator. Reports in the central registry may also be expunged and sealed upon the request of the reporting ESSO with the concurrence of all other reporting ESSOs, if any. Sealed records may be revived if there is a subsequent report after expungement. Sealed records about the state or condition of the mentally retarded adult which contain no reference to the person responsible for the abuse may also be revived for purposes of treating the mentally retarded adult.

c. If the ESSO case record regarding the incident has not been destroyed already, this information shall be expunged and sealed at the same time as the central registry information is expunged and sealed. Information regarding the state or condition of the adult may be maintained in the ESSO case record, if there is not reference to the person responsible for the abuse.

(See Manual G, Chapter 54 for further details on central registry.)

30.32 PROTECTIVE PAYMENT - - ADULT SERVICES

Arrangements for payment to someone other than the client will be made only when he is definitely unable to make personal decisions for the use of his funds and the assistance of a relative, friend or service worker is not possible or is not sufficient to continue money payments to him.

When a money payment cannot be made directly to an individual, a guardian may be secured or a protective payee may be designated.

The designation of a protective payee (person to whom the grant is paid in behalf of the individual) is preferable when help with money management is the individual's essential need, and the individual does not have resources requiring legal management, and voluntary guidance and assistance is not adequate, and guardianship is not feasible, practical or necessary.

1. General Provision.

Protective payment for a recipient of GAU or a beneficiary of SSI is payment of a cash grant or entitlement to another individual designated as a protective payee.

Allowances for the cost of chore services or special needs such as restaurant meals may be issued to a protective payee when a current or potential SSI beneficiary manifests a persistent inability to manage and use these funds for their intended purposes.

If a beneficiary of SSI already has a representative payee, it is assumed he will also be protective payee for the chore service or special need grant.

The objective in making protective payments is to assist the individual in money management or to provide management of funds for the individual who, by reason of physical or mental condition, is incapable of handling his money.

Protective payment is not used when the basic problem is insufficient funds rather than money management or when a financial problem is due to an emergency situation such as short-term illness.

Assistance funds shall not be authorized for payment of protective payee costs or services.

2. Determination of Need for Protective Payment.

The facts supporting a determination of an individual's ability to manage funds must be specific and clearly established that his misuse of funds threatens his well-being, for example:

a. Observation of gross conditions such as extensive paralysis, serious mental retardation, continued disorientation, or severe memory loss.

b. Continued inability to plan and spread necessary expenditures over the usual payment period.

c. Persistent failure to pay for rent, utitities, food and other essentials.

3. Decision to Establish Protective Payments.

The ESSO administrator or his designee may authorize protective payment if recommended by the service worker. The case record must contain the evidence upon which this recommendation is based.

4. Selection of Protective Payee.

The person designated to receive the payment on behalf of a GAU recipient or the chore service or special needs grant of any SSI beneficiary must be interested in or concerned with the individual's welfare. The selection of the protective payee is preferably made by the individual, or with his participation and consent, to the extent possible. The person may be:

a. A relative, friend, or member of the clergy,

b. A member of community service group,

c. A staff member of a public agency, such as one administering health, rehabilitation, and housing programs,

d. The superintendent of a public institution of mental disease or the mentally retarded, or his designee,

e. A DSHS staff member only when no other suitable person is available.

5. Persons Excluded.

To avoid conflict of interest the individual may not be:

a. The ESSO administrator, special investigative or resource staff, or staff handling fiscal processes related to the individual,

b. Vendor of goods and services dealing directly with the recipient such as landlord, skilled nursing home operator, ICF or CCF operator or operator of any social care facility, or grocer.

6. Standards for Selecting a Protective Payee are:

a. Interest and concern in the welfare of the individual, ability to help the individual make proper use of the assistance payment when feasible,

b. Accessibility to the individual,

c. Ability to establish and maintain a positive relationship with the individual,

d. Good character and reliability.

7. Role of the Payee and the Department:

The protective payee will make decisions about the expenditure of the GAU payments. He should encourage the individual to participate to the extent of his ability in the decisions.

An itemized account is not required, but the payee will keep a record of expenditures for the basic needs of food, shelter, clothing and utilities current for review.

The ESSO shall provide the recipient or beneficiary and payee copies of a written agreement on the respective roles of the protective payee and the department. A copy will be retained in the case record. The service worker in cooperation with the payee, will strive to improve the individual's capacity for self-care and money management to the extent possible.

8. Modification or Termination of Protective Payment Plan.

The protective payees may be removed upon his or her request, or when a different payee is designated by the ESSO or when the individual is capable of resuming management of his own funds, or when a court appoints a guardian.

9. Periodic Review.

The need for protective payments and the way in which a protective payee's responsibilities are carried out shall be reconsidered as frequently as indicated by the individual's circumstances and at least every six months.

30.34 GUARDIANSHIP

When a judicial appointment of a guardian or other legal representative appears to serve the best interests of the individual, such appointment will be sought.

Guardianship is preferable when the individual needs someone to control his private affairs to a greater extent than helping with the management of his money, for example, moving the recipient to a more desirable living arrangement.

The ESSO has no authority to petition the court for appointment of a guardian for an adult.

The ESSO shall not authorize the use of assistance funds to pay for guardianship costs or services.

When guardianship is preferable, an attempt will be made to have relatives or friends secure and pay for the appointment of a guardian.

A certified copy of the letter of guardianship must be secured and retained in the financial record.

1. Termination of Guardianship:

Should a guardian die, move away or decline to serve further, the guardianship should be terminated by court action. If the individual lacks resources to pay for formal (legal) dissolution of guardianship, a change of payee is authorized.

If the guardian dies, a copy of the death certificate is filed in the case record. If necessary, the cost of the death certificate can be paid from administrative funds.

If the guardian refuses or is unable to continue to serve, a signed statement from the guardian requesting that the grant no longer be paid to him is filed in the case record.

2. Coordination with Social Security Administration.

Establishment or termination of guardianship for an SSI beneficiary must be made in cooperation with the Social Security Administration.

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REVISION CONTROL SHEET - MANUAL G

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