

(DRAFT proposal from HB 2175 Stakeholder Workgroup – 10/15/08)

**Classification of Substantiated Abuse and Neglect Cases
by Level of Seriousness
Abuse Review Panel Criteria**

Introduction

The purpose of this guide is to assist Oregon state officials to determine which cases of substantiated abuse and neglect should be referred to the State's Abuse Registry Review Panel to be considered for placement on the state abuse and neglect employment exclusion registry. The Registry Review Panel makes the determination as to whether an individual should be placed on the employment exclusion registry, making them ineligible for any employment or volunteer position working with DHS clients.

Placement on the State's Abuse Registry is a very serious consequence, denying the person employment within DHS and with any partner agencies that provide services to DHS clients. Poor performance or even seriously poor performance in a single instance may not justify this designation (or determination).

Scoring

The guide provides for scoring the seriousness of substantiated cases on three dimensions:

- The seriousness of the adverse outcome for the individual who was abused or neglected;
- The likelihood of a serious adverse outcome for the individual (regardless of the actual outcome) due to the subject's act that was founded as abuse or neglect;
- The subject individual's knowledge/training of the performance expectation

The first dimension, the seriousness of the adverse outcome to the individual, has the greatest weight of (X) points. The second dimension regarding likelihood of outcome has a total weight of (X) and the last dimension has a weight of (X). The total possible score, indicative of the most serious case, is (X) points.

It is suggested that any case with a total score of X or higher should be referred to the Abuse Registry Review Panel. In addition, it is suggested that cases with lower scores should be referred to the Panel if the subject individual has a history of three or more substantiated cases of abuse/neglect. Cases may also be referred if the investigating agency believes the conduct raises unusual concerns or reflects a callousness so egregious that it should be reviewed even if the total count of points falls below the threshold for referral. In that event, the investigating authority should include a written statement requesting extraordinary review, and include a written justification for that request.

The Abuse Registry Review Panel will consider two additional criteria:

- Subject individual's prior history of substantiated abuse/neglect cases in the past (three) years
- Mitigating and aggravating circumstances

Scoring Dimensions and Criteria (to be used by the Abuse Review Panel)

- I. Seriousness of adverse outcome for the individual (X points possible) Note that adverse outcomes does not only include physical or financial abuse. It can also include exposing a vulnerable individual to treatment, living conditions or conduct that offends common standards of decency. For example, violating expectations of good hygiene, sexual propriety, and protecting the vulnerable individual from risks; engaging in illegal or explicitly prohibited behaviors (e.g., substance abuse), threatening behaviors, cruelty; intentionally causing physical or emotional distress; or violating plans of care.**
 - No injury, exploitation, loss of property (X points)
 - Minor injury/illness, conduct violations, or exploitation/loss of property less than \$100 (X points)
 - Serious injury or illness (requiring medical attention); serious conduct violations such as engaging in illegal activities; cruelty, or intentionally causing physical or emotional distress; or exploitation/loss of property greater than \$100, (X points)
 - Death or high risk of death, any physical sexual assault, or exploitation/loss of property greater than \$1,000 (X points)

- II. Likelihood (regardless of actual outcome) of a serious adverse outcome for the vulnerable individual (due to the subject's conduct) [serious adverse outcome = score of X or more on above scale] (X points possible)**
 - Very slight risk of harm: this conduct would not generally be expected to result in a serious adverse outcome (X point)
 - Likely, there have been many known cases where this type of conduct has resulted in a serious adverse outcome. (X points)
 - Very likely, the nature of the risks involved suggests that a serious adverse outcome could occur as or more often than one of every four times this conduct occurred. (X points)

- III. Subject individual's knowledge/training of the performance expectation that he/she violated (i.e., level of intent/knowledge of conduct) (X points possible)**
 - Evidence of the subject individual's being trained/knowledge of the expectation was not confirmed in the investigation. (X point)
 - Some evidence of the subject individual's being trained in the expectation, but there were extenuating circumstances (e.g., staff person was a new employee; staff person had worked with the individual (victim) only a short time, there were unusual distracting events going on at the home at the time, etc.). (X points)
 - Evidence suggested that the subject individual was well aware of the performance expectation and there were no extenuating circumstances. (X points)

- IV. Subject individual's prior history of substantiated abuse/neglect cases in the past (three) years (X points possible) (One suggestion was to include this item with the criteria that follows)**
 - The subject individual has a good work history, with no prior substantiated cases of abuse, neglect, in the past three years. (X points)

- The subject individual has had one prior substantiated case of abuse, neglect, in the past three years, but it resulted in no serious adverse outcome to the victim. (X points)
- The subject individual has had two or more prior substantiated cases of abuse, neglect, in the past three years, but none have resulted in a serious adverse outcome to the victim. (X points)
- The subject individual has had one prior substantiated case of abuse, neglect, in the past three years for similar misconduct. (X points)
- The subject individual has had one or more prior substantiated case of abuse, neglect, in the past three years that has resulted in a serious adverse outcome to the victim. (X points)

V. Mitigating and aggravating circumstances (scoring using positive and negative weighing factors to be developed: scorers will add points for aggravating circumstances, and subtract points for mitigating circumstances. Aggravating and mitigating factors may cancel each other out to varying degrees, but total points added or subtracted for all elements cannot exceed an unspecified maximum number of points. The following criteria are tentative)

- How long ago since last complaint
- Evidence of successful treatment or behavioral change, such that subject is unlikely to be a further threat (for example, compelling evidence of change might = -5 vs. none = 0)
- Training (subject did not receive training they should have had =X vs. well trained, fully aware of expectations= X)
- Whether subject's actions were one factor among many or the primary factor in the negative outcome (e.g., staffing, lack of supervision, lack of training) (one factor among many = X vs. main factor = X)
- Subject's prior history of work performance, or patterns of conduct
- Concerns about fairness in investigation, standard of proof, or due process