

Colorado Adult Protective Services

Roles, Responsibilities, & Limitations



Revised March 2009



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Statutory Authority



Colorado statute
mandates the Adult
Protective Services
(APS) program.

The APS program is administered by
County Departments of Social
(Human) Services.

Section 26-3.1-101 C.R.S. et seq. and Section 26-3.1-201, C.R.S., et seq.

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APS Roles

Education – Provide education on the APS program and self-neglect and mistreatment of at-risk adults to professional groups and the community;

Collaboration – Collaborate with service providers to find solutions to complex issues; and

Protection – Protect at-risk adults from mistreatment and self-neglect.

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Community Education

Educational activities focusing on the APS program and mistreatment and self-neglect of at-risk adults are provided to the community and professional groups through:



- Facilitated training events;
- Participation at senior or community events;
- Articles for the community newspaper; and
- Written materials, such as brochures or fraud alerts.

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Collaboration

APS encourages collaboration between the APS program and other professional groups and agencies that serve or investigate mistreatment of at-risk adults.

Collaboration helps insure the best possible services and outcomes for the adult.



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Collaboration

Inter-agency agreements that outline each agency's role in an investigation and/or the provision of services are developed between counties and local agencies, such as:

- Law enforcement
- Mental health
- Community Centered Boards
- Long-term Care Ombudsmen

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Collaboration

Adult Protection teams are comprised of representatives from a variety of professions and agencies that can best meet the needs of the county's at-risk adult population.

Each AP team is required to provide community education, either on its own or in collaboration with the county APS program.

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Protection

County APS programs provide for the safety and protection of at-risk adults that are, or are suspected to be, victims of mistreatment or self-neglect by:



- Receiving reports mistreatment or self-neglect;
- Investigating allegations and conducting an assessment; and
- Offering referral to and arranging for needed services.

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Protection

At-Risk Adult

An at-risk adult is a person 18 years or older who:

- Is susceptible to mistreatment or self-neglect because he/she is unable to perform or obtain services necessary for their own health, safety, or welfare; or
- Lacks sufficient understanding or capacity to make or communicate responsible decisions.

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Protection

Mistreatment

Mistreatment includes:

- Physical abuse
- Sexual abuse
- Caretaker neglect
- Financial exploitation
- Other forms of exploitation



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Protection

Mistreatment

Abuse includes:

- Physical abuse, which is the infliction of physical pain or injury, which may appear as bruises, scratches, broken bones, and so on;
- Unreasonable confinement or restraint; and
- Sexual abuse, which is the subjection to nonconsensual sexual conduct or contact.

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Protection

Mistreatment

Caretaker Neglect is when a caretaker fails to provide adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision for an at-risk adult in his or her care in a manner that a reasonable person would.

Note, the Colorado Medical Treatment Decision Act, states that the withholding of artificial nourishments under a living will is not caretaker neglect. (Section 15-18-110(c) C.R.S.)

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Protection

Mistreatment

Financial Exploitation is the illegal or improper use of an at-risk adult's financial resources for another person's profit or advantage, such as forcing the adult to give away their home or using the adult's savings to take a vacation.

Exploitation is the illegal or improper use of an at-risk adult or adult's assets for another person's advantage, such as forcing an at-risk adult to panhandle or using his/her home to manufacture, sell, or use illegal drugs.

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Protection

Self-Neglect

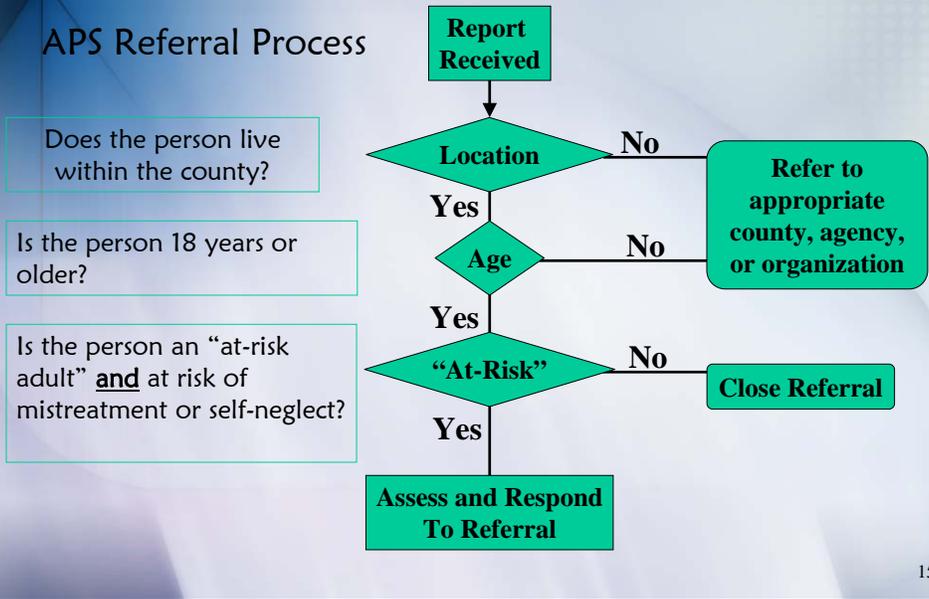


Self-Neglect is defined as an act or failure to act whereby an at-risk adult substantially endangers their health, safety, welfare, or life by not seeking or obtaining services necessary to meet their essential human needs.

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Protection

APS Referral Process



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Protection

APS has three responses to incoming reports:

- Provide information and/or refer to another agency(ies) when the allegation does not involve mistreatment or self-neglect of an at-risk adult;
- Contact the responsible care provider, who is not the suspected perpetrator, to resolve the issue; or
- Conduct an investigation of the allegations and the adult's overall well-being and provide protective services, when appropriate.

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APS Responsibilities

Confidentiality – APS programs are required to keep report and case information confidential, except in very limited circumstances;

Self-Determination – Adults have the right to make his/her own decisions, even if those decisions may not be what most people would determine to be good decisions; and

Least Restrictive Intervention – Intervention should be for the shortest time possible and with services that are the least intrusive necessary to keep the adult safe.

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Responsibilities

Confidentiality

Colorado statute requires that all reports to APS and all subsequent case information remain confidential unless a court orders a release of information for good cause.

Any person who violates the confidentiality provisions in the APS statute is guilty of a crime and may be prosecuted.



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Responsibilities

Confidentiality

APS may release essential information without a court order only when required to provide protective services or investigate possible criminal activities.

Disclosures of information are limited to only the information necessary to arrange services or to assist in a criminal investigation.

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Responsibilities

Confidentiality

These same restrictions limit the information APS can provide to the reporting party.

Therefore, the reporting party is not entitled to any follow up or further information once they have made the report, unless it's necessary to provide protective services.

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Responsibilities

Self-Determination and Consent

Self-determination is the right of an adult to choose one's own course of action and/or outcomes without compulsion.



The APS caseworker is required by statute and through the ethical principal of self-determination to get consent from the adult prior to providing any services.

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Responsibilities

Least Restrictive Intervention

When an at-risk adult consents to services, the APS caseworker has an ethical and statutory requirement to arrange services that constitute the least restrictive intervention.

These are services implemented for the shortest duration and to the minimum extent necessary to meet the needs of the at-risk adult.

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Responsibilities

Least Restrictive Intervention

Examples of least restrictive intervention include:

- A day program or in-home services instead of placement in an assisted living facility; or
- A move to an assisted living facility instead of to a nursing home.

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Limitations

Limitations – Statutory requirements or other restrictions and factors beyond its control may prevent APS from intervening and/or providing protective services.



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Limitations

Right to Refuse

Even after consenting to services an at-risk adult may **refuse** to allow access to records or persons that could aid in providing those services, such as:

- Obtaining medical or bank records;
- Interviewing a suspected perpetrator; or
- Working with family to establish a care plan.

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Limitations

Right to Refuse

Self-determination means that the at-risk adult has the **right to refuse services**. If the adult refuses APS assistance and appears capable of understanding the consequences of doing so, he or she cannot be forced to accept any services.

For example, a caseworker may determine that an adult would benefit from meal preparation services and home health care. The adult agrees to meal services and refuses home health care.

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Limitations

Lifestyle Choices

Unless there is a law, code, or ordinance prohibiting or limiting a choice, the at-risk adult has the right to make lifestyle choices that others feel is objectionable or even dangerous, such as:

- Refusing medical treatment;
- Refusing to take necessary medication;
- Choosing to abuse alcohol or drugs;
- Living in a dirty or cluttered home;
- Continuing to live with the perpetrator;
- Keeping large numbers of pets; or
- Engaging in other behaviors that may not be safe.

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Limitations

Resources

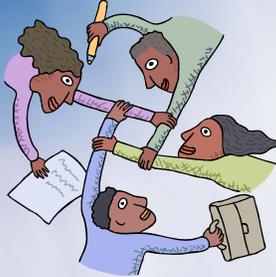
There is no federal or state APS funding for direct services, such as:

- Emergency shelter
- Utility payments
- Emergency food
- Deep cleaning
- Medications
- Rent
- Transportation
- Home repair
- Or any other needs the at-risk adult may have.

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Limitations

Resources



APS must rely on:

- Medicaid
- Medicare
- Charities
- Other service providers
- Other community resources
- Client's or family's income or assets

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Limitations

Resources

Needed services may only be implemented when the adult has funds to pay for services or once eligibility for services or benefits has been established.

For example, an at-risk adult needing nursing home care must have personal funds to pay for care or wait until he/she has qualifies for Medicaid, which can be a long and arduous process.

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Limitations

Legal Advice and Authority

APS may not provide legal advice and may not complete legal documents for an adult, such as a Power of Attorney.



APS may not force an adult to revoke or change a legal document, such as a will.

APS may not force an adult to press criminal charges or file a civil suit against a perpetrator.

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Limitations

Medical Decisions



APS may not be designated as an adult's medical proxy decision maker.

APS may not petition for guardianship solely to make medical decisions*. But APS may make medical decisions if another party petitions the court and the court, with APS's consent, appoints APS as the guardian and grants medical decision-making powers.

* Section 15-18.5-103(8) C.R.S.

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Limitations

Differences Between APS and CPS



Statutory mandates and resources are very different for APS and child protection services (CPS) so the county may not respond to the mistreatment or self-neglect of an at-risk adult in the same way it would respond to a similar situation involving a child.

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Limitations

Differences Between APS and CPS

APS	CPS
Least restrictive intervention required.	Intervention may be very restrictive.
Focus is only on the adult.	Focus is on the family.
A case plan only includes services for which the adult has consented.	A case plan is usually court ordered and parents are mandated to participate and accept services.
A competent at-risk adult <u>cannot</u> be removed from an unsafe situation without consent.	A child <u>can</u> be removed from an unsafe situation without parental consent by police or by court order.

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Limitations

Differences Between APS and CPS

APS	CPS
Cases are voluntary with only limited exceptions.	Many cases are court ordered dependency and neglect cases.
Allegations of emotional or verbal abuse <u>cannot</u> be investigated.	Allegations of emotional or verbal abuse <u>may</u> be investigated.
No emergency shelter system available.	Emergency shelter through the foster care system.
No resources or services targeted specifically for APS casework.	There are resources and services targeted specifically for CPS casework.

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Limitations

Guardianship

An adult is entitled to make his/her own decisions until the court, through a guardianship hearing, determines he/she lacks the ability to make decisions that adequately provide for his/her physical health, safety, or self-care.



County APS programs are not required to petition for guardianship or to become an adult's guardian so each county establishes its own policy.

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Limitations

Guardianship

If the county APS program will petition for and/or accept appointment as a guardian, the county APS program is always the guardian of last resort.

Guardianship is not a “quick fix” as it takes many weeks from initial casework to court hearing. It is only in rare situations that a court will grant an “emergency” guardianship.

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Responsibilities & Limitations

Guardianship

APS may not take guardianship because of a lack of financial and staff resources. Guardianships are very time and resource intensive.

APS will not take guardianship to place a competent adult in a long-term care facility or to prepare a discharge plan for an adult leaving a hospital or long-term care facility.

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Responsibilities & Limitations

Guardianship

Sometimes APS will not take guardianship because circumstances and/or the needs of the at-risk adult would prevent APS from being able to ensure the adult's health, safety, or welfare.

In these situations, guardianship would not resolve the at-risk adult's health, safety, or welfare concerns.

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Responsibilities

Least Restrictive Intervention

For example, even with a guardianship, APS cannot:

- Impose mental health treatment or medications;
- Impose alcohol or drug addiction treatment; or
- Place a developmentally disabled adult in a regional center.

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Responsibilities & Limitations

Guardianship

The court will usually limit the guardian's (county's) powers to those needed to protect the ward (client) at the time of the guardianship hearing.

For example, the guardian may be given the power to make all financial decisions for the ward, to make only routine medical decisions, and to place the ward in a group home or assisted living facility.

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Responsibilities & Limitations

Guardianship

If a ward's circumstances change and the needs of the ward are now beyond the limits in the guardianship order, the guardian must petition the court to modify the order.

For example, the county APS program may change a ward's CPR directive or execute a CPR directive only if the court has granted that power in the guardianship order or in a subsequent hearing.

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Summary

APS protects the health, safety, and welfare of the state's most vulnerable adults by providing community education, finding solutions to complex problems through collaboration; and providing services to meet the at-risk adult's needs...

...while protecting the at-risk adult's right to confidentiality, self-determination and least restrictive intervention.

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Questions

If you have any additional questions about APS' roles, responsibilities, or limitations or about how to make a report to APS please contact your local County Department of Social (Human) Services.



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