

## **Response to Request for Information regarding Adult Protective Services Substantiated Investigations**

### **Basic APS Statistics for FY 12:**

10,198 reports received  
5,824 investigations (57% of reports screened-in)  
1,324 cases substantiated for abuse, neglect, or exploitation (23% substantiated)

### **Types of Substantiated Cases in FY12:**

Self-Neglect:	50%
Caregiver Neglect:	24%
Exploitation:	15%
Abuse:	11%

### **Services Provided to Victims to Prevent Continued Abuse Neglect or Exploitation:**

Of these substantiated cases, APS provided service interventions to 1,266 individuals for whom abuse, neglect, or exploitation was substantiated. These services included:

Home care assistance:	1,118 adults received home care.
Adult day care:	87 adults received adult day care services.
Attendant care:	44 adults received attendant care.
Guardianship filing:	<u>17</u> guardianship petitions were filed. 1,266*

\*Adult victims receiving services (slight overlap of categories with guardianship filing). Those adults who did not receive service may have moved in with family or entered a nursing home or, if they had decisional capacity, refused services.

### **Cases Referred to Employee Abuse Registry with Department of Health:**

For FY12: Eleven (11) paid caregivers were referred to the Employee Abuse Registry.

The Employee Abuse Registry (EAR) is a computerized list that companies who employ paid caregivers must obtain clearance from before hiring a caregiver. If the potential caregiver's name is on the list, the company cannot hire the applicant. The EAR is designed to prevent paid (not family) caregivers who were substantiated for abuse, neglect or exploitation of victims from obtaining employment as a caregiver. The legal basis of APS's use of the EAR is New Mexico Administrative Code number 8.11.6. It provides for due process of the accused.

### **Medicaid Fraud and Abuse Cases Referred to the Attorney General's Office as a Result of an APS Investigation:**

-APS refers any substantiated cases of fraud or abuse to the Attorney General's office.  
-Key limitation to proposing criminal prosecution of APS cases: APS substantiates based upon "preponderance of the evidence", while the criminal charges must be beyond a reasonable doubt. Inherent weaknesses in APS cases are:

- 1) Victims with diminishing capacity and limited ability to testify
- 2) Aging parent(s) declining to prosecute their adult children for exploitation.

**Percent of Substantiated Abuse Cases Prosecuted:** Adult Protective Services does not have this information. The Adult Protective Services Act is the civil law upon which Adult Protective Services is authorized to act. APS conducts investigations and substantiations based on a preponderance of the evidence. APS refers cases to law

enforcement when there is an immediate safety issue or when APS case workers encounter evidence of a crime. In some cases, law enforcement is already involved when APS is referred in to conduct an investigation. Once a case is referred to law enforcement, APS does not receive additional information as to whether the case was successfully prosecuted. In cases in which there is a criminal conviction, it may take place several years after APS was involved. Prosecution may be based on 1) domestic violence statutes or 2) Resident Abuse and Neglect Act (Article 47: 30-47-1). APS cooperates fully with law enforcement, providing information to assist with investigations and prosecutions.

**Summary:**

In 50% of substantiated investigations conducted by APS, there is no perpetrator, only an adult victim with an incapacity who requires APS assistance to ensure self-neglect does not continue. In remaining cases which have a perpetrator, APS's standard of evidence is "preponderance" which may not rise to the criminal level of beyond a reasonable doubt. In some instances, aging parents will not press charges against another family member.