

Colorado Adult Protective Services Program: Overview and Practices Related to Adults with IDD

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COLORADO
Office of Community
Access & Independence
Division of Aging & Adult Services



Organizations that Conduct Investigations of Mistreatment of Adults with IDD

- **Law Enforcement:** Investigates crimes against at-risk persons as defined by Criminal statute
- **APS:** Investigates mistreatment/self-neglect and protection of at-risk adults per APS statute
- **CCB:** Investigates for the purposes of mitigating health and safety risks, prohibiting mistreatment in IDD service system, and addressing systemic and individual concerns
- **CDPHE:** Investigates complaints regarding quality of care, patient/resident rights, and building/equipment safety in health-licensed facilities. On site or record review; intent to improve/correct deficient practices.
- **LTC Ombudsmen:** Investigates complaints ranging from quality of care to abuse/neglect of residents of LTC facilities. The role of LTC Ombudsmen is to act as an advocate for the resident.
- **Protection and Advocacy (Disability Law CO):** Federally mandated P&A program to investigate mistreatment and rights issues and advocate for individuals with IDD and MH

Investigation Types

Law Enforcement

- Authority/Scope: CO Criminal code statutes outline definitions of crimes and at-risk persons, to include at-risk adults with IDD and at-risk elders.
- Goal: prosecution of criminal actions. Not aligned with any service system.
- Burden of proof: Beyond a reasonable doubt

Investigation Types

APS

- Authority/Scope: APS statutes. Limited to at risk adults and mistreatment/self neglect as defined by statute.
- Goal: Investigation & protection of individual client. Not aligned with any service system.
- Burden of proof: Preponderance of evidence

Investigation Types

CCBs

- Authority/Scope: IDD statutes. Limited to individuals with IDD in the CCB service system.
- Goal: Ensure quality of services and mitigate health and safety risks/prohibit mistreatment in the IDD service system. Seeks to improve individual situation as well as systemic contributing factors.
- Burden of proof: Preponderance of Evidence

Colorado APS Program History

- 1983 – APS statute enacted. Target population was older adults age 65+
 - 1991 – APS statute was modified to change the target population to the current 18+ “at-risk adult” standard
 - 2016 – Federal voluntary guidelines for APS programs were established for the first time
- * There are no federal regulations for APS programs.

Recent State Legislation

- Colorado Criminal Statute Changes
 - Mandatory reporting of mistreatment of “at-risk elders” (SB13-111 – implemented 7/1/14)
 - Mandatory reporting of mistreatment of “at-risk adults with IDD” (SB15-109 – implemented 7/1/16)
- Colorado APS Statute Changes
 - CAPS checks and due process (HB17-1284 – due process to be implemented 7/1/18 and CAPS checks to begin 1/1/19)

Note: The APS target population is NOT the same as the mandatory reporting target populations. APS does not investigate based on age or disability alone.

Mandatory Reporting

- Certain persons who are identified in statute as mandatory reporters who “observes the mistreatment of an at-risk elder or an at-risk adult with IDD, or who has reasonable cause to believe that an at-risk elder or an at-risk adult with IDD has been mistreated or is at imminent risk of mistreatment, shall report such fact to a law enforcement agency not more than twenty-four hours after making the observation or discovery.” (Section 18-6.5-108(1)(a), C.R.S.)
- Statutes require law enforcement and County APS programs to forward reports they receive to each other within 24 hours of receipt (Section 26-3.1-102 (3), C.R.S. and Section 18-6.5-108(2)(b), C.R.S.)

HB17-1284 CAPS Checks Bill

Legislative Declaration:

26-3.1-111(1) the General Assembly finds and declares that individuals receiving care and services from persons employed in programs or facilities [that work with at-risk adults] are vulnerable to mistreatment, including abuse, neglect, and exploitation. It is the intent of the General Assembly to minimize the potential for employment of persons with a history of mistreatment of at-risk adults in positions that would allow those persons unsupervised access to these adults. As a result, the General Assembly finds it necessary to strengthen protections for vulnerable adults by requiring certain employers to request a CAPS check by the State Department to determine if a person who will provide direct care to an at-risk adult has been substantiated in a case of mistreatment of an at-risk adult.

HB17-1284 CAPS Checks Bill

- The following are examples of substantiated mistreatment by care providers working for facilities/agencies that will be required to request a CAPS check beginning January 1, 2018:
 - **Physical abuse** - A care provider intentionally branded an at-risk adult with a set of kitchen tongs, causing a severe burn and scarring.
 - **Caretaker neglect** - A client with line of sight supervision requirement and is not allowed to have “sharps” in the home was left alone for 10 minutes. The client found a razor blade and cut his arms multiple times, requiring medical care.

APS - State Role

- Establish statewide program and policy consistent with statute and rule
- Provide training for county department APS staff
- Provide technical assistance to county department APS staff
- Conduct quality assurance/program improvement
- Provide oversight of CAPS (APS data system)
- Manage consumer inquires regarding APS

APS - County Role

- Receive and screen reports of mistreatment and self-neglect
- Conduct investigations for reports that meet criteria
- Conduct assessments of clients' strengths, needs, and cognition
- Provide casework services
- Coordinate with other agencies/persons
 - Law enforcement, CCBs, CDPHE, family members, service providers, and more...
- Convene an APS multi-disciplinary team
- Provide community education
- Provide on-the-job training for new staff

APS Eligible Population

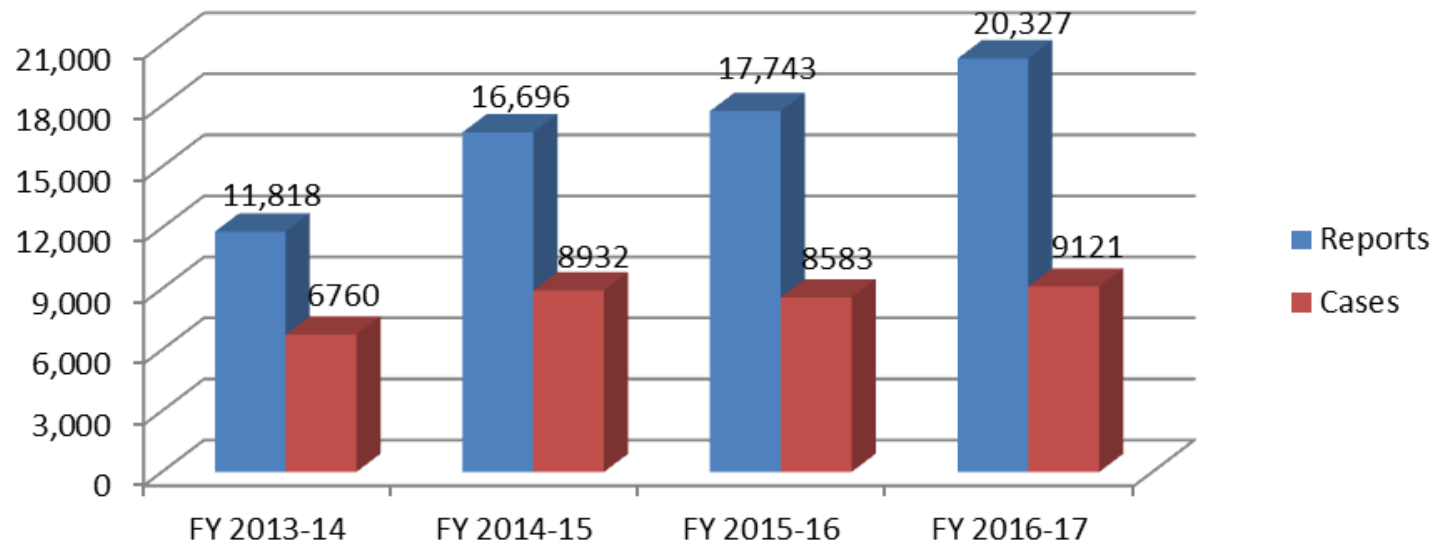
Per the APS statute, “at-risk adults” are persons 18 years of age or older who are susceptible to mistreatment or self-neglect because:

- They are unable to perform or obtain services necessary for their health, safety, or welfare, OR
- They lack sufficient understanding or capacity to make or communicate responsible decisions regarding their person or affairs.

Conditions that increase risk include dementia, physical or medical frailty, developmental disabilities, brain injury, behavioral disorders, and mental illness.

APS Report and Case Trends

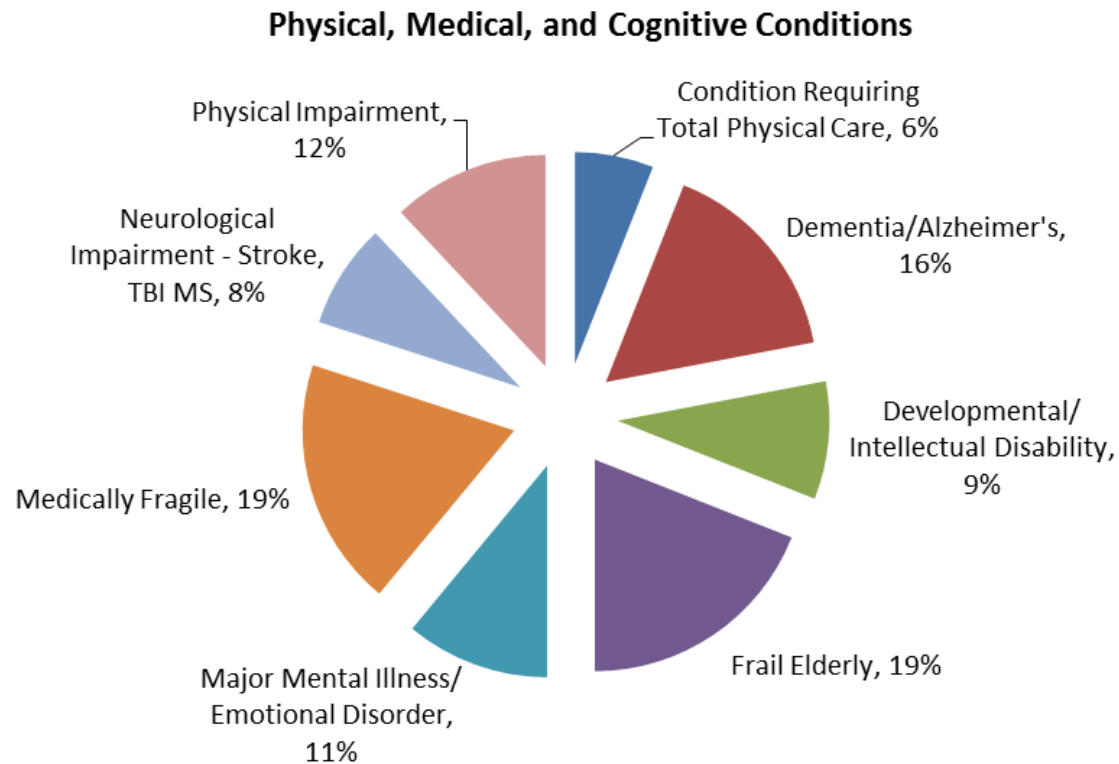
APS Reports and Cases FY 2013-14 through FY 2016-17



In FY 2017-18, APS is projecting another 8% increase in reports (approx. 22,000) and 3% increase in cases (approx. 9400).

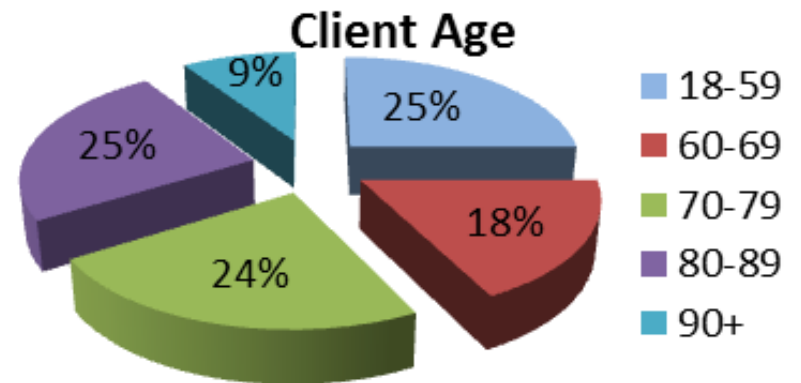
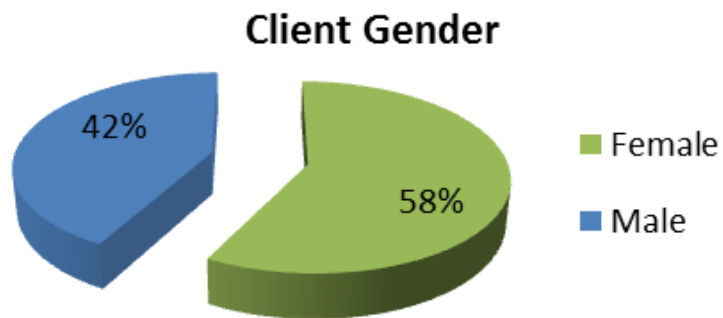
Client Risk Factors – FY 2016-17

There are many physical, medical, and cognitive conditions that may make an adult “at-risk” for mistreatment or self-neglect depending on the severity of the condition and how that condition impacts the adult’s ability to provide for their health and safety or impacts their ability to make or communicate responsible decisions.



Approximately 46% of APS clients had two or more of these risk factors.

APS Client Information - FY 2016-17



APS Mistreatment & Self-Neglect Definitions

- Mistreatment
 - Abuse (physical and sexual)
 - Caretaker Neglect
 - Exploitation (financial and non-financial)
- Self-neglect

Verbal abuse, in and of itself, is not considered mistreatment per APS statute.

Abuse

- “Abuse”, pursuant to Section 26-3.1-101(1), C.R.S., means any of the following acts or omissions committed against an at-risk adult:
 - The non-accidental infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;
 - Confinement or restraint that is unreasonable under generally accepted caretaking standards; or,
 - Subjection to sexual conduct or contact classified as a crime under the “Colorado Criminal Code”, Title 18, C.R.S.

Caretaker Neglect

- "Caretaker neglect", pursuant to Section 26-3.1-101(2.3)(a), C.R.S., means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, habilitation, supervision, or other treatment necessary for the health, safety, or welfare of the at-risk adult **is not secured for an at-risk adult or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise**, or when a caretaker knowingly uses harassment, undue influence, or intimidation to create a hostile or fearful environment for an at-risk adult.

Self-Neglect

- "Self-Neglect", pursuant to Section 26-3.1-101(10), C.R.S., means an act or failure to act whereby an at-risk adult substantially endangers his/her health, safety, welfare, or life by not seeking or obtaining services necessary to meet the adult's essential human needs.

Neglect

- The APS caretaker neglect and self-neglect definitions specifically exclude actions necessary to uphold an adult's advance directive or palliative plan of care, such as:
 - Resuscitation
 - Cardiac pacing
 - Mechanical ventilation
 - Artificial nutrition/hydration

Exploitation

- "Exploitation" means an act or omission committed by a person that:
 - Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk adult of the use, benefit, or possession of anything of value;
 - Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the at-risk adult;
 - Forces, compels, coerces, or entices an at-risk adult to perform services for the profit or advantage of the person or another person against the will of the at-risk adult; or,
 - Misuses the property of an at-risk adult in a manner that adversely affects the at-risk adult's ability to receive health care or health care benefits or to pay bills for basic needs or obligations.

APS Priorities

Confidentiality: Per statute, all aspects of the APS report and case are confidential and can only be shared without a court order under very specific circumstances.

Consent: Adults who have capacity to understand their decisions have the right to refuse protective services.

Self-determination: Adults who do accept protective services have the right to decide which protective services they would like to receive.

Least Restrictive Intervention: APS must provide protective services that are the least intrusive to provide for the client's health and safety. APS should intervene for the shortest time possible to implement services.

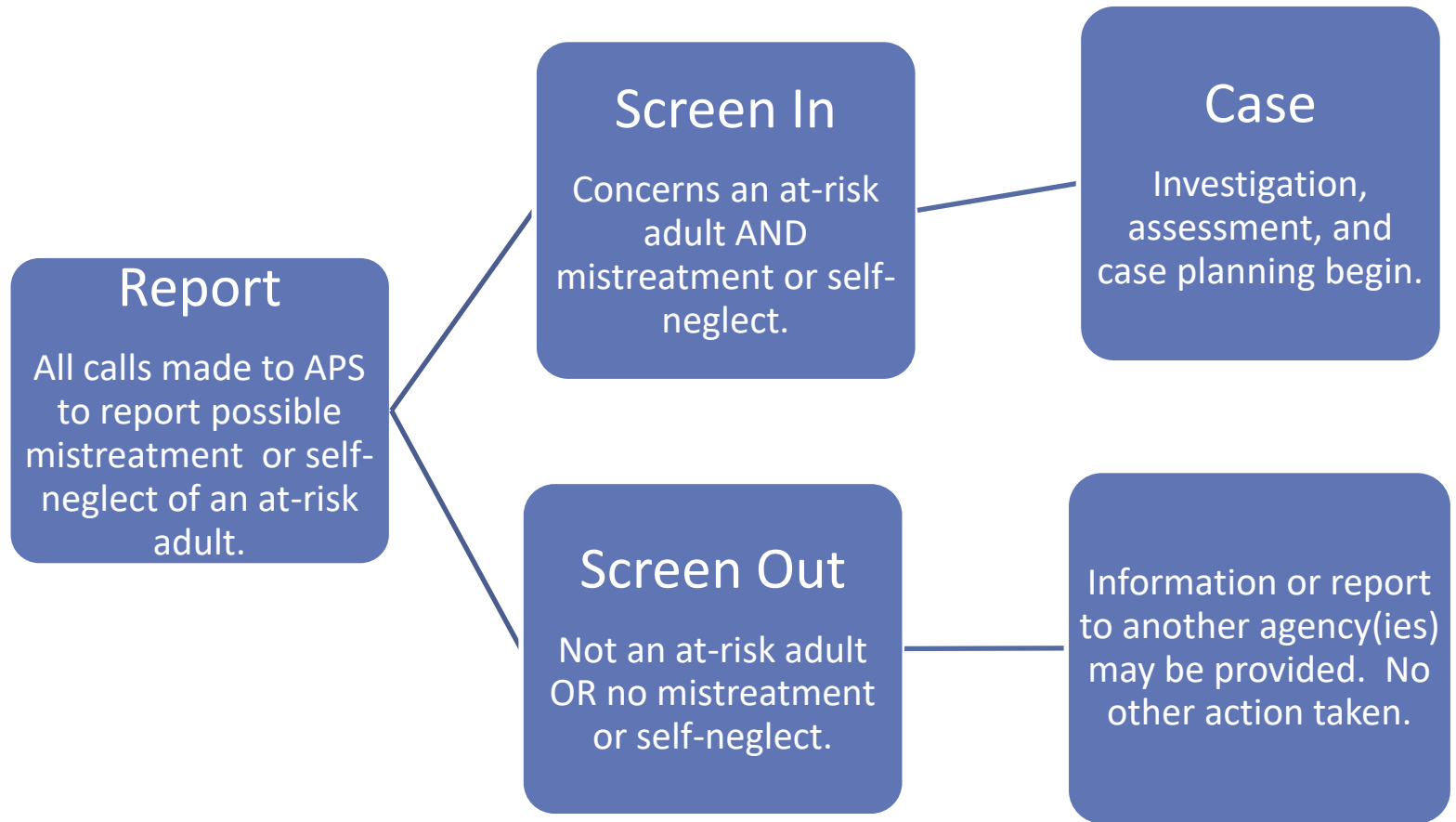
APS Confidentiality

- APS Statutes: Section 26-3.1-102(7) outline the confidentiality requirements for the APS program.
- A court order is required to release any information related to an APS report or case, unless the release meets one of a few very specific exceptions, the most common being:
 - Joint investigation
 - Provision of protective services
 - Law enforcement charges
 - ME investigating a suspicious death
- Violations of confidentiality impinge on the integrity of the APS program.
- There are criminal penalties for violations.

APS Confidentiality

- Releases of APS information beyond what is permitted by statute, is a violation of confidentiality statutes.
- Examples of information sharing that are not permitted under the statute include:
 - Routine/preemptive sharing of the Intake Report to the CCB and LTC ombudsman without a plan to conduct a joint investigation
 - Routine sharing of case report/findings with the LTC ombudsman, CCB, and LE outside of a joint investigation/provision of services
 - Providing a case report to the perpetrator
 - Sharing findings on alleged perpetrators with other collaterals/witnesses in a case

APS Report Decision Tree



APS Report Evaluation

- When a report is made to County APS, information is collected from the reporting party related to the allegations (what is happening to the adult) and the adult
- County departments then evaluate the report information to determine whether it meets criteria for investigation and protective services:
 - Allegations **must** meet the definitions for abuse, neglect, exploitation, and/or self-neglect
 - Adult **must** be “at-risk” based on the rule definition

Investigation

- An investigation involves interviews of persons that will have relevant information related to the allegations or the adult such as reporter, adult, witnesses and other collaterals, alleged perpetrator
- APS will conduct the interviews in person and will not announce their visits, with rare exceptions
- The adult and other witnesses and collaterals will be interviewed alone, whenever possible
- During the investigation, the APS caseworker will also collect evidence and supporting documentation, such as medical records, staffing records, care plans, bank records, photos of injuries

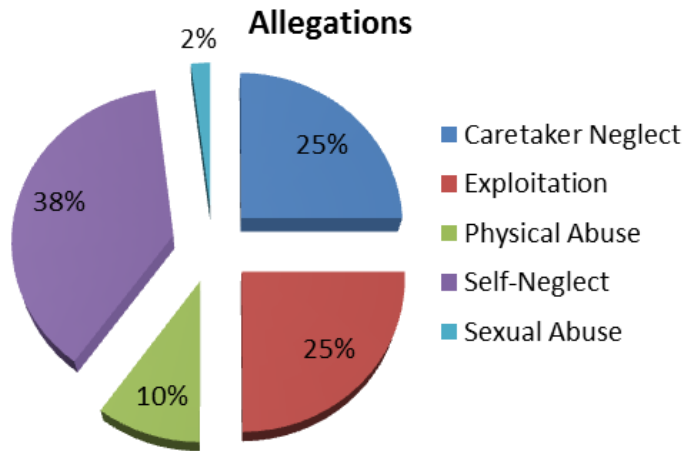
Investigation

- Once complete, the APS caseworker will review all evidence to determine if the allegations are substantiated.
 - Preponderance of evidence standard
 - All findings must be approved by the APS supervisor
 - Beginning July 1, people substantiated in an APS case will be provided a notice of the finding and information on due process (right to appeal the finding)

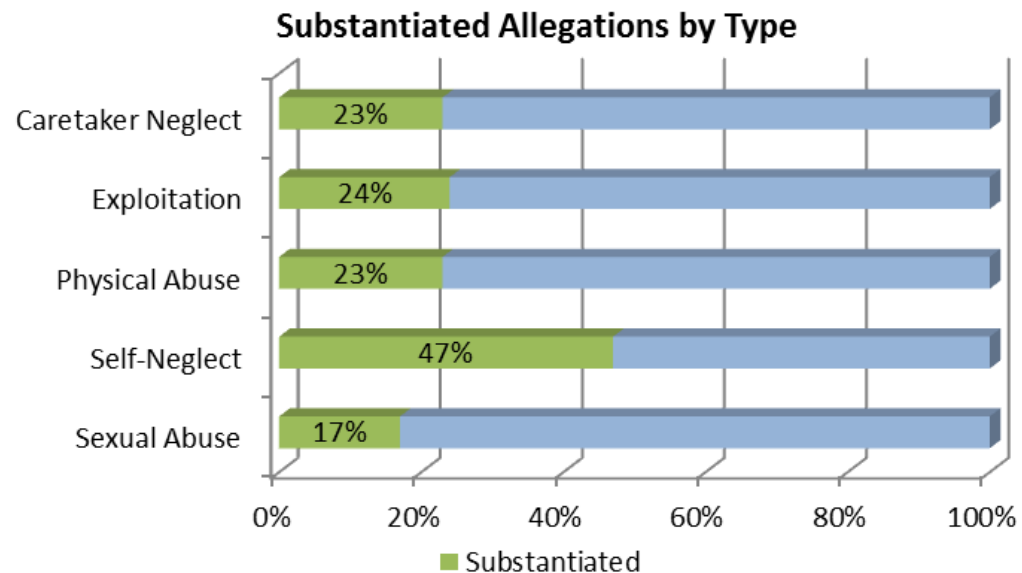
Joint investigations: CCBs and APS

- Joint investigations involve cooperative activities (joint interviews, evidence collection sharing and joint review, collaborative communication when interviews cannot be done together).
- An agency requesting findings/outcomes without conducting any investigation alongside APS is not a joint investigation.
- Cooperative agreements should assist in defining local processes relating to joint investigation.

Findings Data – FY 2016-17

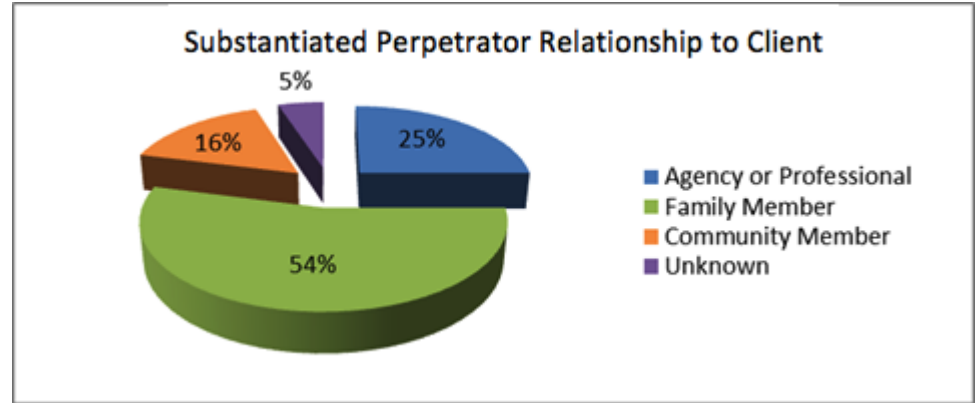


In FY 2016-17, about 32% of all mistreatment/self-neglect allegations were substantiated.

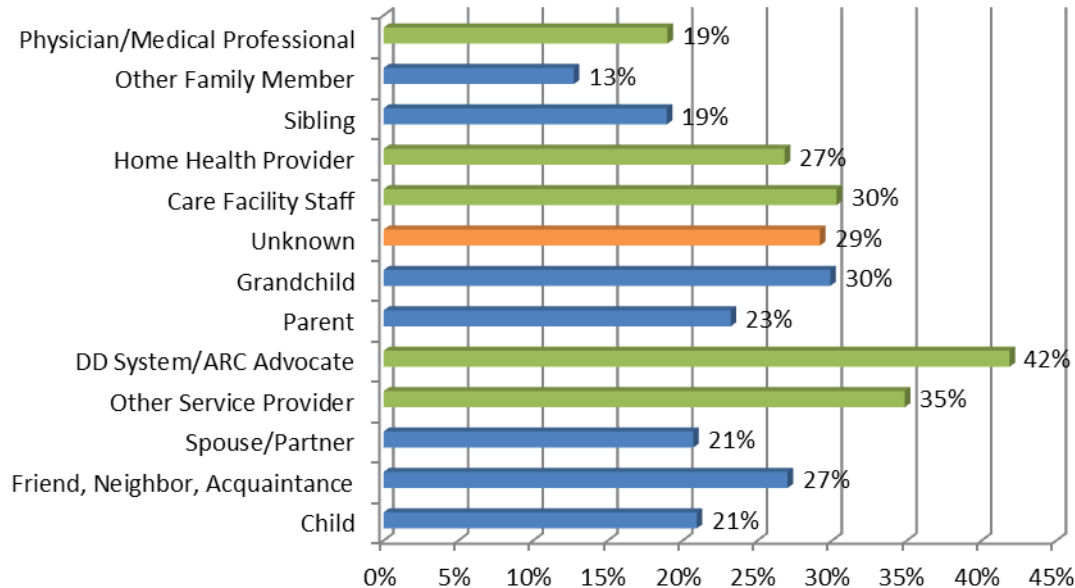


Findings Data

In FY 2016-17, about 25% of alleged perpetrator allegations were substantiated.



Rate of Substantiation by Perpetrator Relationship Group



Assessment

- An assessment is conducted to determine the adult's safety and risk
 - Uses a scientifically validated tool
 - Is not used to diagnose conditions
 - Looks at risk factors to see if the adult has an impact in that area and whether that impact has been mitigated or not
- Impact and mitigating services is assessed by evaluating risk factors in seven key areas:
 - ADLs/IADLs
 - Cognition
 - Behavioral Concerns
 - Medical
 - Home Residence
 - Financial Circumstances
 - Mistreatment

Assessment

- Factors within each assessment area are evaluated for the adult's risk and safety
- The adult's risk can be mitigated and safety improved with appropriate services and/or assistive technology
- The assessment helps to determine the services the adult needs.

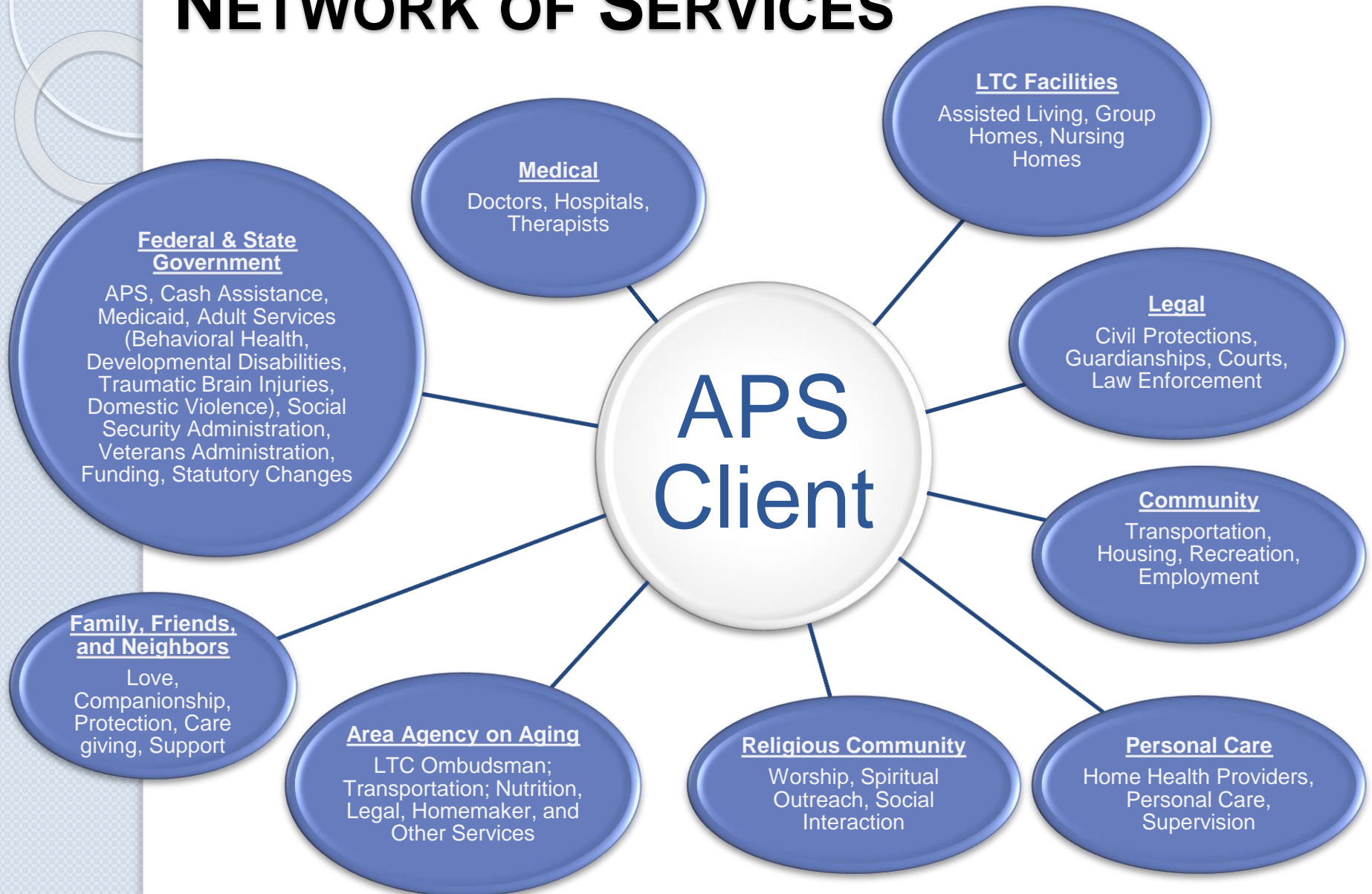
Case Planning

A case plan is developed based on findings in the investigation and assessment. Services implemented must be the ***least restrictive intervention*** available to resolve the health and safety concerns.

The client must ***consent*** to services before those services can be implemented. The client has ***self-determination*** and should be part of the case planning.

APS does not have its own network of services providers and must rely on service providers in the community, or sometimes in the state. When those services are unavailable, APS has no further options for the client.

NETWORK OF SERVICES



Involuntary Case Planning

Consent may not be required and the client may not be able to refuse services when the client:

- 1) Lacks capacity
- 2) Is temporarily unable to make decisions (example, adult is in a coma)
- 3) Has a guardian to make decisions for them, or
- 4) is violating a law.

About 3% of all services implemented on behalf of APS clients in FY 2016-17 were implemented without the client's consent (involuntary) because of the reasons above. This includes services such as protective orders, hospitalization, mental health treatment, or capacity evaluations. The most restrictive involuntary service is petitioning for guardianship or conservatorship for the client when that client no longer has capacity to make decisions.

Guardianship

There must be allegations of mistreatment or self-neglect of an at-risk adult before APS can legally open a case. APS does not have statutory authority to petition for guardianship or conservatorship on behalf of a person who is not an APS client.

The APS statute *urges, but does not require*, county departments to petition for guardianship or conservatorship when the adult lacks capacity to make decisions and is in need of protective services. APS will only consider guardianship when all other options have been exhausted as means to ensure the client's health and safety.

APS must adhere to the guardianship statute requirements and provide evidence that the person needs a guardian and lacks capacity. The court can ask for witnesses to testify, or appoint a court visitor or GAL to review the case. The client must have an attorney, and the court will appoint one if the client does not have his/her own.



A comprehensive APS Annual Report is
available at ColoradoAPS.com

Questions?

Email: Mindy.Kemp@state.co.us