

**Version 2.21.18 Adult Protective Services Program Revisions**

**Title of Proposed Rule:**

**CDHS Tracking #: 17-06-26-02**

Office, Division, & Program:  
OCAI, AAS

Rule Author:  
Peggy Rogers

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**STATEMENT OF BASIS AND PURPOSE**

**Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.*

12 CCR 2518-1 are the program rules for the Adult Protective Services (APS) program, as authorized by Title 26, Article 3.1, C.R.S. The APS program provides protective services for at-risk adults who are experiencing mistreatment or are self-neglecting. The purpose of this proposed rule change is to update sections of the APS rules as required by HB17-1284.

Specifically, HB17-1284 added the following language to statute in Section 26-3.1-108(2) "...the State Department shall promulgate rules to establish a process at the state level by which a person who is substantiated in a case of mistreatment of an at-risk adult may appeal the finding to the state department." The rule changes proposed in this rule packet address this requirement in statute. The proposed rule changes in this packet related to HB17-1284 address investigations and perpetrator due process rights and appeals.

**State Board Authority for Rule:**

Code	Description
26-1-107, C.R.S. (2017)	State Board to promulgate rules
26-1-109, C.R.S. (2017)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2017)	State department to promulgate rules for public assistance and welfare activities.

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
26-3.1-108, C.R.S. (2017)	The state department shall promulgate rules for the implementation of this article.

Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

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**REGULATORY ANALYSIS**

**1. List of groups impacted by this rule.**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Groups that will benefit from these rules are at-risk adults, county APS staff, and substantiated perpetrators of mistreatment. County APS staff will be responsible for successfully completing investigations and notifying substantiated perpetrators of mistreatment of the finding and their appeal rights using a standardized notification process, outlined in rule. The State Department will be responsible for processing the appeals.

Substantiated perpetrators will benefit from due process, as it allows for them to appeal the finding if they feel the finding is not based on factual information, the actions that led to the finding do not meet the legal definition of mistreatment, or the finding is based on a level of evidence below the standard of 'preponderance of evidence'. This will allow for fair outcomes when findings are reported to prospective employers through employer background checks.

**2. Describe the qualitative and quantitative impact.**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

The rules adopted to implement this legislation will impact the county department APS staff, the State Department, substantiated perpetrators of mistreatment, and employers who must request a CAPS check for job applicants. The county department APS staff will need to notify the substantiated perpetrators of the finding and their due process rights. The State Department will need to modify the existing data system to incorporate the notification and appeals processes. The State Department will also need to manage appeals process for substantiated perpetrators who appeal the finding. Results of the appeal process may impact the information provided to employers as a result of a CAPS background check.

When employers request a check of the CAPS database, they will receive information about whether a person applying for a job providing direct care to at-risk adults at their organization has been substantiated in an APS case of mistreatment against an at-risk adult. In FY 2016-17, there were a total of 9,121 APS cases, 62 percent of which pertained to allegations of mistreatment (physical or sexual abuse, caretaker neglect, and exploitation). Forty-five percent of the mistreatment allegations were substantiated by an APS investigation. Furthermore, 25 percent of the identified perpetrators of these mistreatment allegations are those that work in a professional capacity related to the clients. In the long-term, at-risk adults in Colorado will benefit from these employer background checks as they will decrease the risk that those with a history of mistreating at-risk adults will be in positions that allow them to reoffend.

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**3. Fiscal Impact**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources.*

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

The rule changes proposed in this packet related to HB17-1284 will have a fiscal impact on the Department. Funding to support the fiscal impact of the bill was provided for in the Fiscal Note and State General Funds were appropriated for these costs. The State Department will need to hire one FTE to respond to the appeals filed by the substantiated perpetrators. This position will be housed in Administrative Review Division and is funded in HB17-1284 with State General Fund through December 2018. Beginning in January 2019, this position will be funded through cash funds from the fees paid by employers when requesting a CAPS check. Additional funding was also appropriated for legal services necessary as part of the appeals process. Changes to the APS data system, CAPS, are also required to implement perpetrator notifications and to track appeals and subsequent outcomes. The changes to CAPS are estimated to be \$205,000 and General Fund was appropriated to support these costs for FY 2017-18.

County Fiscal Impact

County Departments will incur the cost of mailing the perpetrator notifications. County departments may use a portion of their APS Administration Allocation for these expenses, which could reduce the county fiscal impact to the 20% match required for State General Fund allocations. It is unknown how many notifications each county will have to mail annually, however in FY 2016-17 there were 1,233 substantiated perpetrators, which would have resulted in \$604 in postage statewide. Larger counties can be expected to incur a larger cost due to the higher volume of cases; however, the total estimated cost to each county is unknown.

Federal Fiscal Impact

There is little or no federal fiscal impact.

Other Fiscal Impact (such as providers, local governments, etc.)

No other agencies will be fiscally impacted by these rules. Substantiated perpetrators of mistreatment may be impacted by the rules. If the substantiated perpetrator hires an attorney, there will be a fiscal impact. However, it is not necessary to have an attorney to file an appeal. The exact costs to substantiated perpetrators cannot be determined.

**4. Data Description**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

FY 2016-17 data from CAPS was used as a reference guide to understand the number of substantiated perpetrators.

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**5. Alternatives to this Rule-making**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just "no alternative" answer should include "no alternative because..."*

There are no alternatives to this rule-making, as these changes are necessary to implement HB17-1284.

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**OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
30.100	Addition	N/A	Addition of the definition of severity levels to specify the extent of the impact of the mistreatment to the client. This definition includes definitions of minor, moderate, and severe.	Change will provide employers additional information in the response they receive to the CAPS checks per HB17-1284 to assist them in making hiring decisions. This change will also align with child welfare practice.	
30.250, E, 10	Addition	N/A	Addition of rule regarding the release of confidential case information for the purpose of appeals related to a substantiated finding on a perpetrator.	Change needed to align with changes to 26-3.1-102, C.R.S., implemented through HB17-1284.	
30.260, E	Addition	Rule regarding the retention of case records for 3 years, plus the current year, after the date of closure.	Language added to state that case records pertaining to substantiated perpetrators must be retained indefinitely.	Change needed to ensure substantiated perpetrators are not purged from records and to reflect the intent of HB17-1284.	
30.340, A	Addition	Rule regarding APS supervisor and lead worker minimum responsibilities.	Adds a requirement to ensure timely notification to substantiated perpetrators.	Change needed to ensure notifications are made per changes made to 26-3.1-108, C.R.S. by HB17-1284	
30.340, B	Addition	Rule regarding APS caseworker minimum responsibilities.	Adds a requirement to ensure timely notification to substantiated perpetrators.	Change needed to ensure notifications are made per changes made to 26-3.1-108, C.R.S. by HB17-1284	
30.410, D, 6	Addition	Rule guides the information collected about the alleged perpetrator during intake.	Addition of mailing and email address, date of birth of the alleged perpetrator information requested at intake.	Change needed to ensure the information needed to notify the perpetrator is gathered and to accurately identify a perpetrator for employer background checks. These fields will be optional during intake as	

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
				many reporters will not have this information.	
30.520, A, 7	Addition	Rule regarding making a finding regarding the substantiation or unsubstantiation of the allegations.	Addition of language to include determining the severity level if the finding is substantiated.	Change will provide employers additional information in the background checks (HB17-1284) to assist them in making hiring decisions. This change will also align with child welfare practice.	
30.520, A, 10	Addition	N/A	Addition of requirement for the APS supervisor to approve all findings.	This practice will help ensure that information and evidence collected during the investigation is correctly applied to a finding and severity level.	
30.520, B	Update	Requires completion of the APS investigation in 45 calendar days.	Changes the requirement for completing the investigation to 60 calendar days.	This will allow time for the APS caseworker to complete a thorough investigation and still allow time for supervisors to complete the approvals. This change also aligns the investigation time line with child welfare.	
30.520, B, 3	Addition and Update	Rule regarding making and documenting findings no later than 45 days from receipt of the report.	Changes the requirement for completing the investigation within 60 calendar days. Addition of language to also require notification be made to the substantiated perpetrator at the time of making the finding.	The 60 days will allows time for the supervisor to approve findings. This change also aligns the investigation time line with child welfare. The addition of the perpetrator notification is needed to comply with HB17-1284.	
30.520, B, 4	Deletion	Allows workers to extend the investigation past 45 days with documentation in CAPS.	Removes the option of extending the investigation timeline.	With the increase in time allowed to complete the investigation from 45 to 60 days, extensions are no longer necessary. This change also aligns the	

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				investigation time line with child welfare.	
30.900	Addition	N/A	Addition of a section title Notice to Substantiated Perpetrators and State Level Appeals Process	Change needed to comply with HB17-1284.	
30.910	Addition	N/A	Addition of a sub-title Notice to the Substantiated Perpetrator of Mistreatment.	Change needed to comply with HB17-1284.	
30.910, A	Addition	N/A	Addition of rule regarding notifying the substantiated perpetrator of the finding by first class mail to the last known address. Notice shall be mailed no later than 10 days after the date of the finding.	Change needed to comply with HB17-1284.	
30.910, B	Addition	N/A	Addition of rule stating that the notice must include, at a minimum, the type of mistreatment, date the report was made, the county that investigated, date of finding, information about the release of information, appeal rights, scope of the appeal, and deadlines.	Change needed to comply with HB17-1284.	
30.910, C	Addition	N/A	Addition of rule stating that information regarding substantiated findings made prior to July 1, 2018 shall not be released for purposes of perpetrator notification or employer checks, but may be maintained in CAPS and used for future risk and safety assessments.	Change needed to comply with HB17-1284.	
30.920	Addition	N/A	Addition of a sub-title pertaining to State Level Appeals Process.	Change needed to comply with HB17-1284.	
30.920, A	Addition	N/A	Addition of rule regarding a substantiated perpetrator's right to appeal to the State Department. If no resolution can be reached with the State Department, then the appeal shall be forwarded to the Office of Administrative Courts (OAC).	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.920, B	Addition	N/A	Addition of rule regarding the grounds for appeals being based on the finding being supported by a preponderance of evidence or the actions that led to the finding not meeting the definition of mistreatment.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.920, C	Addition	N/A	Addition of rule regarding the 90 day time frame a substantiated perpetrator has to file an appeal and the information that needs to be included in the appeal (contact information, a statement detailing the basis for the appeal, and the notice of finding).	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.920, D	Addition	N/A	Addition of rule stating the substantiated perpetrator,	Change needed to comply	

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			his/her legal representative, or parent (if the perpetrator is a minor) must submit the appeal.	with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.920, E	Addition	N/A	Addition of rule regarding the appeal being submitted within the 90 day timeframe, unless the appellant can show good cause. If no appeal is requested within the 90 timeframe and there is no good cause, then the state has grounds to not accept the appeal.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.920, F	Addition	N/A	Addition of rule regarding the substantiated finding being used to inform casework and provided to employers for employment and background screenings during the appeal process.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.920, G	Addition	N/A	Addition of rule regarding the right to appeal when there is a pending court action or criminal case due to the same factual basis that resulted in the finding. Rule also includes process for holding the appeal in abeyance while the court action or criminal case is pending, but no longer than 180 days without the appellant being able to ask for a review.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.920, H	Addition	N/A	Addition of rule regarding what circumstances shall be considered admissions to the factual basis of the substantiated finding and considered evidence to support a motion for summary judgment.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.920, I	Addition	N/A	Addition of rule regarding the State Department's responsibility to notify the appellant of the process and timeframes of the appeal, as well as contact information for the State Department. Rule also includes the appellant's right to have access to confidential case information relied upon to make the finding, but states that the information provided must be redacted to protect identifying information per all confidentiality laws and rules. Information that must be redacted includes, but is not limited to reporting party names and addresses, social security/alien registration numbers, and other information the appellant doesn't have a legal right to access.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.920, J	Addition	N/A	Addition of the rule regarding the State Department's	Change needed to comply	

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			careful review of all information to determine an appropriate response to the appeal. Response options include upholding, modifying, expunging, or overturning the finding based on the circumstances of the evidence and appeal. The State Department will also not make changes to the county record, but document the outcome of the appeal elsewhere in CAPS.	with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.920, K	Addition	N/A	Addition of rule regarding the State Department documenting the outcome of the appeal in CAPS. The county's finding will not be changed; rather, the State's outcome will be documented in a separate place.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.920,L	Addition	N/A	Addition of rule stating that the State Department has 120 days to resolve the appeal and notify the appellant of the decision and their right to appeal it to the OAC. Rule allows for a possible extension of the 120 day time frame, if needed to resolve the appeal.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.920, M	Addition	N/A	Rule regarding the transfer of the appeal to the OAC as soon as it is evident within the 120 days that the appeal will not be resolved.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.920, N	Addition	N/A	Addition of rule stating that the appeal shall be determined to be abandoned if the appellant does not contact the State Department for 120 days. Rule states the finding will then be upheld and the appellant notified of the decision.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.930	Addition	N/A	Addition of a sub-title State Fair Hearing Before the Office of Administrative Courts (OAC)	Change needed to comply with HB17-1284.	
30.930, A	Addition	N/A	Addition of rule regarding the appeal being forwarded to the OAC. Rule states the OAC shall docket the appeal, enter a procedural order and notify the appellant of the telephone scheduling conference. During the telephone scheduling the OAC will determine the date of hearing and send all required notices, The appellant must respond to the appeal with information supporting their appeal and if no response is received, the appeal will be determined to be abandoned, but can be reinstated for good cause. If no	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	

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			party responds to a motion to dismiss, the Administrative Law Judge (ALJ) will make a decision.		
30.930, B	Addition	N/A	Addition of rule stating the ALJ shall conduct the appeal in accordance with 24-4-105, C.R.S. Rule includes the rights of the parties, including the State Department having the burden of proof in supporting the finding, and each party can present their case and defense, and the option for telephone or video conferencing hearings.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.930, C	Addition	N/A	Addition of rule stating that after the hearing, the ALJ shall render an initial decision for review by the Office of Appeals.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.930, D	Addition	N/A	Addition of rule stating that the initial decision shall uphold, modify, or overturn the substantiated finding. The county's finding will not be changed. The decision will be documented separately.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.930, E	Addition	N/A	Addition of rule stating that if the appellant does not appear at the hearing despite proper notice and without prior notice of good cause, the appeal will be determined to be abandoned and the initial decision will be to dismiss the appeal. It may be reinstated for good cause.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.930	Addition	N/A	Addition of a sub-title State Department Office of Appeals Functions	Change needed to comply with HB17-1284.	
30.940, A	Addition	N/A	Addition of rule stating the Office of Appeals will review the initial decision and hearing record and entry of the final decision pursuant to state rules.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.940, B	Addition	N/A	Addition of rule stating that the review will be conducted by a state adjudicator not directly involved in any prior review of the appeal.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.940, C	Addition	N/A	Addition of rule stating the final agency decision shall advise the appellant of their right to judicial review of the decision with the state district court if they filed timely	Change needed to comply with HB17-1284. Rules align with the appeals process	

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			exceptions to the initial decision.	currently in place for child welfare.	
30.940, D	Addition	N/A	Addition of rule stating the State Department shall be responsible for defending the final decision during judicial review.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.940, E	Addition	N/A	Addition of rule stating that in any action in any court, the State Department must defend the county's finding, unless the county's actions are alleged to be in violation of, or inconsistent with, state statutes, rules, or state-mandated procedures.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.950	Addition	N/A	Addition of a sub-title Confidentiality of Appeal Records	Change needed to comply with HB17-1284.	
30.950, A	Addition	N/A	Addition of rule stating that all records submitted by parties as part of the appeal and all notices, orders, and notes in the State Department's agency record are confidential and cannot be disclosed unless permitted by state statute or rules.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	
30.950, B	Addition	N/A	Addition of rule stating initial and final agency decisions with identifying information pertaining to the appellant, victim, or other parties redacted may be released to the public.	Change needed to comply with HB17-1284. Rules align with the appeals process currently in place for child welfare.	

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**STAKEHOLDER COMMENT SUMMARY**

**Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

Adult Protective Services Task Group, County Department APS staff, Sub-PAC and PAC  
Administrative Review Division  
Colorado Human Services Directors Association

**This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:*

The APS Task Group, Sub-PAC and PAC, including County APS staff, as well as staff from CDHS's Administrative Review Division were involved in reviewing and providing feedback on drafts of this rule packet.

Stakeholders who had previously expressed an interest in and could be impacted by HB17-1284, including home health and long-term care agencies, advocates for disabled persons, Community Centered Boards, Area Agencies on Aging, other employers who will be required to complete CAPS checks for new employees, Disability Law Colorado, Colorado Commission on Aging were also notified of this rule package.

The Department hosted a stakeholder meeting on January 25, 2018 to hear feedback on APS Rule Packets #1 and #2. Notice of the meeting and information about how feedback could be provided in writing if attendance at the meeting was not possible was sent out to a network of advocates for individuals with intellectual and developmental disabilities through an email newsletter that one of the advocates distributes to the network.

These proposed rule revisions were also posted on the APS Task Group website at:  
<https://www.colorado.gov/pacific/cdhs-boards-committees-collaboration/adult-protective-services-task-group>

**Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes  No

If yes, who was contacted and what was their input?

**Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

Yes  No

Name of Sub-PAC	Child Welfare		
Date presented	December 7, 2017		
What issues were raised?			
Vote Count	For	Against	Abstain

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If not presented, explain why.


**PAC**

Have these rules been approved by PAC?

Yes  No

Date presented December 7, 2017

What issues were raised?

Vote Count

<i>For</i>	<i>Against</i>	<i>Abstain</i>

If not presented, explain why.

**Other Comments**

**Comments were received from stakeholders on the proposed rules:**

Yes  No

*If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.*

**Version 2.21.18** NOTE: Rules in ALL CAPS are new language. Rules with ~~strikethroughs~~ is current language that is being changed. Rules in regular text are existing rules.

**DEPARTMENT OF HUMAN SERVICES  
Adult Protective Services  
ADULT PROTECTIVE SERVICES  
12 CCR 2518-1**

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**30.000 ADULT PROTECTIVE SERVICES**

**30.100 DEFINITIONS**

The following definitions shall apply to these rules.

“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:

- A. 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;
- B. Confinement or restraint that is unreasonable under generally accepted caretaking standards; or,
- C. Subjection to sexual conduct or contact classified as a crime under the “Colorado criminal code”, Title 18, C.R.S.

“Adult Protective Services (APS) Program” means the State Department supervised, county department administered program that has the authority to investigate and/or assess allegations of mistreatment and self-neglect of at-risk adults. The APS Program offers protective services to prevent, reduce, or eliminate the current or potential risk of mistreatment or self-neglect to the at-risk adult using community based services and resources, health care services, family and friends when appropriate, and other support systems. The APS Program focuses on the at-risk adult and those services that may prevent, reduce, or eliminate further mistreatment or self-neglect. The APS Program refers possible criminal activities to law enforcement and/or the district attorney for criminal investigation and possible prosecution.

“Allegation” means a statement asserting an act or suspicion of mistreatment or self-neglect involving an at-risk adult.

“Assessment” means the process of evaluating a client’s functional abilities to determine the client’s level of risk and, in cooperation with the client whenever possible, to identify service needs for the case plan.

“Assumed responsibility”, as used in the definition of caretaker, means a person who is providing or has provided recurring assistance to help meet the basic needs of an at-risk adult. The assumption of responsibility can attach by entering into a formal or informal agreement, whether paid or unpaid; by identifying oneself as a caretaker to others; or based on the nature of the situation or relationship between the caretaker and the at-risk adult.

“At-risk adult”, pursuant to Section 26-3.1-101(1.5), C.R.S., means an individual eighteen years of age or older who is susceptible to mistreatment or self-neglect because the individual is unable to perform or obtain services necessary for his or her health, safety, or welfare, or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person or affairs.

“CAPS” means the Colorado Adult Protective Services (APS) state department prescribed data system.

“CAPS check” means a check of the Colorado Adult Protective Services data system pursuant to Section 26-3.1-111, C.R.S.

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"Caretaker", pursuant to Section 26-3.1-101(2), C.R.S., means a person who:

- A. Is responsible for the care of an at-risk adult as a result of a family or legal relationship;
- B. Has assumed responsibility for the care of an at-risk adult; or,
- C. Is paid to provide care, services, or oversight of services to an at-risk adult.

"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. However, the withholding, withdrawing, or refusing of any medication, any medical procedure or device, or any treatment, including but not limited to resuscitation, cardiac pacing, mechanical ventilation, dialysis, artificial nutrition and hydration, any medication or medical procedure or device, in accordance with any valid medical directive or order, or as described in a palliative plan of care, is not deemed caretaker neglect. In addition to those exceptions identified above, access to Medical Aid in Dying, pursuant to Title 25, Article 48, C.R.S., shall not be considered caretaker neglect.

"Case" means a report that contains information indicating that there is an at-risk adult and a mistreatment category, and the report is screened in for investigation and/or further assessment.

"Caseload average" means the fiscal year monthly average sum of new reports plus ongoing cases per caseworker. The fiscal year caseload average is calculated as:  $[(\text{fiscal year total of new reports}/12) + (\text{beginning cases on July 1} + \text{ongoing cases on June 30}/2)]/\text{FTE on June 30} = \text{caseload average}$ .

"Case Planning" means using the information obtained from the investigation and/or assessment to identify, arrange, and coordinate protective services in order to reduce the client's level of risk for mistreatment and improve safety.

"Clergy member", pursuant to Section 26-3.1-101(2.5), C.R.S., means a priest; rabbi; duly ordained, commissioned, or licensed minister of a church; member of a religious order; or recognized leader of any religious body.

"Client" means an actual or possible at-risk adult for whom report has been received and the county department has made a response, via telephone resolution or open case.

"Collateral contact" means a person who has relevant knowledge about the client's situation that supports, refutes, or corroborates information provided by a client, reporting party, or other person involved in the case. Examples of contacts include, but are not limited to, family members, law enforcement, health care professionals, service providers, facility staff, neighbors, the reporting party, friends, and any person who provides/provided ongoing care or support to the client.

"County Department" means a county department of human/social services.

"Date of notice" means the date that the notice of a substantiated finding against a perpetrator(s) is mailed to the last known mailing address(es) of the perpetrator(s).

"Enhanced supervision" means CAPS security access that prevents a caseworker from finalizing an investigation, assessment, case plan, or case closure without supervisory approval.

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"Exploitation" means an act or omission committed by a person that:

- A. 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;
- B. 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;
- C. 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,
- D. 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.

"Facility" means a medical or long-term care facility that provides 24 hour care and oversight for residents, and includes a group or host home, alternative care facility, state regional center, or state mental health facility.

"Financial institution" means a state or federal bank, savings bank, savings and loan association or company, building and loan association, trust company, or credit union.

"Fiscal Year" means the State Department fiscal year, which begins July 1 and ends June 30.

"FTE" means Full Time Equivalent. The actual percentage of time a person works on the APS program shall be considered that person's FTE.

"Good cause", except as applied by a court, means emergency conditions or circumstances which would prevent a reasonable person from meeting a deadline or complying with aps rule or practice. Examples include, but are not limited to, law enforcement request to delay the aps investigation; inability to locate the client or key collaterals despite reasonable, documented attempts; additional time required to obtain documents which were timely requested but not delivered; lack of proper notice to the substantiated perpetrator of the availability of an appeal; etc.

"Inconclusive finding" means that indicators of mistreatment or self-neglect may be present but the investigation could not confirm the evidence to a level necessary to substantiate the allegation.

"Investigation" means the process of determining if an allegation(s) of mistreatment involving an at-risk adult can be substantiated by a preponderance of evidence.

"Least restrictive intervention" means acquiring or providing services, including protective services, for the shortest duration and to the minimum extent necessary to remedy or prevent mistreatment.

"Medical Directive or Order" means a medical durable power of attorney, a declaration as to medical treatment executed pursuant to Section 15-18-104, C.R.S., a medical order for scope of treatment form executed pursuant to Article 18.7 of Title 15, C.R.S., and a CPR directive executed pursuant to Article 18.6 of Title 15, C.R.S.

"Minor impact" means the client may experience some difficulty with the assessment risk indicator, but there is very little impact on the client's overall health, safety, and/or welfare and no intervention is necessary to improve overall safety.

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"Mistreatment", pursuant to Section 26-3.1-101(7), C.R.S., means:

- A. Abuse;
- B. Caretaker neglect;
- C. Exploitation;
- D. An act or omission that threatens the health, safety, or welfare of an at-risk adult; or,
- E. An act or omission that exposes an at-risk adult to a situation or condition that poses an imminent risk of bodily injury to the at-risk adult.

"Person(s)" means one or more individuals, limited liability companies, partnerships, associations, corporations, legal representatives, trustees, receivers, or the State Department of Colorado, and all political subdivisions and agencies thereof.

"Protective Services" means services to prevent the mistreatment and self-neglect of an at-risk adult initiated and provided by the county department authorized to administer the Adult Protective Services Program. Such services include, but are not limited to:

- A. Receipt and investigation of reports of mistreatment and self-neglect;
- B. Assessment of the at-risk adult's physical, environmental, resources and financial, medical, mental and behavioral, and support system needs;
- C. Protection from mistreatment;
- D. Coordination, implementation, delivery, and monitoring of services necessary to address the at-risk adult's safety, health, and welfare needs;
- E. Assistance with applications for public benefits and other services; and,
- F. Initiation of protective and probate proceedings under Colorado Revised Statutes.

"Reassessment" means the process of updating the assessment status areas and the case plan, including the status of any services implemented and any new services and/or goals identified since the last assessment.

"RED Team" is an acronym that stands for Review, Evaluate, and Direct. The RED Team is a decision making process that utilizes a structured framework to determine the county department's response to reports.

"Report" means an oral or written report of suspected mistreatment or self-neglect of a suspected at-risk adult, received by the county department.

"Risk" means conditions and/or behaviors that create increased difficulty or impairment to the client's ability to ensure health, safety, and welfare.

"Safety" means the extent to which a client is free from harm or danger, or to which harm or danger is lessened.

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"Self-Determination" means the right to decide for one's self; the ability or right to make one's own decisions without interference from others.

"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. Refusal of medical treatment, medications, devices, or procedures by an adult or in accordance with a valid medical directive or order, or as described in a palliative plan of care, shall not be deemed self-neglect. Refusal of food and water in the context of a life-limiting illness shall not, by itself, be evidence of self-neglect. "Medical directive or order" includes, but is not limited to, a medical durable power of attorney, a declaration as to medical treatment executed pursuant to Section 15-18-104, C.R.S., a medical orders for scope of treatment form executed pursuant to Article 18.7 of Title 15, C.R.S., and a CPR directive executed pursuant to Article 18.6 of Title 15, C.R.S. In addition to those exceptions identified above, access to Medical Aid in Dying, pursuant to Title 25, Article 48, C.R.S., shall not be considered self-neglect.

"Significant impact" means that the client's impairment diminishes the client's health, safety, and/or welfare and intervention is necessary to improve overall safety.

**"SEVERITY LEVEL" MEANS THE EXTENT OF THE IMPACT CAUSED TO THE CLIENT AS A RESULT OF MISTREATMENT.**

- A. MINOR – MISTREATMENT OCCURRED THAT RESULTED IN LITTLE TO NO HARM OR CHANGE TO THE CLIENT'S HEALTH, SAFETY, WELFARE, OR FINANCES.
- B. MODERATE – MISTREATMENT OCCURRED THAT RESULTED IN HARM OR CHANGE TO THE CLIENT'S HEALTH, SAFETY, WELFARE, OR FINANCES.
- C. SEVERE – MISTREATMENT OCCURRED THAT RESULTED IN SUBSTANTIAL HARM OR CHANGE TO THE CLIENT'S HEALTH, SAFETY, WELFARE, OR FINANCES.

"Staffing a case" means the review of an APS case between the supervisor and caseworker to ensure the appropriateness of the investigation findings, client assessment, case plan, service provision, need for ongoing services, plans to terminate services, documentation, and overall intervention as it relates to APS rules and best practices. Staffing a case may include the county department APS unit, the State Department APS unit, and/or the APS Team in addition to the supervisor and caseworker.

"State Department" means the Colorado Department of Human Services.

"Substantiated finding" means that the investigation established by a preponderance of evidence that mistreatment or self-neglect has occurred.

"Undue Influence" means the use of influence to take advantage of an at-risk adult's vulnerable state of mind, neediness, pain, or emotional distress.

"Unsubstantiated finding" means the investigation did not establish any evidence that mistreatment or self-neglect has occurred.

## **30.000 ADULT PROTECTIVE SERVICES**

### **30.250 CONFIDENTIALITY**

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- A. Information received as a result of a report to APS and subsequent investigation and casework services shall be confidential and shall not be released without a court order for good cause except in limited circumstances, as defined in Section 30.250, E.
- B. The county department shall treat all information related to the report and the case, whether in written or electronic form, as confidential according to applicable statutes. Such information includes, but is not limited to, the following:
  - 1. Identifying information, such as the name, address, relationship to the at-risk adult, date of birth, or Social Security Number of the:
    - a. At-risk adult;
    - b. At-risk adult's family members;
    - c. Reporting party;
    - d. Alleged perpetrator; and,
    - e. Other persons involved in the case.
  - 2. Allegations, assessment, and investigative findings, including, but not limited to:
    - a. Initial report of allegations and concerns;
    - b. The client's safety and risk as determined by the client assessment;
    - c. Medical and behavioral diagnoses, past medical conditions, and disabilities;
    - d. Services provided to or arranged for the adult;
    - e. Information learned as a result of a criminal investigation;
    - f. Information obtained during the APS investigation and the substantiation or non-substantiation of the allegations; and,
    - g. Legal protections in place including, but not limited to, wills, advance directives, powers of attorney, guardianship, conservatorship, representative payeeship, and protective orders.
- C. Individuals or groups requesting information regarding APS reports and/or investigations shall be informed of the confidential nature of the information and shall be advised that a court order is required to release information held by the county department, except as provided at Section 30.250, E. These persons or groups include, but are not limited to:
  - 1. Federal and state legislators;
  - 2. Members of other governmental authorities or agencies, including county commissioners, city councils, school boards, and other city and county department boards, councils, officials, and employees;
  - 3. Courts and law enforcement agencies;
  - 4. Attorneys, guardians, conservators, agents under powers of attorney, representative payees, and other fiduciaries;

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5. Family members, reporting parties, or other interested parties;
  6. Any alleged perpetrator; and,
  7. Media representatives.
- D. In a criminal or civil proceeding or in any other circumstance in which the APS report and/or case record is subpoenaed or any request for disclosure has been made, or any county department or State Department representative is ordered to testify concerning an APS report or case, the court shall be advised, through proper channels, of the statutory provisions, rules, and policies concerning disclosure of information.
1. Confidential information shall not be released unless so ordered by the court for good cause.
  2. Courts with competent jurisdiction may determine good cause. Although it is not an exhaustive list, the following are examples of court proceedings in which a court may determine that good cause exists for the release of confidential information:
    - a. Guardianship or conservatorship proceeding in which either the county is the petitioner or has been ordered to testify;
    - b. Review of Power of Attorney under the Uniform Power of Attorney Act, as outlined at Title 15, Article 14, Part 7, Colorado Revised Statutes (C.R.S.);
    - c. Review of a fiduciary under Title 15, Article 10. Part 5, C.R.S.; and/or,
    - d. Criminal trial.
- E. Information held by the State Department or county department may be released without a court order only when:
1. Coordination with professionals and collateral contacts is necessary to investigate mistreatment or self-neglect and/or to resolve health and/or safety concerns.
  2. It is essential for the provision of protective services, including establishing eligibility for, arrangement and implementation of services and benefits, and appointment of a guardian and/or conservator.
  3. A review of a Power of Attorney is requested under the Uniform Power of Attorney Act, as outlined at C.R.S. Title 15, Article 14, Part 7 or review of a fiduciary under C.R.S. Title 15, Article 10, Part 5.
  4. A case is reviewed with the adult protection team, in accordance with the adult protection team's by-laws, and when in executive session with members who have signed a confidentiality agreement.
  5. A criminal complaint or indictment is filed based on the APS report and investigation.
  6. There is a death of a suspected at-risk adult and formal charges or a grand jury indictment have been brought.
  7. The coroner is investigating a death suspected to be a result of mistreatment or self-neglect.

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8. An audit of the county department of human or social services is being conducted pursuant to Section 26-1-114.5, C.R.S.
  9. Notification is made to substantiated perpetrator(s) of mistreatment pursuant to Section 26-3.1-108, C.R.S.
  10. THE DISCLOSURE IS MADE FOR PURPOSES OF THE APPEALS PROCESS RELATING TO A SUBSTANTIATED CASE OF MISTREATMENT OF AN AT-RISK ADULT PURSUANT TO SECTION 26-3.1-108(2).
- F. Whenever there is a question about the legality of releasing information the requestor shall be advised to submit a written request to the appropriate court to order the county department to produce the desired records or information within the custody or control of the county department.
- G. Information released under Section 30.250, D and E, shall be the minimum information necessary to secure the services, conduct the investigation, or otherwise respond to the court order. The county department shall:
1. Provide the information only to persons deemed essential to the court order, criminal or APS investigation, Adult Protection team activities, or the provision of services;
  2. Edit the information prior to its release to physically remove or redact sensitive information not essential to the court order, criminal or APS investigation, Adult Protection Team activities, or provision of services and benefits;
  3. Redact all information that would identify the reporting party unless ordered by the court, the reporting party has given written consent, or when sharing the report with law enforcement per, 26-3.1-102, (3); and,
  4. Always redact all HIPAA protected information and any other confidential information which is protected by law unless specifically ordered by a court; and,
  5. Redact all other report and case information not directly related to the court order.
- H. When a court order or other written request for the release of information related to an APS report or case is received, as outlined in Sections 30.250, D and E, the county department shall:
1. Comply within the time frame ordered by the court, or in accordance with county department policy; and,
  2. Provide a written notice with the information to be released regarding the legality of sharing confidential information.
- I. All confidential APS information and data shall be processed, filed and stored using safeguards that prevent unauthorized personnel from acquiring, accessing, or retrieving the information.
1. Client files shall be kept in a secured area when not in use.
  2. Passwords to CAPS shall be kept secured.
  3. The State Department shall ensure that only State Department and county department staff persons with a business need to do so shall have access to CAPS.
  4. Laptops and other mobile devices used to document in the field shall be protected and encrypted in compliance with HIPAA security requirements.

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5. Email correspondence that contains APS confidential information shall be sent through secure encryption programs.
  6. All CAPS users must electronically sign the CAPS Security and Confidentiality Agreement annually.
- J. County departments shall not access information in CAPS that is not necessary to serve the client. Violations may result in loss of access to CAPS, at the discretion of the State Department.
- K. Any person who willfully violates confidentiality or who encourages the release of information related to the mistreatment and self-neglect of an at-risk adult from CAPS or the APS case file, to persons not permitted access to such information, commits a Class 2 petty offense and shall be punished as provided in Section 26-3.1-102(7)(c), C.R.S.

### **30.260 DOCUMENTATION**

- A. The county department shall thoroughly document all Adult Protective Services (APS) reports and case information in CAPS. There shall be no parallel paper or electronic system used to enter APS documentation. Documentation shall include all aspects of the APS case, including:
1. Initial report;
  2. Investigation;
  3. Assessment;
  4. Case plan;
  5. Contact records for the client, alleged perpetrator, reporter, and all collaterals and supports;
  6. Ongoing case notes;
  7. Case closure; and,
  8. Any other processes related to the case.
- B. All documents and evidence critical to the APS case record shall be scanned into CAPS, to include:
1. A release of information form(s) signed by the client, when appropriate;
  2. All of the client's Powers of Attorney(s), living will declaration, and/or other advance directives, as applicable;
  3. All documents, reports, and correspondence related to guardianship, conservatorship, and representative payeeship, whether county department held or private, as applicable; and,
  4. Other documentation, such as medical reports, results of psychiatric evaluations, photographic documentation, and other evidence collected during the investigation and assessment.

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- C. All documentation pertaining to APS reports and cases, including interview and case notes, evidence gathered, such as photos, medical records, and bank statements shall be kept in a secure location until documented in CAPS and then shall be destroyed.
  - 1. Hardcopy and electronic aps files created prior to July 1, 2014 shall be kept in a secured location.
  - 2. All APS files created July 1, 2014 or later shall be documented in CAPS and the file/notes destroyed.
  - 3. Original legal documents such as guardianship, representative payeeship, birth certificates, or tax documents may be retained in a hardcopy file, in addition to CAPS, that is in a secured location.
- D. The county department shall use CAPS to document all other APS program activities, including Adult Protection team activities, APS staff qualifications, FTE, new worker and continuing education received, cooperative agreements, and other activities required by rule.
- E. Case records THAT DO NOT PERTAIN TO SUBSTANTIATED PERPETRATORS shall be retained for a minimum of three (3) years, plus the current year, after the date of case closure.
- F. CASE RECORDS PERTAINING TO SUBSTANTIATED PERPETRATORS SHALL BE RETAINED INDEFINITELY.

#### **30.340 STAFF DUTIES AND RESPONSIBILITIES**

- A. The direct supervisor or lead worker shall, at a minimum:
  - 1. Receive reports of mistreatment and self-neglect as outlined in Section 30.400.
  - 2. Evaluate the report, determine the response, and develop a plan for caseworker safety, as outlined in Sections 30.400. At the option of the county, the county department may use the RED Team process.
  - 3. Staff open cases of each caseworker monthly to ensure cases meet program requirements related to the provision of protective services.
  - 4. ENSURE TIMELY NOTIFICATION IS MADE TO PERPETRATORS WHO HAVE SUBSTANTIATED FINDINGS MADE AGAINST THEM IN APS CASES, AS OUTLINED IN SECTION 30.910.
- 45. Review cases to ensure:
  - a. Timely casework;
  - b. Investigation, assessment, and case planning were thorough and complete;
  - c. Case closure, if applicable, was appropriate; and,
  - d. Documentation in CAPS is complete and accurate.
- 56. Review of cases shall be completed using one of two approved methods:

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- a. Method One: using the case review score card in CAPS, each month review not less than fifteen percent (15%) of each caseworker's cases that were open and/or closed during the month; or,
  - b. Method Two: approve every county APS case at key junctures of the APS casework process utilizing the automated approval process in CAPS, as follows:
    - i. Upon completion of the initial investigation, assessment, and case plan;
    - ii. Upon completion of a six month reassessment for cases open longer than six months; and,
    - iii. At case closure.
67. Assess APS caseworkers' professional development needs and provide opportunities for training.
78. Respond to APS reports or have a contingency plan to respond within assigned time frames, including emergencies, and to provide protective services when no caseworker is available.
- B. APS caseworkers shall, at a minimum:
1. Receive reports of mistreatment and self-neglect as outlined in Sections 30.400;
  2. Investigate allegations and assess the client's safety and needs as outlined in Section 30.500;
  3. PROVIDE TIMELY NOTIFICATION TO PERPETRATORS WHO HAVE SUBSTANTIATED FINDINGS MADE AGAINST THEM IN APS CASES, AS OUTLINED IN SECTION 30.910.
  34. Develop, implement, and monitor case plans, conduct required client visits, and provide protective services as outlined in Section 30.600;
  45. Document case findings as outlined throughout 12 CCR 2518-1; and,
  56. Assume responsibility for own learning and required training hours.
- C. APS case aides may assist caseworkers in completing non-professional level tasks that do not require casework expertise, but shall not perform the duties of the caseworker or supervisor, such as completing:
1. The investigation and/or assessment;
  2. The case plan;
  3. The required monthly client contact visits; or,
  4. Required reports to the court, for cases in which the county department is the guardian or conservator.
- D. APS intake screeners or administrative support staff may:
1. Receive and document intake reports in CAPS or through the CAPS web2case form;

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2. Assign all reports to the supervisors for determination of appropriate response; and,
3. Direct urgent calls to the appropriate internal and external authorities.

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### **30.400 REPORT RECEIPT AND RESPONSE**

#### **30.410 INTAKE**

- A. The county department shall receive oral or written reports of at-risk adult mistreatment and self-neglect, occurring in the community or in a facility.
- B. The county department shall have an established process during business and non-business hours for receiving such reports.
- C. The county department shall input oral reports directly in CAPS or the CAPS web2case form. Written reports received via email, fax, or mail shall be documented in CAPS within one (1) business day of receipt. If unable to enter the report in the system within one business day, the county department shall document the reason.
- D. CAPS shall guide the information gathered for the report to include:
  - 1. The client's demographic information, such as name, gender, date of birth or approximate age, address, current location if different from permanent address, and phone number;
  - 2. The reporter's demographic information, unless the reporter requests anonymity, such as name, phone number, address, relationship to client and, if applicable, the reporter's agency or place of business;
  - 3. Allegations of mistreatment or self-neglect;
  - 4. Safety concerns for the client;
  - 5. Safety concerns for the caseworker; and,
  - 6. The alleged perpetrator's information, such as name, gender, MAILING AND EMAIL address, phone number, DATE OF BIRTH, ~~SOCIAL SECURITY NUMBER~~, and relationship to the client, when mistreatment is alleged.
- E. The county department shall determine jurisdiction for responding to the report.
  - 1. The county department with jurisdiction for responding to a report is the county in which the adult resides.
  - 2. When the adult is homeless, as defined in 42 U.S.C. Section 11302, the county department with jurisdiction is the county in which the adult's primary nighttime residence is located.
  - 3. If jurisdiction is unable to be determined by 1 or 2, above, the county department with jurisdiction is the county in which the adult is currently present.
  - 4. If an emergency response is necessary, the county department where the adult is located at the time of the report is the responsible county department until jurisdiction is determined.
- F. County departments shall utilize all available resources to determine jurisdiction, such as:
  - 1. History within CAPS;

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2. Colorado Benefits Management System (CBMS);
  3. Colorado Courts;
  4. Where services are being provided; and/or,
  5. The adult's school.
- G. If a county department receives a report and determines that the report was made to the wrong county, the receiving county department shall transfer the report to the responsible county department as soon as possible, but no later than eight (8) hours after determining the correct county.

### **30.500 INVESTIGATION AND ASSESSMENT**

#### **30.510 INVESTIGATION AND ASSESSMENT OVERVIEW**

- A. The county department shall conduct a thorough and complete investigation into the allegations unless the initial visit and assessment confirms that the client is not an at-risk adult.
1. If the assessment and/or further investigation confirms that the client is not an at-risk adult, the county department shall close the APS case. The county department may provide the adult referrals to resources or continue to assist the adult through other county department programs.
  2. If the client refuses to participate in the investigation, the county department shall complete the investigation by gathering evidence and interviewing other collateral contacts that have knowledge of the client or the alleged mistreatment.
  3. The investigation must include reasonable efforts to interview the client, witnesses, collateral contacts, as defined in Section 30.100, and any other persons who can provide relevant investigative evidence or context. If the interview cannot be conducted, the attempts and the reason for being unable to complete the interview shall be documented.
  4. The interviews and collection of evidence must address the specific allegations identified in the report as well as any new mistreatment or self-neglect that may be identified during the investigation.
- B. The county department shall begin an assessment of the client's risk, safety, and strengths during the initial face-to-face visit to further clarify the level of risk of mistreatment or self-neglect to the client and the client's immediate needs.
- C. The investigation and assessment may be conducted independent of one another or simultaneously, depending on the nature of the allegations.
- D. If upon initial investigation, the county department determines a different county has jurisdiction, the originating county department shall transfer the case in CAPS. The county department determined to have jurisdiction shall uphold the screening decision and conduct the investigation and assessment, unless:
1. Additional or new information related to the safety of the adult or alleged mistreatment or self-neglect indicating the case may be closed is gathered by the county department determined to have jurisdiction.

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2. The basis for the decision to close the case shall be documented in CAPS.

### **30.520 INVESTIGATION**

- A. The county department shall conduct an investigation to determine findings related to allegations of mistreatment or self-neglect. The investigation shall include, but may not be limited to:
  1. Determining the need for protective services. If the client is in clear and immediate danger, the county shall intervene immediately by notifying the proper emergency responders.
  2. Determining if the investigation should be conducted jointly with another entity, such as:
    - a. Law enforcement and/or the district attorney;
    - b. Community Centered Board;
    - c. Health Facilities Division;
    - d. Attorney General's Medicaid Fraud Unit; and/or,
    - e. The long-term care ombudsman.
  3. Conducting a face-to-face interview with the client, unannounced and in private, whenever possible, and if not unannounced and/or in private, the reason shall be documented in CAPS.
  4. Conducting interviews with eCollateral eContacts.
  5. Interviewing the alleged perpetrator(s), with or without law enforcement. In the event the alleged perpetrator is unable to be interviewed, the reason shall be documented in CAPS. The following information shall be collected related to the alleged perpetrator(s) in addition to information about the allegations:
    - a. Full name of the alleged perpetrator(s) with accurate spelling;
    - b. Current email address, when available;
    - c. Current physical and mailing address; and,
    - d. Date of birth.
  6. Collecting evidence and documenting with photographs or other means, when appropriate, such as:
    - a. Police reports;
    - b. Any available investigation report from a currently or previously involved facility and the occurrence report from the Health Facilities Division;
    - c. Medical and mental health records;
    - d. Bank or other financial records.
    - e. Care plans for any person in a facility or receiving other services that require a care plan and any daily logs or charts; and/or,

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- f. Staffing records and employee work schedules when investigating in a facility.
  7. Making a finding regarding the substantiation or unsubstantiation of the allegations INCLUDING THE SEVERITY LEVEL OF THE MISTREATMENT WHEN THERE IS A SUBSTANTIATED FINDING.
  8. Determining the identity of, and making a finding related to, the perpetrator(s) of the mistreatment.
  9. Determining whether there are additional mistreatment concerns not reported in the initial allegations and investigating and documenting any newly identified concerns.
  10. THE SUPERVISOR SHALL APPROVE ALL FINDINGS.
  4011. Notifying law enforcement when criminal activity is suspected.
- B. The county department shall complete the investigation within ~~forty-five (45)~~ SIXTY (60) calendar days of the receipt of the report, ensuring that documentation of the investigation is occurring in CAPS throughout the investigation process, as follows:
1. All interviews, contacts, or attempted contacts with the client, collateral, alleged perpetrators, and other contacts during the investigation shall be documented within fourteen (14) calendar days of receipt of the information.
  2. All evidence collected during the investigation shall be scanned and attached to the case by the conclusion of the investigation.
  3. Findings for the allegations and alleged perpetrator(S) shall be documented no later than ~~forty-five (45)~~ SIXTY (60) calendar days from receipt of the report, INCLUDING SUPERVISOR APPROVAL OF THE FINDINGS. BEGINNING JULY 1, 2018 ALL SUBSTANTIATED PERPETRATORS SHALL BE PROVIDED NOTICE OF THE SUBSTANTIATION AND THEIR APPEAL RIGHTS, AS OUTLINED IN SECTION 30.910.
  4. ~~If the investigation cannot be completed within this time frame, the county department shall document the reason why.~~

### **30.900 NOTICE TO SUBSTANTIATED PERPETRATORS AND STATE LEVEL APPEALS PROCESS**

#### **30.910 NOTICE TO THE SUBSTANTIATED PERPETRATOR OF MISTREATMENT**

- A. BEGINNING JULY 1, 2018, THE COUNTY DEPARTMENT SHALL NOTIFY PERPETRATOR(S) SUBSTANTIATED IN CASES INVOLVING MISTREATMENT OF AN AT-RISK ADULT OF THE FINDING VIA FIRST CLASS MAIL TO THEIR LAST KNOWN MAILING ADDRESS, AS DOCUMENTED IN CAPS, USING A FORM APPROVED BY THE STATE DEPARTMENT. NOTICE SHALL BE MAILED NO LATER THAN TEN (10) CALENDAR DAYS FOLLOWING THE DATE OF FINDING ON THE PERPETRATOR. A COPY OF THE NOTICE SHOWING THE DATE THE NOTICE WAS MAILED SHALL BE MAINTAINED IN CAPS.
- B. AT A MINIMUM, THE NOTICE SHALL INCLUDE THE FOLLOWING INFORMATION:
1. TYPE OF MISTREATMENT AND SEVERITY LEVEL, DATE THE REPORT WAS MADE TO THE COUNTY DEPARTMENT, NAME OF THE COUNTY DEPARTMENT THAT CONDUCTED THE INVESTIGATION, DATE THE FINDING WAS MADE IN CAPS, AND INFORMATION CONCERNING INDIVIDUALS OR AGENCIES THAT HAVE ACCESS TO THE INFORMATION.
  2. THE CIRCUMSTANCES UNDER WHICH INFORMATION CONTAINED IN CAPS WILL BE PROVIDED TO OTHER INDIVIDUALS OR AGENCIES.
  3. THE RIGHT OF THE SUBSTANTIATED PERPETRATOR TO REQUEST A STATE LEVEL APPEAL, AS SET FORTH IN SECTION 30.920. THE COUNTY DEPARTMENT SHALL PROVIDE THE SUBSTANTIATED PERPETRATOR WITH THE STATE APPROVED APPEAL FORM.
  4. NOTICE THAT THE SCOPE OF AN APPEAL IS LIMITED TO CHALLENGES THAT THE FINDING(S) ARE NOT SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE OR THAT THE ACTIONS SUBSTANTIATED AS MISTREATMENT DO NOT MEET THE LEGAL DEFINITION OF MISTREATMENT. THE STATE DEPARTMENT WILL BE RESPONSIBLE FOR DEFENDING THE DETERMINATION AT THE STATE LEVEL FAIR HEARING.
  5. AN EXPLANATION OF APPEAL OPTIONS AND DEADLINES CONTAINED IN SECTION 30.920.
- C. INFORMATION CONTAINED IN CAPS RECORDS RELATED TO A PERSON WHO HAS BEEN SUBSTANTIATED IN A CASE OF MISTREATMENT OF AN AT-RISK ADULT PRIOR TO JULY 1, 2018 SHALL BE EXPUNGED AND SHALL NOT BE RELEASED FOR THE PURPOSES OF NOTIFICATION OR A CAPS CHECK. THE STATE DEPARTMENT AND COUNTY DEPARTMENTS MAY MAINTAIN SUCH INFORMATION IN CAPS TO ASSIST IN FUTURE RISK AND SAFETY ASSESSMENTS.

#### **30.920 STATE LEVEL APPEALS PROCESS**

- A. SUBSTANTIATED PERPETRATOR(S) OF MISTREATMENT SHALL HAVE THE RIGHT TO A STATE LEVEL APPEAL TO CONTEST THE SUBSTANTIATED FINDING. THE REQUEST FOR APPEAL OF THE DECISION SHALL FIRST BE SUBMITTED TO THE STATE DEPARTMENT UNIT DESIGNATED TO HANDLE SUCH APPEALS. IF THE STATE DEPARTMENT AND THE APPELLANT ARE UNABLE OR UNWILLING TO RESOLVE THE APPEAL IN ACCORDANCE WITH THE PROVISIONS SET FORTH BELOW IN THIS SECTION, THE STATE DEPARTMENT SHALL FORWARD THE APPEAL TO THE OFFICE OF ADMINISTRATIVE COURTS (OAC) TO PROCEED TO A FAIR HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE (ALJ).
- B. THE GROUNDS FOR APPEAL SHALL CONSIST OF THE FOLLOWING:

1. THE SUBSTANTIATED FINDING(S) ARE NOT SUPPORTED BY A PREPONDERANCE OF CREDIBLE EVIDENCE; OR,
  2. THE ACTIONS ULTIMATELY FOUND TO BE SUBSTANTIATED AS MISTREATMENT DO NOT MEET THE STATUTORY OR REGULATORY DEFINITION OF MISTREATMENT.
- C. THE SUBSTANTIATED PERPETRATOR(S) OF MISTREATMENT SHALL HAVE NINETY (90) CALENDAR DAYS FROM THE DATE OF NOTICE OF SUBSTANTIATION OF MISTREATMENT TO APPEAL THE FINDING IN WRITING TO THE STATE DEPARTMENT. THE WRITTEN APPEAL SHALL BE SUBMITTED VIA THE STATE APPROVED ONLINE FORM OR USING THE HARD COPY APPEAL FORM PROVIDED TO THE SUBSTANTIATED PERPETRATOR BY THE COUNTY DEPARTMENT AND SHALL INCLUDE:
1. THE CONTACT INFORMATION FOR THE APPELLANT;
  2. A STATEMENT DETAILING THE BASIS FOR THE APPEAL; AND,
  3. NOTICE OF FINDING OF RESPONSIBILITY FOR MISTREATMENT OF AN AT-RISK ADULT SENT TO THE APPELLANT BY THE COUNTY DEPARTMENT.
- D. THE STATE LEVEL APPEAL PROCESS MUST BE INITIATED BY THE SUBSTANTIATED PERPETRATOR(S) OF MISTREATMENT OR HIS/HER ATTORNEY. THE APPELLANT DOES NOT NEED TO HIRE AN ATTORNEY TO FILE AN APPEAL. IF THE SUBSTANTIATED PERPETRATOR(S) IS A MINOR CHILD, THE APPEAL MAY BE INITIATED BY HIS/HER PARENTS, LEGAL CUSTODIAN, OR ATTORNEY.
- E. THE APPEAL MUST BE SUBMITTED TO THE STATE DEPARTMENT WITHIN NINETY (90) CALENDAR DAYS OF THE DATE OF THE NOTICE OF THE SUBSTANTIATED FINDING. IF THE APPEAL IS FILED MORE THAN NINETY (90) CALENDAR DAYS FROM THE DATE OF NOTICE OF THE SUBSTANTIATED FINDING, THE APPELLANT MUST SHOW GOOD CAUSE FOR NOT APPEALING WITHIN THE PRESCRIBED TIME PERIOD AS SET FORTH IN SECTION 30.920.C. A FAILURE TO REQUEST STATE REVIEW WITHIN THE NINETY-DAY (90) PERIOD WITHOUT GOOD CAUSE SHALL BE GROUNDS FOR THE STATE DEPARTMENT TO NOT ACCEPT THE APPEAL.
- F. THE SUBSTANTIATED FINDING SHALL CONTINUE TO BE USED FOR SAFETY AND RISK ASSESSMENT, EMPLOYMENT AND BACKGROUND SCREENING BY THE STATE DEPARTMENT WHILE THE ADMINISTRATIVE APPEAL PROCESS IS PENDING.
- G. THE APPELLANT SHALL HAVE THE RIGHT TO APPEAL, EVEN IF A COURT ACTION OR CRIMINAL PROSECUTION IS PENDING AS A RESULT OF THE MISTREATMENT. THE STATE DEPARTMENT SHALL HOLD IN ABEYANCE THE ADMINISTRATIVE APPEAL PROCESS PENDING THE OUTCOME OF THE COURT ACTION OR CRIMINAL PROSECUTION IF REQUESTED BY THE APPELLANT, OR IF THE STATE DEPARTMENT DETERMINES THAT AWAITING THE OUTCOME OF THE COURT CASE IS IN THE BEST INTEREST OF THE PARTIES. IF THE APPELLANT OBJECTS TO THE CONTINUANCE, THE CONTINUANCE SHALL REMAIN IN PLACE, BUT THE CONTINUANCE OF THE APPEAL SHALL NOT EXCEED ONE HUNDRED EIGHTY (180) CALENDAR DAYS WITHOUT THE APPELLANT HAVING THE OPPORTUNITY TO SEEK A REVIEW OF THE CONTINUANCE BY AN ADMINISTRATIVE LAW JUDGE. THE PENDENCY OF OTHER COURT PROCEEDINGS SHALL BE CONSIDERED GOOD CAUSE TO EXTEND THE CONTINUANCE OF THE APPEAL PAST THE ONE HUNDRED EIGHTY (180) DAY TIMEFRAME.
- H. THE FOLLOWING CIRCUMSTANCES SHALL BE CONSIDERED TO BE ADMISSIONS TO THE FACTUAL BASIS OF THE SUBSTANTIATED FINDING(S) OF THE RESPONSIBILITY FOR THE MISTREATMENT OF AN AT-RISK ADULT IN CAPS AND SHALL BE CONSIDERED CONCLUSIVE EVIDENCE OF THE FACTUAL BASIS OF THE INDIVIDUAL'S RESPONSIBILITY

FOR THE MISTREATMENT TO SUPPORT A MOTION FOR SUMMARY JUDGMENT  
SUBMITTED TO THE OFFICE OF ADMINISTRATIVE COURTS:

1. THE APPELLANT HAS BEEN FOUND GUILTY OF A CRIME AGAINST AN AT-RISK ADULT PURSUANT TO SECTION 18-6.5-103, C.R.S. ARISING OUT OF THE SAME FACTUAL BASIS AS THE SUBSTANTIATED FINDING IN CAPS.
  2. THE APPELLANT HAS BEEN FOUND GUILTY OR HAS PLED GUILTY OR NOLO CONTENDERE AS PART OF ANY PLEA AGREEMENT INCLUDING, BUT NOT LIMITED TO, A DEFERRED JUDGEMENT AGREEMENT TO A CRIME AGAINST AN AT-RISK ADULT PURSUANT TO SECTION 18-6.5-103, C.R.S. ARISING OUT OF THE SAME FACTUAL BASIS AS THE SUBSTANTIATED FINDING IN CAPS.
  3. THE APPELLANT HAS BEEN FOUND GUILTY OR HAS PLED GUILTY OR NOLO CONTENDERE AS PART OF ANY PLEA AGREEMENT INCLUDING, BUT NOT LIMITED TO, A DEFERRED JUDGMENT AGREEMENT, IN A CASE IN WHICH A CRIME AGAINST AN AT-RISK ADULT WAS CHARGED PURSUANT TO SECTION 18-6.5-103, C.R.S., ARISING OUT OF THE SAME FACTUAL BASIS AS THE SUBSTANTIATED FINDING IN CAPS. THE OFFENSE TO WHICH THE APPELLANT PLED GUILTY MUST BE RELATED TO THE SAME FACTUAL BASIS AS THE SUBSTANTIATED FINDING IN CAPS.
- I. AFTER THE APPELLANT REQUESTS AN APPEAL, THE STATE DEPARTMENT SHALL INFORM THE APPELLANT OF THE DETAILS REGARDING THE APPEAL PROCESS, INCLUDING TIMEFRAMES FOR THE APPEALS PROCESS AND CONTACT INFORMATION FOR THE STATE DEPARTMENT.
1. THE APPELLANT, AS THE PARTY IN INTEREST, SHALL HAVE ACCESS TO THE CASE RECORD RELIED UPON BY THE COUNTY DEPARTMENT TO MAKE THE FINDING IN ORDER TO PROCEED WITH THE APPEAL. THE APPELLANT'S USE OF THE CASE RECORD FOR ANY OTHER PURPOSE IS PROHIBITED UNLESS OTHERWISE AUTHORIZED BY LAW.
  2. PRIOR TO PROVIDING ACCESS TO THE APPELLANT, THE STATE DEPARTMENT SHALL REDACT IDENTIFYING INFORMATION CONTAINED IN THE CASE RECORD AND DOCUMENTS TO ENSURE COMPLIANCE WITH ALL STATE AND FEDERAL CONFIDENTIALITY LAWS AND RULES REGARDING ADULT MISTREATMENT RECORDS OR OTHER PROTECTED INFORMATION, INCLUDING BUT NOT LIMITED TO: REPORTING PARTY NAME(S) AND ADDRESS(ES), SOCIAL SECURITY NUMBER OR ALIEN REGISTRATION NUMBER AND INFORMATION PERTAINING TO OTHER PARTIES IN THE CASE THAT THE APPELLANT DOES NOT HAVE A LEGAL RIGHT TO ACCESS.
- J THE STATE DEPARTMENT IS AUTHORIZED TO ENTER INTO SETTLEMENT NEGOTIATIONS WITH THE APPELLANT AS PART OF THE LITIGATION PROCESS. THE STATE DEPARTMENT IS AUTHORIZED TO ENTER INTO SETTLEMENT AGREEMENTS THAT MODIFY, OVERTURN OR EXPUNGE THE REPORTS AND/OR FINDINGS AS REFLECTED IN THE STATE PORTION OF CAPS. THE STATE DEPARTMENT IS NOT AUTHORIZED TO MAKE ANY CHANGES IN THE COUNTY PORTION OF CAPS. IN EXERCISING ITS DISCRETION, THE STATE DEPARTMENT SHALL TAKE INTO CONSIDERATION THE BEST INTERESTS OF THE AT-RISK ADULTS, THE WEIGHT OF THE EVIDENCE, THE SEVERITY OF THE MISTREATMENT, ANY PATTERNS OF MISTREATMENT REFLECTED IN THE RECORD, THE RESULTS OF ANY COURT PROCESSES, THE REHABILITATION OF THE APPELLANT AND ANY OTHER PERTINENT INFORMATION.
- K. THE COUNTY DEPARTMENT'S FINDINGS SHALL NOT BE CHANGED TO REFLECT THE STATE DEPARTMENT'S RESPONSE TO THE APPEAL. THE STATE DEPARTMENT SHALL DOCUMENT ALL DECISIONS AND THE OUTCOME OF THE APPEAL IN CAPS.

- L. THE STATE DEPARTMENT AND THE APPELLANT SHALL HAVE ONE HUNDRED TWENTY (120) CALENDAR DAYS FROM THE DATE THE STATE DEPARTMENT RECEIVES THE APPEAL TO RESOLVE THE ISSUE(S) ON THE APPEAL. THE ONE HUNDRED TWENTY (120) DAY TIME FRAME MAY BE EXTENDED BY AGREEMENT OF BOTH THE APPELLANT AND THE STATE DEPARTMENT IF IT IS LIKELY THAT THE ADDITIONAL TIME WILL RESULT IN A FULLY EXECUTED SETTLEMENT AGREEMENT OR RESOLUTION OF THE APPEAL.
- M. AS SOON AS IT IS EVIDENT WITHIN THE ONE HUNDRED TWENTY (120) DAYS THAT THE APPELLANT AND STATE DEPARTMENT WILL NOT RESOLVE THE ISSUE(S) ON APPEAL, THE STATE DEPARTMENT SHALL FORWARD A COPY OF THE APPELLANTS ORIGINAL APPEAL DOCUMENT(S) TO THE OFFICE OF ADMINISTRATIVE COURTS TO INITIATE THE OFFICE OF ADMINISTRATIVE COURTS FAIR HEARING PROCESS.
- N. IF, BY THE END OF THE ONE HUNDRED TWENTY (120) DAY PERIOD, THE STATE DEPARTMENT HAS BEEN UNABLE TO CONTACT THE APPELLANT USING THE INFORMATION SUBMITTED BY THE APPELLANT, INCLUDING BY FIRST CLASS MAIL, AND THE APPELLANT HAS NOT CONTACTED THE STATE DEPARTMENT, THE APPEAL SHALL BE DEEMED ABANDONED. THE SUBSTANTIATED FINDING ENTERED INTO CAPS BY THE COUNTY DEPARTMENT SHALL BE UPHELD IN CAPS WITHOUT FURTHER RIGHT OF APPEAL. THE STATE DEPARTMENT SHALL NOTIFY THE APPELLANT OF THIS RESULT BY FIRST CLASS MAIL TO THE ADDRESS PROVIDED BY THE APPELLANT.

**30.930 STATE FAIR HEARING BEFORE THE OFFICE OF ADMINISTRATIVE COURTS (OAC)**

- A. WHEN THE OFFICE OF ADMINISTRATIVE COURTS RECEIVES THE APPEAL DOCUMENTS FROM THE STATE DEPARTMENT, THE OFFICE OF ADMINISTRATIVE COURTS SHALL DOCKET THE APPEAL AND ENTER A PROCEDURAL ORDER TO THE PARTIES INDICATING THE FOLLOWING:
  - 1. THE DATE AND TIME FOR A TELEPHONE SCHEDULING CONFERENCE WITH THE PARTIES.
  - 2. DURING THE TELEPHONE SCHEDULING CONFERENCE, THE OFFICE OF ADMINISTRATIVE COURTS SHALL DETERMINE THE DATE FOR THE HEARING. FOLLOWING THE SCHEDULING CONFERENCE, THE OFFICE OF ADMINISTRATIVE COURTS WILL ISSUE A FURTHER PROCEDURAL ORDER AND NOTICE OF HEARING. THE ORDER/NOTICE WILL CONTAIN THE HEARING DATE, THE FOURTEEN (14) DAY DEADLINE FOR THE NOTICE OF ISSUES, THE FOURTEEN (14) DAY DEADLINE FOR THE APPELLANT'S RESPONSE AND DEADLINE FOR FILING PRE-HEARING STATEMENTS. ANY PARTY REQUIRING AN EXTENSION OR MODIFICATION OF ANY OF THE DEADLINES IN THE ORDER MAY FILE A REQUEST WITH THE ADMINISTRATIVE LAW JUDGE.
  - 3. THE NOTICE OF ISSUES SHALL INCLUDE THE FOLLOWING:
    - a. THE SPECIFIC ALLEGATIONS(S) THAT FORM THE BASIS OF THE COUNTY DEPARTMENT'S SUBSTANTIATED FINDING THAT THE APPELLANT WAS RESPONSIBLE FOR MISTREATMENT OF AN AT-RISK ADULT;
    - b. THE SPECIFIC TYPE OF MISTREATMENT FOR WHICH THE APPELLANT WAS SUBSTANTIATED AND THE LEGAL AUTHORITY SUPPORTING THE FINDING, AND
    - c. TO THE EXTENT THAT THE STATE DEPARTMENT DETERMINES THAT THE FACTS CONTAINED IN CAPS SUPPORT A MODIFICATION OF THE TYPE OF MISTREATMENT DETERMINED BY THE COUNTY DEPARTMENT, THE STATE DEPARTMENT SHALL SO NOTIFY THE COUNTY DEPARTMENT AND

THE APPELLANT OF THAT MODIFICATION AND THE PROCESS SHALL PROCEED ON THE MODIFIED TYPE OF MISTREATMENT.

4. THE APPELLANT SHALL RESPOND TO THE STATE DEPARTMENT'S NOTICE OF ISSUES BY PROVIDING THE FACTUAL AND LEGAL BASIS SUPPORTING THE APPEAL TO THE STATE DEPARTMENT AND TO THE OFFICE OF ADMINISTRATIVE COURTS.
  5. IF THE APPELLANT FAILS TO PARTICIPATE IN THE SCHEDULING CONFERENCE REFERENCED ABOVE, OR FAILS TO SUBMIT A RESPONSE TO THE STATE DEPARTMENT'S NOTICE OF ISSUES WITHIN 14 DAYS, THE OFFICE OF ADMINISTRATIVE COURTS SHALL DEEM THE APPEAL TO HAVE BEEN ABANDONED BY THE APPELLANT AND RENDER AN INITIAL DECISION DISMISSING THE APPEAL. IN ACCORDANCE WITH THE PROCEDURES SET FORTH BELOW, THE OFFICE OF APPEALS MAY REINSTATE THE APPEAL FOR GOOD CAUSE SHOWN BY THE APPELLANT.
  6. IN THE EVENT THAT EITHER PARTY FAILS TO RESPOND TO A MOTION TO DISMISS FILED IN THE APPEAL, THE ADMINISTRATIVE LAW JUDGE SHALL NOT CONSIDER THE MOTION TO BE CONFESSED AND SHALL RENDER A DECISION BASED ON THE MERITS OF THE MOTION.
- B. THE ADMINISTRATIVE LAW JUDGE SHALL CONDUCT THE APPEAL IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT, SECTION 24-4-105, C.R.S. THE RIGHTS OF THE PARTIES INCLUDE:
1. THE STATE DEPARTMENT SHALL HAVE THE BURDEN OF PROOF TO ESTABLISH THE FACTS BY A PREPONDERANCE OF THE EVIDENCE AND THAT THE FACTS SUPPORT THE CONCLUSION THAT THE APPELLANT IS RESPONSIBLE FOR THE MISTREATMENT INDICATED IN THE NOTICE OF ISSUES PROVIDED BY THE STATE DEPARTMENT. THE ADMINISTRATIVE LAW JUDGE CAN CONSIDER EVIDENCE OTHER THAN THE CASE RECORD IN CAPS IN CONCLUDING THAT THE FINDING IS SUPPORTED BY A PREPONDERANCE OF EVIDENCE;
  2. EACH PARTY SHALL HAVE THE RIGHT TO PRESENT HIS OR HER CASE OR DEFENSE BY ORAL AND DOCUMENTARY EVIDENCE, TO SUBMIT REBUTTAL EVIDENCE AND TO CONDUCT CROSS-EXAMINATION;
  3. SUBJECT TO THESE RIGHTS AND REQUIREMENTS, WHERE A HEARING WILL BE EXPEDITED AND THE INTERESTS OF THE PARTIES WILL NOT BE SUBSEQUENTLY PREJUDICED THEREBY, THE ADMINISTRATIVE LAW JUDGE MAY RECEIVE ALL OR PART OF THE EVIDENCE IN WRITTEN FORM, OR BY ORAL STIPULATIONS;
  4. A TELEPHONIC HEARING MAY BE CONDUCTED AS AN ALTERNATIVE TO A FACE-TO-FACE HEARING UNLESS EITHER PARTY REQUESTS A FACE-TO-FACE HEARING IN WRITING. THE WRITTEN REQUEST FOR A FACE-TO-FACE HEARING MUST BE FILED WITH THE OFFICE OF ADMINISTRATIVE COURTS AND THE OTHER PARTY AT LEAST TEN (10) CALENDAR DAYS BEFORE THE SCHEDULED HEARING. A REQUEST FOR A FACE-TO-FACE HEARING MAY NECESSITATE THE RE-SETTING OF THE HEARING; AND,
  5. WHERE FACILITIES EXIST THAT HAVE VIDEOCONFERENCING TECHNOLOGY LOCAL TO THE COUNTY DEPARTMENT THAT MADE THE FINDING, EITHER PARTY MAY REQUEST THAT THE HEARING BE CONDUCTED VIA THAT TECHNOLOGY. THE REQUESTING PARTY SHALL INVESTIGATE THE FEASIBILITY OF THIS APPROACH AND SHALL SUBMIT A WRITTEN REQUEST OUTLINING THE ARRANGEMENTS THAT COULD BE MADE FOR VIDEO CONFERENCE. THE OFFICE

OF ADMINISTRATIVE COURTS SHALL HOLD THE HEARING VIA VIDEOCONFERENCING FOR THE CONVENIENCE OF THE PARTIES WHENEVER REQUESTED AND FEASIBLE. A REQUEST FOR A HEARING VIA VIDEOCONFERENCING MAY NECESSITATE THE RE-SETTING OF THE HEARING.

- C. AT THE CONCLUSION OF THE HEARING, UNLESS THE ADMINISTRATIVE LAW JUDGE ALLOWS ADDITIONAL TIME TO SUBMIT DOCUMENTATION, THE ADMINISTRATIVE LAW JUDGE SHALL TAKE THE MATTER UNDER ADVISEMENT. AFTER CONSIDERING ALL THE RELEVANT EVIDENCE PRESENTED BY THE PARTIES, THE ADMINISTRATIVE LAW JUDGE SHALL RENDER AN INITIAL DECISION FOR REVIEW BY THE COLORADO DEPARTMENT OF HUMAN SERVICES, OFFICE OF APPEALS.
- D. THE INITIAL DECISION SHALL UPHOLD, MODIFY OR OVERTURN/REVERSE THE COUNTY FINDING. THE ADMINISTRATIVE LAW JUDGE SHALL HAVE THE AUTHORITY TO MODIFY THE TYPE OF MISTREATMENT TO MEET THE EVIDENCE PROVIDED AT THE HEARING. THE ADMINISTRATIVE LAW JUDGE SHALL NOT ORDER THE COUNTY TO MODIFY ITS RECORD; RATHER, THE STATE DEPARTMENT SHALL INDICATE THE OUTCOME OF THE APPEAL IN ITS PORTION OF CAPS.
- E. WHEN AN APPELLANT FAILS TO APPEAR AT A DULY SCHEDULED HEARING HAVING BEEN GIVEN PROPER NOTICE, WITHOUT HAVING GIVEN TIMELY ADVANCE NOTICE TO THE OFFICE OF ADMINISTRATIVE COURTS OF ACCEPTABLE GOOD CAUSE FOR INABILITY TO APPEAR AT THE HEARING AT THE TIME, DATE AND PLACE SPECIFIED IN THE NOTICE OF HEARING, THEN THE APPEAL SHALL BE CONSIDERED ABANDONED AND THE ADMINISTRATIVE LAW JUDGE SHALL ENTER AN INITIAL DECISION DISMISSING THE APPEAL. IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN SECTION 30.940, THE OFFICE OF APPEALS MAY REINSTATE THE APPEAL FOR GOOD CAUSE SHOWN BY THE APPELLANT.

### **30.940 STATE DEPARTMENT OFFICE OF APPEALS FUNCTIONS**

- A. REVIEW OF THE INITIAL DECISION AND HEARING RECORD AND ENTRY OF THE FINAL AGENCY DECISION SHALL BE PURSUANT TO STATE RULES AT SECTIONS 3.850.72 - 3.850.73 (9 CCR 2503-8).
- B. REVIEW SHALL BE CONDUCTED BY A STATE ADJUDICATOR IN THE OFFICE OF APPEALS NOT DIRECTLY INVOLVED IN ANY PRIOR REVIEW OF THE COUNTY REPORT BEING APPEALED.
- C. THE FINAL AGENCY DECISION SHALL ADVISE THE APPELLANT OF HIS/HER RIGHT TO SEEK JUDICIAL REVIEW IN THE STATE DISTRICT COURT, CITY AND COUNTY OF DENVER, IF THE APPELLANT HAD TIMELY FILED EXCEPTIONS TO THE INITIAL DECISION.
- D. IF THE APPELLANT SEEKS JUDICIAL REVIEW OF THE FINAL AGENCY DECISION, THE STATE DEPARTMENT SHALL BE RESPONSIBLE FOR DEFENDING THE FINAL AGENCY DECISION ON JUDICIAL REVIEW.
- E. IN ANY ACTION, IN ANY COURT CHALLENGING A COUNTY'S SUBSTANTIATED FINDING AGAINST A PERPETRATOR OF MISTREATMENT, THE STATE DEPARTMENT WILL DEFEND THE STATUTES, RULES, AND STATE-MANDATED PROCEDURES LEADING UP TO THE FINDING, AND WILL DEFEND ALL COUNTY ACTIONS THAT ARE CONSISTENT WITH STATUTES, RULES, AND STATE-MANDATED PROCEDURES. THE STATE DEPARTMENT SHALL NOT BE RESPONSIBLE FOR DEFENDING THE COUNTY DEPARTMENT FOR ACTIONS THAT ARE ALLEGED TO BE IN VIOLATION OF, OR INCONSISTENT WITH, STATE STATUTES, STATE RULES OR STATE-MANDATED PROCEDURES.

### **30.950 CONFIDENTIALITY OF APPEAL RECORDS**

- A. ALL RECORDS SUBMITTED BY THE PARTIES AS PART OF THE STATE LEVEL APPEAL PROCESS AND ALL NOTICES, ORDERS, AGENCY NOTES CREATED BY OR MADE PART OF THE STATE DEPARTMENT'S AGENCY RECORD SHALL BE CONFIDENTIAL AND SHALL NOT BE RELEASED OR DISCLOSED UNLESS SUCH RELEASE OR DISCLOSURE IS PERMITTED BY THE APPLICABLE STATE STATUTES OR 12 CCR 2518, VOLUME 30.250.
- B. INITIAL AND FINAL AGENCY DECISIONS WHERE INFORMATION IDENTIFYING THE APPELLANT, VICTIM(S), OTHER FAMILY MEMBERS, OR MINORS HAVE BEEN REDACTED MAY BE RELEASED TO THE PUBLIC.