DEPARTMENT OF HUMAN SERVICES

Adult Protective Services

ADULT PROTECTIVE SERVICES

12 CCR 2518-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

30.000 ADULT PROTECTIVE SERVICES

30.100 DEFINITIONS [Rev. eff. 8/2/19]

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. Unlawful sexual behavior as defined in Section 16-22-102(9), 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 or temporary 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.

"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 legal relationship; or

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 the process by which a county department provides services to an at-risk adult. A case begins when a report identifies an at-risk adult and allegations that qualify as a mistreatment or self-neglect, and the report is screened in for investigation and assessment. The county department may continue to provide services under a case after the investigation has concluded.

"Caseload average" means the fiscal year monthly average of new cases and the sum of cases carried over from the prior fiscal year, per caseworker. The fiscal year caseload average is calculated as: [(new cases/12) + cases carried over from prior FY] / FTE on June 30 = caseload average]. Caseload average will fluctuate on a monthly basis that may be influenced by a number of factors; therefore, the caseload average is based on the fiscal year 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 self-neglect and improve safety.

"Certification due date" means the date by which new APS staff must complete certification training. The certification due date for supervisors, lead caseworkers, and caseworkers is six months from the date the supervisor, lead caseworker, or caseworker was hired or transferred to the APS program. The certification due date for case aides and screeners is one month from the date the case aide or screener was hired or transferred to the APS program.

"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 a report has been received and the county department has made a response.

"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).

"Direct care", pursuant to Section 26-3.1-101(3.5), C.R.S., means services and supports, including case management services, protective services, physical care, mental health services, or any other service necessary for the at-risk adult's health, safety, or welfare. An employer may identify which employees provide direct care, consistent with this definition, in an internal policy.

"Employee", pursuant to Section 26-3.1-111(2), C.R.S., means a person, other than a volunteer, who is employed by or contracted with an employer and includes a prospective employee.

"Employer", pursuant to Section 26-3.1-111(2), C.R.S., means a person, facility, entity, or agency described in Section 26-3.1-111(7), C.R.S., and includes a prospective employer. "Employer" also includes a person hiring someone to provide Consumer-Directed Attendant Support Services pursuant to C.R.S. Article 10 of Title 25.5, if the person requests a CAPS check.

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

"Exploitation" means an act or omission 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; or,

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; or,

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 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 other 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 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.

"Harmful act" means an act committed against an at-risk adult by a person with a relationship to the at-risk adult when such act is not defined as abuse, caretaker neglect, or exploitation but causes harm to the health, safety, or welfare of an at-risk adult.

"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 or self-neglect 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 or self-neglect.

"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 cardiopulmonary resuscitation (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.

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

A. Abuse;

B. Caretaker neglect;

C. Exploitation; or,

D. A harmful act.

"Mistreatment occurred - not culpable finding" means the investigation established by a preponderance of the evidence that mistreatment occurred but the individual who caused the mistreatment is not culpable. Documentation must clearly support that the individual who caused the mistreatment is an at-risk adult or a minor child with cognitive functioning that prevents the at-risk adult or child from having awareness of the consequences of their actions, as demonstrated by county department observations of cognition or behaviors, and/or interviews with expert collaterals, and/or medical or neuro-psych records, and/or behavioral plans developed by the adult's or child's service agency. A "mistreatment occurred – not culpable finding" must be used if the individual who caused the mistreatment is a child under the age of ten (10) years old.

"Person with a relationship", as applied to the definition of harmful act, means a person who can be identified as having a relationship or attempting to develop a relationship with an at-risk adult. The relationship may include but is not limited to a familial, legal, caretaking, pastoral, friendship, or other relationship and excludes strangers.

"Preponderance of Evidence" means credible evidence that a claim is more likely true than not.

"Protective Services" means services by the state or political subdivisions or agencies thereof in order to prevent the mistreatment or self-neglect of an at-risk adult. Such services include, but are not limited to:

A. Providing casework services;

B. Arranging for, coordinating, delivering where appropriate, and monitoring services, including medical care for physical or mental health needs;

C. Protection from mistreatment and self-neglect;

D. Assistance with applications for public benefits;

E. Referral to community service providers; and,

F. Initiation of probate proceedings.

"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, electronic, 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.

"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 or her health, safety, welfare, or life by not seeking or obtaining services necessary to meet the adult's essential human needs. Choice of lifestyle or living arrangements shall not, by itself, be evidence of self-neglect. Refusal of medical treatment, medications, devices, or procedures by an adult or on behalf of an adult by a duly authorized surrogate medical decision maker 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.

"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.

"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.

"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.

"Support network" means persons who provide consistent, recurrent, or ongoing care or support to the client, such as family members, doctors, care providers, or guardians.

"Unable to investigate/not required finding" means an investigation was not possible because the county department was unable to gather any investigative evidence and exhausted all options and leads by which to conduct an investigation; or the report was screened in and later determined it did not meet APS criteria for investigation, as outlined in Section 30.510.A.

"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.

30.200 ADULT PROTECTIVE SERVICES PROGRAM ADMINISTRATION AND OVERVIEW

30.210 APS PROGRAM ADMINISTRATION [Rev. eff. 1/30/17]

A. The Adult Protective Services (APS) Program is mandated by Title 26, Article 3.1, of the Colorado Revised Statutes. The county department shall administer the APS Program in accordance with the statutes and rules governing the APS Program and in general State Department fiscal and program regulations.

B. The county department shall utilize funding appropriated by the State Legislature to make reasonable efforts to maintain a fiscal year caseload average of no more than twenty to one (20:1).

C. In order to ensure the security of CAPS and the Personal Identifying Information (PII) and Personal Health Information (PHI) contained within, the county department shall notify the State Department through a CAPS support request within three (3) working days upon learning of a change in APS staffing, but no later than the CAPS user's last day of employment. An email to the State Department may substitute for a CAPS support ticket in the event a CAPS support ticket cannot be submitted.

D. The county department shall make reasonable efforts to advise county residents of services available through the APS Program by such methods as Adult Protection Team mandated community education, as defined at Section 30.830, B, 4, press releases, presentations, pamphlets, and other mass media.

E. The county department shall handle responses to requests for services from other agencies, including the State Department, other county departments, or another state's APS Program, in the same manner and time frames as requests received from within the county.

F. The county department shall report to the State Department at such times and in such manner and form as the State Department requires, including through CAPS, manually generated reports, quality improvement and assurance processes, and other forms of reporting.

30.220 APS PROGRAM REVIEW AND OVERSIGHT

A. Under Section 26-1-111(1)(D), C.R.S., the county departments are supervised by the State Department in providing welfare services and shall be subject to the rules of the Executive Director and the State Board of Human Services, which require the State Department to ensure that the county department complies with requirements provided by statute, State Board of Human Services and Executive Director rules (9 CCR 2501-1), federal laws and regulations, and contract and grant terms. More information about the state and county relationship can be found in Sections 26-1-115 through 26-1-119, C.R.S.

B. The county department shall be subject to routine quality control and program monitoring, to minimally include:

1. Targeted review of CAPS documentation;

2. Review and analysis of data reports generated from CAPS;

3. Case review;

4. Targeted program review conducted via phone, email, or survey; and,

5. Onsite program review.

C. The focus of the monitoring shall be to identify:

1. Compliance with program statute and rules;

2. Best practices that can be shared with other county departments; and,

3. Training needs.

D. The county department may be subject to a performance improvement plan to correct areas of identified non-compliance as stated in the February 2, 2021 information memo regarding the APS Oversight Plan, herein incorporated by reference; no later amendments or editions are incorporated. The memo can be found at http://bit.ly/cdhs-memo-01 and is available for public inspection and copying during normal business hours at Adult Protective Services, 1575 Sherman St., Denver, Colorado, 80203.

E. If the county fails to make improvements required under the performance improvement plan, the county department may be subject to corrective action, and/or sanctions, as authorized by Section 26-1-109(4), C.R.S., 9 CCR 2501-1, and the APS oversight memo in Subsection D, above.

30.230 ELIGIBILITY

A. Adult Protective Services (APS) receives and investigates reports of mistreatment and self-neglect and provides protective services to at-risk adults:

1. Who need services and/or ongoing protection due to a report of actual or suspected mistreatment or self-neglect; and/or,

2. For whom the county department has been appointed guardian and/or conservator, or has been designated as representative payee; and/or,

3. Who are residents of long term care facilities, such as nursing homes and assisted living residences, who must relocate due to the closure of the facility and:

a. The county department has been appointed guardian and/or conservator; or,

b. They are in need of protective services due to a lack of case management and/or assistance from any other reliable source.

4. Without regard to income, resources, or lawful presence.

30.240 APS PRINCIPLES – CONSENT, SELF DETERMINATION, AND LEAST RESTRICTIVE INTERVENTION

A. The client's consent is not required for the county department to investigate or assess allegations of mistreatment or self-neglect.

B. The final decision as to acceptance of protective services shall rest with the client unless the client has been adjudicated incapacitated by the court or as outlined in Section 30.600.

1. It shall not be construed that a person is being mistreated or is self-neglecting for the sole reason that he or she is being furnished or is relying upon treatment or practices in accordance with the tenets and practices of that person's recognized church or religious denomination.

C. Protective services provided to and other services arranged for the client shall constitute the least restrictive intervention and be those services provided for the shortest duration and to the minimum extent necessary to meet the needs of the client.

30.250 CONFIDENTIALITY [Rev. eff. 8/2/19]

A. Pursuant to Section 26-3.1-102(7)(a), C.R.S. and except as provided in Section 26-3.1-102(7)(b), C.R.S. and Section 30.250, B, reports of the mistreatment or self-neglect of any at-risk adult, including the name and address of any at-risk adult, member of said adult's family, or informant, or any other identifying information contained in such reports and subsequent cases resulting from the reports, is confidential, and is not public information. The county department shall treat all information related to the report and the case, whether in written or electronic form, as confidential and 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. The 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.

B. Pursuant to Section 26-3.1-102(7)(b), C.R.S., disclosure of a report of the mistreatment or self-neglect of an at-risk adult and information relating to an investigation of such a report and subsequent cases resulting from the report is permitted only when authorized by a court for good cause. A court order is not required, and such disclosure is not prohibited when:

1. A criminal investigation into an allegation of mistreatment is being conducted, when a review of death by a coroner is being conducted when the death is suspected to be related to mistreatment, or when a criminal complaint, information, or indictment is filed and the report and case information is relevant to the investigation, death review, complaint, or indictment.

2. There is a death of a suspected at-risk adult from mistreatment or self-neglect and a law enforcement agency files a formal charge or a grand jury issues an indictment in connection with death.

3. The disclosure is necessary for the coordination of multiple agencies' joint investigation of a report or for the provision of protection services to an at-risk adult, such as, but not limited to:

a. Coordination with law enforcement to conduct a joint investigation;

b. Providing protective services, such as establishing eligibility for, arrangement and implementation of services and benefits, and appointment of a guardian and/or conservator.

c. 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.

d. Reviewing a case with the Adult Protection Team to find solutions to cases with complex service provision needs, in accordance with the Adult Protection Team's by-laws, and when in executive session with members who have signed a confidentiality agreement.

4. The disclosure is necessary for purposes of an audit of a county department of human or social services pursuant to Section 26-1-114.5, C.R.S.

5. 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), C.R.S.

   a. This subsection is in addition to and not in lieu of other federal and state laws concerning protected confidential information. Disclosures allowed are:

      i. Notification made by the county department to substantiated perpetrator(s) of mistreatment pursuant to Section 26-3.1-108, C.R.S.

      ii. Disclosure by the State Department 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), C.R.S.

6. The disclosure is made by the State Department to an employer, or to a person or entity conducting employee screening on behalf of the employer, as part of a CAPS check pursuant to Section 26-3.1-111, C.R.S. or by a county department pursuant to Section 26-3.1-107, C.R.S.

7. The disclosure is made to an at-risk adult, or if the at-risk adult is otherwise incompetent at the time of the request, to the guardian or guardian ad litem for the at-risk adult, with the following conditions:

   a. The disclosure shall not be made until after investigation is complete; and,

   b. The disclosure shall not include any identifying information related to the reporting party or any other appropriate persons, as follows:

      i. The county department shall redact any and all identifying information related to the reporting party; and,

      ii. The county department may redact Personal Identifying Information (PII) related to the client, supports, collaterals, and alleged or substantiated perpetrators, as deemed necessary by the county department; and,

   c. The county department shall redact all Personal Health Information (PHI) protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), state, or federal law of the reporting party, supports, collaterals, and alleged or substantiated perpetrator; and,

   d. The county department shall obtain from the guardian a copy of the guardianship order or guardian ad litem appointment, independently verify that the order or appointment remains valid, and attach the order or appointment to the client's case in CAPS; and,

e. If the guardian is a substantiated perpetrator in a case of mistreatment of an at-risk adult, the disclosure must not be made without authorization by the court for good cause. The county department shall require the guardian to obtain a court order and the county department shall obtain a copy of the court order from the guardian and attach the order to the case in CAPS.

8. The disclosure is made to a county department that assesses or provides protective services for children, when the information is necessary to adequately assess for safety and risk or to provide protective services for a child. A county department that assesses or provides protective services for at-risk adults is similarly permitted to access information from a county department that assesses or provides protective services for children pursuant to Section 19-1-307(2)(X), C.R.S.

a. Information must be limited to information regarding prior or current reports, assessments, investigations, or case information related to an at-risk adult or an alleged perpetrator.

b. The provisions of this Subsection 30.250, B, 8 are in addition to and not in lieu of other federal and state laws concerning protected or confidential information.

i. the county department may not share Personal Identifying Information (PII) or Personal Health Information (PHI) protected by HIPAA that is not necessary to the child welfare investigation, assessment, or provision of services for the child(ren).

ii. Information provided to child welfare staff must be the minimum necessary for worker safety concerns for child welfare staff, the investigation, assessment, and provision of services for the child(ren).

iii. County department APS staff may share information with any county department's child welfare staff.

iv. The county department's child welfare staff shall not be provided access to CAPS, unless that child welfare staff person is also the county department's APS staff person.

9. The disclosure is made to an employer required to request a CAPS check pursuant to Section 26-3.1-111 or to the State Department agency that oversees the employer when the information is necessary to ensure the safety of other at-risk adults under the care of the employer. The information must be the minimum information necessary to ensure the safety of other at-risk adults under the care of the employer or oversight of the State Department agency.

C. 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.

D. Information released under Section 30.250, B, 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 Section 26-3.1-102, (3), C.R.S;

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.

E. 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, except as outlined in Section 30.250, B.

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.

3. The county department or State Department shall comply within the time frame ordered by the court, unless a motion to quash is pending, or, if there is no stated timeline within the court order, in accordance with county department or State Department policy and provide a written notice with the information to be released regarding the legality of sharing confidential information.

F. 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, B. 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;

4. Attorneys, guardians, conservators, agents under powers of attorney, representative payees, and other fiduciaries;

5. Family members, reporting parties, or other interested parties;

6. Any alleged perpetrator; and,

7. Media representatives.

G. Any person who violates any provision of this Subsection 30.250, A through F is guilty of a Class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars as provided in Section 26-3.1-102(7), C.R.S.

H. 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 created prior to July 1, 2014 when CAPS was implemented shall be kept in a secured area when not in use. All other documents related to APS reports and cases shall be kept in CAPS, as outlined in Section 30.260, B and C.

2. Laptops and other mobile devices used to document in the field shall be protected and encrypted in compliance with HIPAA security requirements.

3. Email correspondence that contains APS confidential information shall be sent through secure encryption programs.

4. 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.

a. All CAPS users must electronically sign the CAPS Security and Confidentiality Agreement annually and follow the requirements therein.

b. County departments shall not access information in CAPS that is not necessary to serve the client.

c. Violations of CAPS security and confidentiality requirements may result in loss of access to CAPS, at the discretion of the State Department.

I. Clients shall be referred to the Colorado Address Confidentiality Program (ACP) as appropriate to determine their eligibility for services including the legal substitute mailing address and mail forwarding services. The State Department and county department shall comply with any applicable provisions for APS clients enrolled in the ACP.

30.260 DOCUMENTATION [Rev. eff. 5/30/18]

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 support network individuals;

6. All collaterals;

7. Ongoing case notes;

8. Case closure; and,

9. Any other processes related to the case.

B. All documents and evidence relevant to the investigation, assessment, and identification of needed services for the client shall be scanned into CAPS, to include:

1. A release of information form(s) signed by the client, when appropriate;

2. A copy of a power of attorney, living will declaration, and/or other advance directive if the county department receives or discovers information that the client has one in place, except when:

a. The client has fiduciary authority in place but the client or the fiduciary refuses to provide copies of the document, the county department shall attempt to review the documents to determine the authority provided within.

b. If unable to obtain or review relevant documentation for good cause the county department shall document all attempts to obtain a copy and review the document(s), and if able to review the document(s) shall document the authority provided.

3. A copy of all associated documents if the county department is appointed guardian, conservator, or representative payee or receives or discovers information that the client has one in place, the county department shall scan and upload documentation as follows:

a. All court documents, court reports, Social Security Administration appointments, correspondence, and other documents related to the county-held guardianship, conservatorship, or representative payeeship shall be scanned and uploaded to CAPS.

b. A copy of the court order or representative payee assignment for non-county held guardianship, conservatorship, or representative payeeship shall be scanned and uploaded to CAPS, except when:

i. The client has a guardianship, conservatorship, or representative payeeship in place but the client or the fiduciary refuses to provide copies of the document, the county department shall attempt to review the documents to determine the authority provided within.

ii. If unable to obtain or review relevant documentation for good cause the county department shall document all attempts to obtain a copy and review the document(s), and if able to review the document(s) shall document the authority provided within.

4. Other documentation and evidence collected during the investigation and assessment, such as medical reports, results of psychiatric evaluations, photographic documentation, etc. If unable to obtain relevant documentation for good cause the county department shall document all attempts to collect the evidence and why the evidence was unattainable.

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.

30.300 STAFF QUALIFICATIONS, TRAINING, AND DUTIES

30.310 EDUCATION AND EXPERIENCE QUALIFICATIONS

A. Prior to making a formal offer to a candidate for an APS position, the county department shall ensure that all personnel who will be working in the APS program possess the following minimum qualifications for education and experience, or have an approved waiver in place as outlined in 30.310.B. The State Department may suspend or deny training and/or CAPS access to persons who do not meet the requirements outlined or have an approved waiver in place.

B. The APS caseworker position requires a Bachelor's degree or higher with an equivalent of thirty (30) semester or forty-five (45) quarter hours in human behavioral sciences or health care related courses, such as, social work, sociology, psychology, psychiatry, gerontology, nursing, special education, family intervention techniques, diagnostic measures, therapeutic techniques, guidance and counseling, criminal justice, or other human behavioral sciences, or a medical field relevant to the APS program and/or at-risk adults.

C. The casework supervisor position, including managers, administrators, and/or county directors who provide direct casework supervision (herein known collectively as supervisors) requires:

1. A bachelor's degree with an equivalent of thirty (30) semester or forty-five (45) quarter hours in human behavioral sciences or health care related courses, such as, social work, sociology, psychology, psychiatry, gerontology, nursing, special education, family intervention techniques, diagnostic measures, therapeutic techniques, guidance and counseling, criminal justice, or other human behavioral sciences or medical field relevant to the APS program and/or at-risk adults; and,

2. Three (3) years of professional caseworker, case management, or human services experience in a public or private human services agency; or,

3. A master's degree or higher in a social work or human behavioral sciences, as described in Section 30.310.a.3.a; and,

4. Two (2) years of professional caseworker, case management, or human services experience in a public or private human services agency.

D. The Case Aide and Intake Screener positions, if available in the county department, require a high school diploma or a General Equivalency Diploma (GED) plus at least six (6) months full time public contact in human services or a related field. Substitution for public contact is successful completion of a certificate program relevant to human services, and/or at least six (6) semester or nine (9) quarter hours in a human behavioral sciences or health care field, as described in Section 30.310.A.1.

E. If proven recruitment difficulty exists or a current county employee has exhibited qualifying knowledge and work skills, as determined by the county department and the candidate does not meet the education and experience requirements outlined in Section 30.310.A, the county department may request a waiver of the requirements using the state-approved form. The request shall include.

1. The position for which the county department is requesting a waiver, including the percentage of time the position will be performing the duties of the APS program (% FTE), and the type of waiver requested, as follows:

a. Temporary educational waiver. Request this type of waiver when the pool of candidates is limited due to recruitment difficulty and/or there is an internal candidate who has not yet completed his or her educational requirements. Provide documentation on the:

i. Recruitment efforts made by the county department and identified difficulties, and/or documentation of the current employee's experience with the county department; and,

ii. Educational progress of the proposed candidate, including the type of degree and major that is being sought.

iii. Anticipated completion date of the candidate's degree.

b. Permanent educational waiver. Request this waiver when the pool of candidates is limited due to recruitment difficulties and/or when there is an internal candidate, and meeting the educational requirements is not a reasonable expectation of the candidate. The county department must submit its request with documentation on the qualifying knowledge and skills that would allow the candidate to successfully carry out the requirements of the APS position, as follows:

i. The recruitment efforts made by the county department and identified difficulties, and/or documentation of the current employee's experience with the county department; and,

ii. The reason the completion of the educational requirement is not a reasonable expectation for the candidate; and,

iii. The type and years of work experience with at-risk adults or other vulnerable populations applicable to the APS program and clients, which may substitute for the required education; and,

iv. Other relevant qualities and information that demonstrate the candidate could successfully carry out the requirements of the APS position; and,

v. The county department's plan to provide support in the person's knowledge and skill growth.

2. The State Department will review the waiver request and will issue a:

a. Temporary educational waiver for up to two (2) years, to allow the applicant to complete their degree. The county department may request an extension of the waiver near the end of the waiver term if more than two years is needed to complete the degree; or,

b. Permanent educational waiver if the county department has sufficiently supported the request for a permanent educational waiver; or,

c. Denial of the waiver, including the reason for the denial.

F. All APS staff education and experience shall be documented in CAPS.

30.320 BACKGROUND CHECK REQUIREMENTS

A. Pursuant to Section 26-3.1-107(2), C.R.S, beginning January 1, 2019, county departments shall complete a CAPS check prior to hiring a new APS employee who will have direct contact with at-risk adults, and may complete a CAPS check for existing APS employees, using one of two methods:

1. Method One: The county APS supervisor searches for the new or existing employee in CAPS to determine if the employee has been substantiated for mistreatment in an APS case.

a. The county department APS supervisor shall exclude findings, as outlined in Section 30.960.K.

b. The county department APS supervisor shall attest to completing the CAPS check when submitting the request for CAPS access for the new APS employee.

2. Method Two: The county department registers as an employer and requests the CAPS check through the process outlined in Section 30.960. The county department APS supervisor shall attest to utilizing method two for the CAPS check when submitting the request for CAPS access for the new APS employee.

B. The county department may use the information received through a CAPS check to inform an employment decision or as grounds to conduct further investigation, as outlined in Section 26-3.1-111(6)(c), C.R.S.

C. Information obtained through a CAPS check shall only be released pursuant to Section 26-3.1-111(6)(d), C.R.S.

D. The county department shall complete a criminal background check on all prospective APS employees who, while in their employment, have direct, unsupervised contact with any actual or potential at-risk adult.

E. If the county department has not previously requested and received a criminal background check on a current employee hired on or after May 29, 2012, the county department shall immediately request a fingerprint criminal background check. The county department shall pay the fee.

F. The county department shall require a fingerprint background check for all prospective employees.

1. The county department shall submit to the Colorado Bureau of Investigation (CBI), pursuant to Section 26-3.1-107(1), C.R.S, a complete set of fingerprints taken by a qualified law enforcement agency or qualified fingerprint agency to obtain any criminal record held by the CBI.

2. The background check shall include a check of the records at the Colorado Bureau of Investigation and the Federal Bureau of Investigation.

3. The county department is strongly urged to require the background check be flagged for future notification of arrest and/or conviction.

4. The prospective employee shall pay the fee for the criminal record check unless the county department chooses to pay the fee.

5. The prospective employee's employment shall be conditional upon a satisfactory criminal background check.

a. The current employee or applicant shall be disqualified from employment, regardless of the length of time that may have passed since the discharge of the sentence imposed, for any felony criminal offenses as defined in Title 18, Articles 2-10, 12-13, 15-18, 20, 23 of the Colorado Revised Statutes, or any felony offense in any other state the elements of which are substantially similar to the elements of any of the offenses included herein.

b. At the county department's discretion, a person shall be disqualified from employment either as an employee or as a contracting employee if less than ten years have passed since the person was discharged from a sentence imposed for conviction of any of the following criminal offenses:

1) Third degree assault, as described in Section 18-3-204, C.R.S.;

2) Any misdemeanor, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;

3) Violation of a protection order, as described in Section 18-6-803.5, C.R.S.;

4) Any misdemeanor offense of child abuse, as defined in Section 18-6-401, C.R.S.;

5) Any misdemeanor offense of sexual assault on a client by a psychotherapist, as defined in Section 18-3-405.5, C.R.S.;

6) Any misdemeanor offense of arson, burglary and related offenses, robbery, or theft, as defined in Title 18, Articles 1-4, C.R.S.;

7) A pattern of misdemeanor convictions within the ten years immediately preceding the date of submission of the application, or;

8) Any misdemeanor offense in any other state, the elements of which are substantially similar to the elements of any of the offenses described above.

6. Prospective employees who are transferring from one county department to another are not required to be re-fingerprinted if they complete the following process:

a. New employees must obtain their CBI clearance letter or a photocopy of their processed fingerprint card from their former employer. They must attach it to a new fingerprint card, with the top portion completed.

b. The new fingerprint card must include the new employer's address. “Transfer – County Department” must be inserted in the “Reason Fingerprinted” block.

c. The CBI clearance letter (or photocopy of the old fingerprint card) and the new fingerprint card shall be sent with payment by the county department to the CBI.

d. County departments that have accounts with CBI are not required to send payment, but the county department shall enter its CBI account number in the OCA block of the new fingerprint card.

30.330 TRAINING REQUIREMENTS [Rev. eff. 4/1/18]

A. The county department shall ensure that all APS staff complete required APS training as outlined in Section 30.330.

B. APS caseworkers, lead caseworkers, and supervisors whose job titles are identified in Section 30.310.A and B must meet the required initial certification requirements and recertification requirements each fiscal year thereafter in order to perform the duties of an APS caseworker or supervisor.

C. Certification for new caseworkers and supervisors includes successful completion of the pre-academy workbook (PAW), CAPS training, and Training Academy, as outlined below.

1. The PAW shall be completed within one (1) month of hire or transfer to the APS program.

a. The PAW must be completed at least two business days prior to attending CAPS training; and,

b. The PAW must be completed at least five business days prior to attending Training Academy.

2. CAPS training must be completed prior to receiving access to CAPS and must be completed before beginning any APS casework, as outlined in Section 30.330.C.3, and in no situation later than six months following hire or transfer to the APS program.

3. Caseworkers and supervisors who have completed the PAW and CAPS training may begin working in the APS program. They shall obtain consultative support until fully certified on all reports and cases from a certified county APS supervisor or lead worker or from the State Department. This consultative support must continue until full certification is obtained through the completion of Training Academy.

4. Training academy must be completed within six (6) months of hire or transfer to the APS program.

5. If an APS caseworker or supervisor does not complete certification requirements by the certification due date, as outlined above, CAPS access shall be revoked and they will not be able to continue to perform APS casework or supervisory duties until new worker certification is completed.

    i. the staff person must complete certification for new workers during the next available Training Academy and/or CAPS training session.

    ii. If certification is obtained after the certification due date, recertification hours may also be required, as outlined in Section 30.330.E.

6. If a newly hired APS caseworker or supervisor has held certification as an APS caseworker or supervisor in the state of Colorado in the previous four (4) years and has successfully completed basic investigation training, completion of the certification process is not required. Caseworkers and supervisors who are transferring from one county APS program to another in the same fiscal year must continue to meet their continuing education hours for recertification, as outlined in Section 30.330.F.

D. All case aides and screeners shall complete the pre-academy workbook (PAW) and CAPS training within one (1) month of hire or transfer to the APS program and shall not be provided CAPS training until the PAW has been completed.

1. The PAW must be completed at least two business days prior to CAPS training.

2. Case aides and screeners may attend APS training academy, space permitting.

3. The certification due date is used to determine when the staff person's recertification requirement begins. If certification was obtained after the certification due date, recertification hours may also be required, as outlined in Section 30.330.E.

E. Other State-Department approved county department staff with a business need for view-only access to CAPS shall complete the PAW at least two business days prior to CAPS training.

F. The county department shall ensure that all APS staff members fulfill recertification requirements each fiscal year.

1. Recertification requirements begin the first state fiscal year after the earlier of the certification completed date or the certification due date, as outlined in Sections 30.100 and 30.330.C and D.

2. County department APS staff shall complete continuing education hours by June 30 each state fiscal year.

    a. Unless mandated by the State Department, attendance at any specific training event is at the supervisor's discretion.

b. APS staff who have a break in service during a fiscal year, for example for extended medical leave or a transition from one county APS program to another, shall complete recertification hours on a prorated basis for that fiscal year, as follows:

i. Up to 25% time in service must complete 25% of required recertification hours.

ii. Up to 50% time in service must complete 50% of required recertification hours.

iii. Up to 75% time in service must complete 75% of required recertification hours.

iv. Up to 100% time in service must complete 100% of required recertification hours.

3. If the APS staff person does not complete new worker certification by the certification due date and completes the certification in the following state fiscal year, the staff person shall complete recertification requirements as well as the new worker certification that fiscal year. An exception to the recertification hours requirement may be approved by the State Department for good cause.

4. Continuing education hours for recertification must be related to APS casework and client populations, including, but not limited to:

a. Client populations, such as behavioral health, cognition, brain injury, disabilities, etc.

b. Provision of casework services, such as best practices, Medicaid and other public benefits training, community resources, etc.

c. Interview, investigation, and client assessment skills.

d. Legal topics and issues, such as guardianship, end of life decision-making, etc.

e. Mistreatment related, such as identifying signs of mistreatment, understanding medical reports, sexual assault training, etc.

f. Worker safety, resiliency, and self-care.

g. Supervisors may obtain training on leadership and supervision for up to fifty percent (50%) of required hours. Lead workers who are performing supervisory duties may obtain leadership and supervision training for up to twenty-five percent (25%) of required hours.

5. At least half of all required continuing education hours must be acquired through state-provided training opportunities. Non-state provided training hours may be used for up to half of all required continuing education hours and may include:

a. National APS organizations' webinar training;

b. Child welfare training academy coursework that has cross-over relevance and has been approved by the State Department APS unit;

c. Other state or national APS conferences;

d. Training conducted by agencies or professionals that work with older adults or people with disabilities such as a Community Centered Board, Alzheimer's Association, Colorado Coalition for Elder Rights and Abuse Prevention (CCERAP).

e. Reading professional journals or watching educational videos about current APS best practices, research, and interventions.

5. The number of hours required for recertification each fiscal year is based on the person's position and the percentage of time the person works in the APS program, as designated in CAPS, as follows:

a. Supervisors, lead caseworkers, and caseworkers:

i. Up to twenty-five percent (25%) APS FTE shall complete at least ten (10) hours.

ii. Up to fifty percent (50%) APS FTE shall complete at least twenty (20) hours.

iii. Up to seventy-five percent (75%) APS FTE shall complete thirty (30) hours.

iv. Up to one hundred percent (100%) APS FTE shall complete forty (40) hours.

b. Case Aides:

i. Up to twenty-five percent (25%) APS FTE shall complete at least five (5) hours.

ii. Up to fifty percent (50%) APS FTE shall complete at least ten (10) hours.

iii. Up to seventy-five percent (75%) APS FTE shall complete fifteen (15) hours.

iv. Up to one hundred percent (100%) APS FTE shall complete twenty (20) hours.

G. All training hours shall be documented in CAPS within fourteen (14) calendar days of completion of the training.

30.340 STAFF DUTIES AND RESPONSIBILITIES [Rev. eff. 5/30/18]

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. The supervisor shall review and provide final approval of all findings, as outlined in Section 30.520.A,9, and ensure timely notification is made to perpetrators who have substantiated findings made against them in APS cases, as outlined in Section 30.910.

5. 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.

6. Review of cases shall be completed using one of two approved methods:

   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:

      1) Upon completion of the initial investigation, assessment, and case plan;

      2) Upon completion of a six month reassessment for cases open longer than six months; and,

      3) At case closure.

7. Assess APS caseworkers' professional development needs and provide opportunities for training.

8. 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 Section 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.

4. Develop, implement, and monitor case plans, conduct required client visits, and provide protective services as outlined in Section 30.600;

5. Document case findings as outlined throughout 12 CCR 2518-1; and,

6. 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;

2. Assign all reports to the supervisors for determination of appropriate response; and,

3. Direct urgent calls to the appropriate internal and external authorities.

30.400 REPORT RECEIPT AND RESPONSE

30.410 INTAKE [Rev. eff. 1/30/17]

A. The county department shall receive oral, electronic, 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. Reports received via mail, or voicemail, or email shall be documented in CAPS within twenty-four (24) hours of receipt. As applicable to this rule, reports received by the county via mail, voicemail, or electronic means during non-business hours may be considered to be received by the county department no later than the first business day following the report. If unable to enter the report in the system timely, the county department shall document the reason in CAPS.

D. Reports that include an allegation of mistreatment must be forwarded to the appropriate law enforcement agency within twenty-four (24) hours after receipt of the report. As applicable to this rule, reports made via mail, voicemail, or electronic means during non-business hours may be considered to be received by the county department no later than the first business day following the report.

E. 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, and relationship to the client, when mistreatment is alleged.

F. 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.

5. In rare situations a county department may conduct a joint investigation with another county department or may take primary ownership of a case that would not typically be within the county department's jurisdiction.

a. The original county departments of jurisdiction shall be responsible for responding to the report and beginning the investigation until the involved county departments have reached a decision regarding the responsible county department to manage the cases.

b. There must be good cause for a joint response/investigation or for taking ownership outside of the county department's normal jurisdiction, such as multiple clients being mistreated by the same alleged perpetrator(s), whether in a facility or community setting, when those clients' residences are in different counties; and,

c. The county departments involved must all agree to the joint response/investigative and/or primary owner of a case; and,

d. The good cause for the change in jurisdiction must be documented in CAPS.

G. County departments shall utilize all available resources to determine jurisdiction, such as:

1. History within CAPS;

2. Colorado Benefits Management System (CBMS);

3. Colorado Courts;

4. Where services are being provided; and/or,

5. The adult's school.

H. 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.

30.420 REPORT CATEGORIZATION [Rev. eff. 1/30/17]

A. The county department shall review and evaluate all reports received utilizing the RED team process and framework or a supervisory review to determine whether the report should be screened in for investigation or screened out.

B. The county department shall first determine whether the report involves mistreatment or self-neglect of an adult the county department could reasonably conclude was an at-risk adult at the time of the mistreatment, based upon information in the report related to physical, medical, and/or cognitive deficits or diagnoses and/or information in prior APS reports or cases.

C. If the report does not involve mistreatment or self-neglect of an at-risk adult the report shall be screened out no later than the third working day after receipt of the report.

D. If the report does involve mistreatment or self-neglect of an at-risk adult, the county department shall then make a screening decision based on a determination as to whether the report meets one of the exceptions outlined below:

1. The report shall be screened out and the county department shall not complete an investigation when:

   a. The alleged incidence was previously investigated and there is no new information in the report that impacts the client's current health, safety, or welfare;

   b. The only allegation is self-neglect of an adult who has been assessed by APS within the past six months, and, the self-neglect is substantively unchanged from the previous APS case, and the adult has a recent history of refusing services, and there is no reported decline in the adult's abilities and/or change in circumstances;

   c. There is no information to locate the client and no ability to obtain additional information necessary to proceed with an investigation;

   d. The only allegation is self-neglect and the county department has confirmed with the reporting party or other professional that the adult has been moved to a stable, long-term and safe placement, the client has sufficient services in place to mitigate risks, or the adult died prior to the county department's screening decision.

2. The report may be screened out when:

   a. The mistreatment occurred more than one hundred-eighty (180) days prior to the report; and,

   b. The county department can reasonably determine that the alleged perpetrator no longer has contact with the client and/or is no longer providing direct care to at-risk adults, pursuant to Section 30.960.A.

c. The county department may screen the report in for investigation at the county department's discretion.

3. Reports not subject to an exception outlined in Section 30.420.D.1 and 2 shall be screened in for investigation and are determined to be a case; except when a new allegation(s) is received and the county department has a current open case, the new report shall be screened out and the new allegation shall be added to and investigated in the current open case.

E. If the report is not screened in because it does not meet criteria for APS intervention, the county department may:

1. Contact the adult to offer services for another program in the county department, such as Medicaid or behavioral health services, and/or provide referral information to the adult for another service agency, or refer the reporting party to another agency or resource.

2. Inform the reporting party of the decision not to investigate.

F. The county department shall document the reason the report was screened out.

30.430 RESPONSE PRIORITY [Rev eff. 1/30/17]

A. The county department shall determine a time frame response to the case based upon the reported level of risk.

B. When factors present indicate the client is in clear and immediate danger or urgent and significant risk of harm due to the severity of the mistreatment or self-neglect, or due to the vulnerability or physical frailty of the client, the county department shall:

1. Determine the case to be an emergency;

2. Call 911, if appropriate based on the circumstances of the report; and,

3. Make an initial response as soon as possible, but no later than twenty-four (24) hours including non-business days, after the receipt of the report. An initial response shall be:

a. An in-person visit with the client; or,

b. An attempted in-person visit with the client; or,

c. An outreach to another professional who is not alleged to be the perpetrator, who can evaluate the client's immediate safety when conducting an in-person visit would be detrimental to the client and/or unsafe to the client and/or the county department.

4. If the initial response was not an in-person contact with the client and the county department was unable to ascertain the client's safety, the county department shall attempt an in-person client contact each day following the initial attempt at contact, including non-business days.

a. A law enforcement welfare check may be substituted for attempts at contact during non-business days. The county department shall follow up on the next working day.

b. If the county department has confirmed the client to be unavailable or safe, such as in the intensive care unit (ICU), the reason for delayed response shall be documented.

c. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

d. Following the third day of unsuccessful attempts at contact, the county department may choose to call, email, text, or send a letter requesting an appointment with the client.

e. If attempts at contact remain unsuccessful, the county department shall close the case no later than thirty-five (35) calendar days after the last attempt at contact.

f. The county department shall document all attempts to contact the client.

5. If the initial response was not an in-person contact with the client but the county department was able to ascertain safety, it shall make an in-person client contact on the first working day following the report.

a. If the county department has confirmed the client to be unavailable, such as in the intensive care unit (ICU), the reason shall be documented.

b. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

c. Following the third day of unsuccessful attempts at contact, the county department may choose to call, email, text, or send a letter requesting an appointment with the client.

d. If attempts at contact remain unsuccessful, the county department shall close the case no later thirty-five (35) calendar days after the last attempt at contact.

e. The county department shall document all attempts to contact the client.

C. When the report and subsequent supervisory review and/or RED team process indicate the client is not in immediate danger or urgent risk of harm the county department shall:

1. Determine the case to be a non-emergency.

2. Make an initial response no later than three (3) working days beginning the day after the county department's receipt of the report. An initial response shall be:

a. An in-person visit with the client; or

b. An attempted in-person visit with the client;

c. An outreach to another professional who is not alleged to be the perpetrator, who can evaluate the client's immediate safety when conducting an in-person visit would be detrimental to the client and/or unsafe to the client and/or the county department.

3. When the initial response was not an in-person contact with the client or the county department was unable to ascertain the client's safety, the county department shall attempt an in-person client contact every other working day for a minimum of three attempts.

    a. A law enforcement welfare check may be substituted for one attempt at contact and qualifies as one of the three required attempts at contact.

    b. If the county department has confirmed the client to be unavailable or safe, the reason for delayed response shall be documented.

    c. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

    d. Following the third unsuccessful attempt at contact, the county department may choose to call, email, text, or send a letter requesting an appointment with the client.

    e. If attempts at contact remain unsuccessful, the county department shall close the case no later than thirty-five (35) calendar days after the last attempted contact.

    f. The county department shall document all attempts to contact the client.

4. If the county department was able to ascertain safety,

    a. The county department shall attempt an in-person client contact within the response time frame or beginning on the first working day after ascertaining safety if safety were ascertained on the last day of the response time frame. Attempts at contact shall continue every other working day for a minimum of three attempts.

    b. If the county department has confirmed the client to be unavailable, the reason shall be documented.

    c. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

    d. Following the third unsuccessful attempt at contact, the county department may choose to call, email, text, or send a letter requesting an appointment with the client.

    e. If attempts at contact remain unsuccessful, the county department shall close the case no later than thirty-five (35) calendar days after the last attempt at contact.

    f. The county department shall document all attempts to contact the client.

D. Prior to the initial in-person client contact visit, the county department shall determine whether:

1. The visit and investigation should be made in conjunction with law enforcement and/or personnel from other agencies in accordance with the county department's cooperative agreements;

2. The client is in CAPS and/or is otherwise known to the county department;

3. Safety concerns exist, based on historical data and information provided in the report, requiring the caseworker to be accompanied by:

    a. Law enforcement;

    b. The supervisor;

    c. Another case worker; or,

    d. Emergency, medical, and/or mental health personnel, if known or suspected medical or psychiatric conditions exist.

30.500 INVESTIGATION AND ASSESSMENT

30.510 INVESTIGATION AND ASSESSMENT OVERVIEW [Rev. eff. 4/1/18]

A. The county department shall conduct a thorough and complete investigation into the allegations, with the following exceptions:

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, as outlined in Section 30.660.

    a. The client assessment status areas of activities of daily living (ADLS)/ instrumental activities of daily living (IADLS), cognition, behavioral concerns, and medical shall be used as the key determiners of whether an adult is at-risk, by definition.

    b. The county department may provide the adult referrals to resources or continue to assist the adult through other county department programs.

    c. The finding for the allegation(s) shall reflect that an investigation was not required.

2. If the only allegation is self-neglect and the county department is able to determine by confirming with other professionals that the client's health, safety, and welfare is no longer at risk because the client's needs are being met by a safe placement or an appropriate and adequate level of services, the county department shall close the case as outlined in Section 30.660.

3. If the client has passed away and the only allegation in the case is self-neglect the county department shall stop the investigation and close the case, as outlined in Section 30.660.

B. In cases where there is an allegation of mistreatment and the client is deceased the county department shall conduct an investigation.

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.

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

E. If upon initial investigation, a change in jurisdiction is appropriate, as outlined in Section 30.410.F.5, the ongoing investigation will follow the established agreement.

30.520 INVESTIGATION [Rev. eff. 8/2/19]

A. The county department shall conduct an investigation to determine findings related to allegations of mistreatment or self-neglect, as required by Section 30.510. 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, except in self-neglect only cases, 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;

e. The long-term care ombudsman; and/or,

f. County department Child Welfare programs.

3. Making reasonable efforts to conduct interviews, as outlined below. The interviews and collection of evidence must address the specific allegations identified in the report and any new mistreatment or self-neglect that may be identified during the assessment or investigation. If an interview cannot be conducted for good cause, the attempts and the cause shall be documented.

a. An in-person initial interview with the client, unannounced and in private, whenever possible.

i. The county department shall document in CAPS that the visit was unannounced and in private and if not unannounced and/or in private for good cause, the cause shall be documented in CAPS.

ii. If the client is unable to be interviewed for good cause, the cause shall be documented in CAPS.

b. Ongoing interviews with the client to complete the investigation and assessment as outlined in Section 30.530. If the client refuses to participate in the investigation or cannot be located, the county department shall complete the investigation by gathering evidence and interviewing other collateral contacts that have knowledge of the client and/or the alleged mistreatment or self-neglect.

c. Interviews with all collateral contacts. In the event a collateral contact cannot be located or interviewed for good cause, the cause shall be documented in CAPS; and,

d. Interview(s) with the alleged perpetrator(s), with or without law enforcement. In the event the alleged perpetrator is unable to be located or interviewed for good cause, the cause shall be documented in CAPS. The following information shall be collected related to the alleged perpetrator(s), to the fullest extent possible, in addition to information about the allegations:

i. Full name of the alleged perpetrator(s) with accurate spelling;

ii. Current email address, when available;

iii. Current physical and mailing address;

iv. Date of birth; and,

v. Other identifying demographic and contact information.

4. 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,

f. Staffing records and employee work schedules when investigating in a facility.

5. Making a finding regarding each allegation and alleged perpetrator, including the severity level of the mistreatment when there is a substantiated finding. A severity level shall not be assigned to a substantiated self-neglect allegation.

6. Determining whether there are additional mistreatment or self-neglect concerns not reported in the initial allegations. If there are additional concerns the county department shall enter the mistreatment and alleged perpetrator or self-neglect into the case, investigate, and make a finding, including the severity level of the mistreatment when there is a substantiated finding. A severity level shall not be assigned to a substantiated self-neglect allegation.

7. Supervisory review of all findings and approval only when the county department has completed a thorough investigation and the evidence justifies the findings.

8. Notifying law enforcement when criminal activity is suspected.

B. Each employer defined by Section 30.960.A must provide access to the county department to conduct an investigation into an allegation of mistreatment. Access includes the ability to request

interviews with relevant persons and to obtain relevant documents and other evidence, as follows:

1. The patient, client, resident, or consumer of the agency who is the client in an APS case of mistreatment or who is relevant to the APS investigation; and,

2. Personnel, including paid employees, contractors, volunteers, and interns who are relevant to the investigation; and,

3. Individual patient, client, resident, or consumer records relevant to the investigation, including:

    a. Health records;

    b. Incident and investigative reports;

    c. Care and behavioral plans;

    d. Staffing schedules and time sheets; and,

    e. Photos and other technological evidence.

4. Entrance to the employer's premises as necessary to complete a thorough investigation. At the time of entry, county department staff must identify themselves and the purpose of the investigation to the person in charge of the entity.

5. Attorneys and their staff who are providing legal assistance pursuant to a contract with an area agency on aging, and the long-term care ombudsman are not subject to the requirements in this Section 30.520.B.

C. In the event that a finding is determined to be incorrect after supervisory approval, the county department shall take the following applicable steps:

1. If the finding was originally unsubstantiated and the finding is changing to inconclusive, correct the finding in CAPS.

2. If the finding was originally inconclusive and the finding is changing to unsubstantiated, correct the finding in CAPS.

3. If the finding was originally unsubstantiated or inconclusive and the finding is changing to substantiated, correct the finding in CAPS and notify the alleged perpetrator as outlined in Section 30.910, A-C.

4. If the finding was originally substantiated and the finding is changing to unsubstantiated or inconclusive, correct the finding in CAPS and notify the alleged perpetrator of the correction as outlined in Section 30.910, C. If there is an open appeal at the time of the correction, the county department shall notify the State Department of the change in finding no later than ten (10) calendar days of identifying the need to correct the finding.

D. The county department shall complete the investigation into the allegation(s) within sixty (60) calendar days of the receipt of the report. When allegations are received or identified after the initial report, the county department shall complete the investigation into the additional allegation(s) within sixty (60) days of the receipt or identification of the additional mistreatment or self-neglect. For all investigations the county department shall ensure that documentation of the investigation occurs in CAPS throughout the investigation process, as follows:

1. All interviews, contacts, or attempted contacts with the client, collaterals, 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 sixty (60) calendar days from receipt of the report, including supervisor review and approval of the findings. If the county is unable to complete the investigation timely for good cause, the cause shall be documented in CAPS. Beginning July 1, 2018 all substantiated perpetrators shall be provided notice of the substantiation and their appeal rights, as outlined in Section 30.910.

30.530 ASSESSMENT [Rev. eff. 1/30/17]

A. The county department shall begin an assessment of the client's risk, safety, and strengths during the initial in-person visit.

B. Using the assessment tool in CAPS, the county department shall complete a baseline assessment of the client to determine the client's risk and safety, whether the client is an at-risk adult, and if there is a need for protective services.

1. If the client is in clear and immediate danger, the county shall intervene immediately by notifying the proper authorities or arranging for appropriate emergency responders.

2. If the client dies while the county department is completing the initial assessment, the assessment shall be completed using the information that was obtained prior to the client's death. If the client passed away prior to the beginning of the investigation and assessment, an assessment shall not be completed.

3. If the client is not an at-risk adult, as defined in Section 30.100, the case shall be closed, per Section 30.510, A. The assessment status areas of ADLS/IADLS, cognition, behavioral concerns, and medical shall be used as the key determiners of whether an adult is at-risk.

C. The county department shall complete and document the assessment in CAPS within forty-five (45) calendar days of the receipt of the report, as follows:

1. All impacts (significant, minor, no, and unknown) and mitigating services, and the assessment narrative and/or case notes supporting selected impacts and services, shall be documented and the assessment marked complete no later than forty-five (45) calendar days from receipt of the report.

2. If the assessment cannot be completed within this time frame for good cause, the county department shall document the cause.

30.600. CASE PLANNING AND IMPLEMENTATION

30.610. CASE PLAN DEVELOPMENT [Rev. eff. 1/30/17]

A. The county department shall develop a case plan for protective services based upon the findings of the investigation and assessment and in accordance with APS principles.

B. A case plan shall not be developed and the case shall be closed when there are no identified needs, when the client's needs have already been addressed at the time of the investigation and assessment, when the client is not an at-risk adult, or when the client passed away prior to the development of a case plan.

C. The case plan shall include:

1. The service needs necessary to successfully achieve safety improvement for any identified risk factors, characterized with a significant impact, for which there is no adequate mitigating service in place at the time of APS initial response;

2. The person responsible for arranging each identified service need, and if other than the county department, document the individual's agreement to arrange the service need; and,

3. The status of all identified service needs.

D. The county department shall complete and document the case plan within forty-five (45) calendar days of the receipt of the report. If the case plan cannot be completed within this time frame for good cause, the county department shall document the cause in CAPS. The county department shall add newly identified service needs to the case plan throughout the life of the case.

E. The county department shall implement services, upon consent of the client, that are available in the community and that the client is eligible to receive at no or reduced cost or is able to pay for privately. The county department shall not be required to provide and/or pay for services that are not available in the community or those that the client is not eligible to receive at no or reduced cost or is able to pay for privately.

F. If services are unavailable through other government programs or local service providers and the APS client is unable to pay for the services, the county shall utilize APS client services funds, within available appropriations, to purchase goods and services for the APS client.

1. The county department shall not open an APS case only to purchase a service for a community member and shall not use APS client services funds for any service that is not intended to improve the health, safety, and/or welfare of the APS client.

2. Client services funds may be used in the following situations:

a. Emergency situations, such as emergency shelter, food, medicine, or utilities;

b. When the purchase(s) resolves the immediate need; or,

c. For one-time, temporary, or short-term needs while the APS client is waiting for other service providers or funding sources to be approved and services begun; and/or,

3. Goods and services acceptable for purchase with client services funds shall be the minimum necessary to resolve the safety concern.

4. Client services funds may be used to develop a county or regional contract with an agency or professional to provide a specific service for multiple APS clients throughout the contract duration, such as a specialist to conduct in-home capacity evaluations, a registered nurse to do in-home medical evaluations, or a long-term care facility to provide emergency shelter beds.

30.620 PROVISION OF SERVICES [Rev. eff. 4/1/18]

A. The county department shall provide protective services for the shortest duration necessary to ensure the client's safety by implementing case plan goals as quickly as possible in order to stabilize the client's situation and prevent further mistreatment or self-neglect.

B. If the client appears to have capacity to make decisions:

1. The client may refuse protective services, but the county department shall attempt to obtain the client's consent to additional visits or phone calls from the caseworker if the situation appears to require further services. The caseworker shall document the consent or refusal to additional visits or phone calls.

2. Caseworkers shall provide clients who refuse services with the county department contact information for future reference.

C. If a client is suspected to lack capacity to make decisions, is at risk for harm, and refuses to consent to services, the county department shall document the client's inability to provide consent.

1. Documentation shall include:

a. Observations of client behaviors and actions;

b. Medical documentation of client's suspected incapacity and safety concerns to support involuntary case planning; and/or,

c. Investigative evidence.

2. The county department shall ensure immediate safety and make its best effort to obtain an evaluation of the client's decision making capacity from a qualified professional.

3. These situations shall be staffed with the supervisor and/or county attorney to:

a. Determine the client's risk and safety;

b. Assess the client's ability to consent;

c. Determine urgency of safety concerns if intervention is not taken;

d. Review previous interventions; and,

e. Ensure the intervention is done ethically and is the least restrictive intervention to ensure the client's safety.

4. The county department shall intervene when appropriate to coordinate with the responsible agency in taking action to protect the immediate safety and health of the client, such as:

a. Gaining access to the client with assistance from law enforcement, family, or another person the client trusts;

b. Emergency hospitalization;

c. Coordinating with municipal authorities to arrange a home clean up, when there is a clear biohazard;

d. Mental health hold, per Title 27, Article 65, C.R.S.;

e. Coordinating with family members, law enforcement, or financial institutions to freeze client bank accounts to prevent further loss of assets;

f. Recommending a delayed disbursement of finances from the client's broker-dealer pursuant to Title 11, Article 51, C.R.S.;

g. Emergency protection order, per Title 13, Article 14, C.R.S.;

h. Authorization of a Medical Proxy Decision Maker, per Title 15, Article 18.5, C.R.S.;

i. Requesting a judicial review of a fiduciary, per Title 15, Article 10, Part 5, C.R.S., and Title 15, Article 14, Part 7, C.R.S.;

j. Contacting the Social Security Administration or other pension administrator to secure a representative payee;

k. Petitioning the court for emergency guardianship and/or special conservatorship, per Title 15 Article 14, Parts 3 and 4, C.R.S., or,

l. Alcohol and drug involuntary commitment, per Title 27, Article 81, Part 112 and Title 27, Article 82, Part 108.

D. If a client lacks capacity and has a fiduciary to make decisions on behalf of the client, the county department shall consult with supervisors, the county director, the county attorney, law enforcement, and/or the district attorney to determine whether the county department should petition the court for a review of the fiduciary's actions if:

1. The fiduciary refuses to allow the provision of protective services, which places the client at-risk for continued mistreatment or self-neglect; or,

2. There are allegations and evidence of mistreatment of the client by the client's fiduciary.

3. The county department shall petition the court under the appropriate statute:

a. Uniform Power of Attorney Act, as outlined in Title 15, Article 14, Part 7, C.R.S.;

b. Guardianship or conservatorship statutes as outlined in Title 15, Article 14, Parts 3 and 4, C.R.S.; and/or,

c. Fiduciary oversight statute, as outlined in Title 15, Article 10, Part 5, C.R.S.

E. The county department shall maintain ongoing client contact as long as the case is open.

1. For clients living in the community, an in-person client contact shall occur at least once every month, not to exceed thirty five calendar days (35) from the last in-person contact.

2. For clients living in a facility, an in-person client contact shall occur at least once every month, not to exceed thirty five calendar days (35) from the last in-person contact.

    a. The county department has the option of substituting a phone call to the direct care provider to ascertain the client's current status, in lieu of an in-person visit for every other required monthly in-person contact.

    b. If it has been reported that the client has been mistreated at the facility, whether caused by a staff person, visitor, or other resident, and the facility has not appropriately resolved the cause of the mistreatment or put adequate safety measures in place, then a phone call to ascertain the client's current status is not appropriate and the required monthly contact shall be an in-person visit.

3. During the monthly contact, the county department shall:

    a. Continue the investigation of allegations, if applicable;

    b. Continue assessment of client's strengths and needs, including changes to the client's status;

    c. Pursue the continued safety improvement and reduction and/or mitigation of risk;

    d. Monitor the effectiveness of arranged services to determine whether continued APS intervention is needed; and,

    e. Document information gathered during the contact per the above monthly contact requirements and update all contact records as information is obtained and/or changes occur for the client, alleged perpetrator, reporting party, and supports within fourteen (14) calendar days of the visit.

F. County departments may, as a courtesy, complete monthly visits on behalf of other county departments, as follows:

1. When a client temporarily or permanently relocates to a licensed facility more than seventy-five (75) miles outside the county boundary and the county department of original jurisdiction maintains the case, the county department of original jurisdiction shall ensure ongoing protective services.

2. Monthly contacts, required by Section 30.620, E, may be conducted by the county of original jurisdiction or may be conducted via courtesy visits by the county department in which the facility is located or by another county department that is visiting the facility.

3. No county department should be expected to provide more than three courtesy visits per twelve (12) month period at the request of the county department of original jurisdiction. County departments may negotiate to provide more than three courtesy visits.

4. Upon completion of each courtesy visit, the county department that conducted the visit shall document the monthly contact in CAPS, including any identified need for services or follow up by the county department of original jurisdiction, as required in Section 30.620, E, within fourteen (14) calendar days of the monthly contact. The county department of original jurisdiction shall be advised immediately of any need for emergency services identified during the courtesy visit.

5. The county department of original jurisdiction is responsible for ensuring the courtesy visit is conducted and is responsible for implementing any necessary services or follow up identified during the courtesy visit.

6. A county department conducting a courtesy visit shall not document the visit as a new report or case for the purpose of data collection.

G. If the client permanently relocates to another county and the client no longer needs protective services, or the client permanently relocates to another state, the county department shall close the case, as outlined in Section 30.660.

H. If the client relocates to another county and the client continues to need protective services, the county department shall transfer the case to the client's new county of residence within five (5) calendar days of learning the move is permanent. The county department shall update the case in CAPS prior to completing the transfer, as follows:

1. Update the client, perpetrator, reporting party, and collateral contact information;

2. Update the investigation, assessment, case plan, and case notes to include all information gathered to date; and,

3. Call the receiving county department supervisor to staff the case prior to the transfer.

I. When a client permanently relocates to a new county, the case may remain with the former county department only when:

1. The case is within thirty-five (35) calendar days of resolution and the former county department chooses to retain the case;

2. The former county department holds representative payeeship and chooses to retain the case; and/or,

3. The former county department holds guardianship or conservatorship. Either county department may, with the agreement of the receiving county department, petition the court for a transfer of guardianship and/or conservatorship to the receiving county department.

J. County departments shall work collaboratively to provide protective services to clients, as needed.

K. The county department shall reassess the client's needs and review the provision of protective services as long as the case remains open, as follows:

1. For cases in which the county department is the guardian, conservator, or representative payee:

a. An updated assessment shall be completed at least annually; and,

b. A determination shall be made as to the appropriateness of continued protective services, including whether the client:

I. Continues to be an at-risk adult, as defined in Section 30.100,

II. Continues to be in need of fiduciary support; and,

III. Needs updated services to address identified needs or implement independence in areas of strength; and,

c. The case plan shall be updated to include the client's services, service status, persons responsible for implementing each service, and service dates.

2. For cases in which the county department is not the appointed guardian, conservator, or representative payee:

a. An updated assessment shall be completed no later than 180 days from the baseline assessment and every 60 days thereafter; and,

b. A determination shall be made as to the appropriateness of continued protective services, including whether the client:

I. Continues to be an at-risk adult, as defined in Section 30.100,

II. Continues to be in need of protective services; and,

III. Needs updated services to address identified needs or implement independence in areas of strength; and,

c. The case plan shall be updated to include the client's services, service status, persons responsible for implementing each service, and service dates.

30.630 COURT INTERVENTION

A. When the investigation and assessment indicates probable incapacity and there is danger to the client's health, safety, and welfare and the client is unable and/or unwilling to accept services, the county department is urged to petition the court for an order authorizing the appointment of a guardian and/or conservator in order to resolve the safety concern(s).

B. Prior to reaching a decision to petition the court for guardianship or conservatorship, the county department shall ensure that the following factors are met and have been documented in CAPS:

1. No other method of intervention will meet the client's needs;

2. There are no other responsible parties, such as family or friends, to act as guardian or conservator.

3. Court intervention will resolve safety concerns;

4. The county department does not seek guardianship solely to make medical decisions on behalf of the client (See Section 15-18.5-103(8), C.R.S.); and,

5. Court intervention is warranted by either:

a. The degree of incapacity, as supported by medical or psychiatric evidence, and the degree of risk, as supported by investigative evidence; or,

b. The suspected incapacity of the client and the degree of risk, as supported by the investigative evidence, where medical or psychiatric evidence of incapacity cannot be obtained without court intervention.

C. If all factors in Section 30.630.B have been met, the county department is urged to accept guardianship and/or conservatorship.

1. The county department's attorney shall represent the county department in the legal process.

2. The county department shall provide all information deemed necessary by legal counsel.

3. A representative of the county department shall be prepared to testify in support of the petition.

4. The type of court intervention sought must be the least restrictive intervention required to meet the needs of the client and only for those areas in which the client lacks the capacity or the ability to understand the consequences of decisions, as medically or psychiatrically substantiated.

5. When a county department is appointed by the court to act as guardian or conservator, a copy of the letter of appointment and all other court documents and reports shall be maintained in CAPS and the client's case record updated to reflect fiduciary information.

D. The county department may choose to accept or reject any appointment of guardianship, based upon county department policy.

E. The county department shall initiate proceedings to withdraw as guardian and/or conservator when:

1. Medical or psychiatric evidence indicates a guardian and/or conservator is no longer necessary;

2. Another appropriate guardian or conservator has been identified; or,

3. The county department is no longer able to fulfill guardianship responsibilities, as appointed.

F. When a person or agency other than the county department is requesting appointment as the guardian and/or conservator of the client, the county department shall assist responsible parties, as needed, in identifying legal counsel or providing other assistance in initiating the petition(s).

30.640 REPRESENTATIVE PAYEE

A. The county department shall only apply for appointment as a representative payee when no other reliable person or agency is available and willing to seek the appointment and:

1. The reported financial issues pertaining to mistreatment and/or self-neglect have been substantiated and determined to present significant harm to the client's health, safety, or welfare without intervention; and,

2. Other less restrictive intervention options have been assessed and found to be inadequate to protect and assist the client; and,

3. Medical, psychiatric, and/or financial evidence exists to show the client is unable to manage his/her personal finances.

B. The county department shall follow the procedures and guidelines for payees as set forth by the SSA or other organization(s).

C. The county department shall initiate procedures, as outlined by the SSA or other organization(s), to discontinue its services as representative payee when:

1. Medical, psychiatric, and/or financial evidence indicates a payee is no longer necessary;

2. Another appropriate payee has been identified;

3. The county department is no longer able to fulfill payee responsibilities, as appointed; or,

4. The client dies.

30.645 TRUST ACCOUNTS

A. The county department shall ensure that all guardianships, conservatorships, representative payeeships, and personal needs accounts that are held by the county department, and in which the county department has some financial authority or responsibility, have an established trust account.

B. The established trust account shall bear the name of the county department or the name and the title of the director of the county department as trustee for the client or as otherwise required by the Social Security Administration (SSA).

1. Withdrawals from savings, checking, or investment accounts shall require two signatures, neither of which may be the caseworker or the bookkeeper.

2. Shortages in trust accounts are the responsibility of the county department.

C. The county department shall manage any trust account established pursuant to such department's fiduciary duty as a guardian, conservator, representative payee, or other purpose in accordance with any State and Federal requirements for said accounts.

30.660 CASE CLOSURE [Rev. eff. 1/30/17]

A. Cases not requiring additional protective services shall be closed within thirty-five (35) calendar days of the last monthly contact with the client.

1. If the client cannot be located and the county department has sent a letter to the client or is reaching out to others who might know the client's location, the case may remain open until the county department exhausts all attempts to locate the client.

2. The county department shall document all attempts to locate the client.

B. Cases in which the client is relocated to a long-term care facility may remain open for up to thirty-five (35) calendar days in order to ensure the placement is appropriate for the client's needs. The county department may keep the case open past the thirty-five (35) days if there is good cause and the department documents the cause in CAPS.

C. Cases in which the county department has been appointed as the client's guardian, conservator, and/or representative payee shall remain open for the duration of the court order or for as long as the county remains as the representative payee. If the client has died, the case shall be closed immediately following completion of any investigative and/or fiduciary responsibilities.

D. A decision to close a case shall be made for any or all of the following reasons:

1. After investigation and assessment, the client does not meet the definition of an at-risk adult.

2. After investigation and assessment there are no identified needs or all of the client's needs were met prior to the report to the county department.

3. The investigation and/or assessment identified needs but the client is competent to make decisions and refuses services.

4. If, after completion of the investigation and after repeated and documented efforts, the whereabouts of the client cannot be established or the client refuses contact.

5. The client no longer needs protective services.

6. Service goals are completed.

7. Repeated efforts at service delivery have proven to be ineffective and no additional alternatives exist.

8. Critical services necessary to improve safety are unavailable in the community or to the client.

9. The client moved out of the state.

10. The client has been sentenced to incarceration for longer than thirty (30) calendar days.

11. The client died. Prior to closing the case, the investigation must be completed as outlined in Sections 30.510 and 30.520.

E. The county department shall document the case closure, to minimally include:

1. A final assessment, if applicable, to determine the safety improvement as a result of APS intervention;

2. Update of all case, client, perpetrator, reporting party, and collateral contact information to reflect the most current data and information;

3. Reason for case closure;

4. Whether there is continued perpetrator involvement; and,

5. A narrative to address the overall outcome of APS intervention, to include why safety was or was not increased and why risk was or was not decreased.

30.800 COMMUNITY COLLABORATION

30.810 COOPERATIVE AGREEMENTS

A. Per Section 26-3.1-103(2), C.R.S., the county department shall implement cooperative agreements in conjunction with its local:

1. Law enforcement agencies;

2. District Attorney;

3. Long-Term Care Ombudsman; and,

4. Community Centered Board.

B. The focus of such agreements shall be the coordination of investigations and protective services that promote the protection of at-risk adults and each agreement shall provide that each agency shall maintain the confidentiality of the information exchanged pursuant to state and federal statute.

C. The agreement with law enforcement agencies shall include, at a minimum:

1. A process outlining the role of law enforcement for receiving, assessing, referring, and responding to reports received during the county department's non-business hours, if applicable;

2. A procedure regarding sharing of reports of mistreatment between the local law enforcement agency(ies) and the county department;

3. Procedures for the provision of assistance from one agency upon the request of the other agency;

4. Procedures to coordinate investigative duties; and,

5. The beginning and ending date of the agreement, the term of which shall not exceed five years.

D. The agreements with the District Attorney, long-term care ombudsman, and Community Centered Board shall, at a minimum, include:

1. Procedures for the provision of assistance from one agency upon the request of the other agency;

2. Procedures to coordinate investigative duties; and,

3. The beginning and ending date of the agreement, the term of which shall not exceed five years.

30.830 ADULT PROTECTION TEAMS

A. The director of each county department with ten (10) or more screened in reports of at-risk adult mistreatment and/or self-neglect in the prior state fiscal year is required to establish an Adult Protection Team.

1. The county department may establish its own Team or may coordinate with another contiguous county department(s) that is required to establish a Team.

2. The Team shall meet quarterly, at a minimum.

3. The county department shall determine the level of decision making authority for the Team. The role of the Team may be advisory only.

B. The purpose of the Team shall be to:

1. Review the processes used to report and investigate mistreatment and self-neglect of at-risk adults;

2. Staff particular cases or possible cases with Team members, such as those that:

    a. Have proven difficult to resolve and Team members may be able to identify solutions;

    b. Are situations where early intervention by other community systems may prevent mistreatment; and/or,

    c. Are valuable for educating Team members on APS program processes and requirements.

3. Facilitate interagency cooperation regarding services to at-risk adults including the development of solutions and action steps necessary to reduce risk and improve safety; and,

4. Provide community education on the mistreatment and self-neglect of at-risk adults. The county department shall be the primary training agency, but may utilize training provided by team members or another designee. The county department shall:

    a. Determine the topic to be presented, based upon county department or community need;

    b. Use materials developed by the county department, the State Department, national associations, or other professional adult protective services agencies;

    c. At a minimum, provide five (5) training activities per fiscal year, in any combination of the following:

        1) A live presentation to a community or professional group;

        2) Participation in a senior or community forum, such as:

        a) Providing an article for a newsletter or local community newspaper; or,

        b) Providing brochures or other written materials at a county department or other community event.

        3) Sponsorship of a community Elder Abuse Awareness Day or similar event.

C. The director of the county department or the director's designee shall identify and recruit team members consistent with professional groups as specified in Section 26-3.1-102(1)(b), C.R.S., and other relevant community agencies.

D. Each Team member shall be advised of the confidential nature of his or her responsibilities in accordance with Section 26-3.1-102(7), C.R.S., and shall be required to sign a confidentiality agreement at least once each fiscal year.

E. The Team shall develop and adopt written by-laws or a Memorandum of Understanding that minimally include the Team's:

1. Purpose;

2. Structure, including:

a. Meeting facilitation. Teams that conduct education to the community as part of the Team meeting shall adjourn to executive session prior to staffing any case or discussing any APS client or community member;

b. Frequency of meetings; and,

c. Composition of the Team.

3. Rules for membership, including:

a. Member duties;

b. Process for resignation and causes for termination from the Team.

4. Process for handling potential conflicts of interest.

F. The county department shall review and update all team documents, such as by-laws and confidentiality agreements when statute or rule changes occur that impact the team's process or every five years, whichever occurs first.

G. The county department shall enter all Team activities, including but not limited to cases staffed, training provided, and confidentiality agreements, in CAPS within fourteen (14) calendar days of the activity.

30.900 NOTICE TO SUBSTANTIATED PERPETRATORS AND STATE LEVEL APPEALS PROCESS [Eff. 5/30/18]

30.910 NOTICE TO THE SUBSTANTIATED PERPETRATOR OF MISTREATMENT [Eff. 5/30/18]

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, 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, and 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. In the event that a notice regarding a substantiated finding was sent to an alleged perpetrator in error, the county department shall correct the finding in CAPS, as outlined in Section 30.520.B, and notify the alleged perpetrator of the correction as soon as possible, but no later than ten (10) calendar days from the discovery of the error.

D. 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 investigative record relied upon by the county department to make the finding in order to proceed with the appeal. The appellant's use of the investigative 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 investigative 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.

O. A health oversight agency is defined consistent with the provisions of federal regulations found at 45 CFR 164.501[1] as of 2021, herein incorporated. This rule does not contain any later amendments or editions. The regulation are available at https://www.ecfr.gov. This regulation is also available for inspection and copying at the Colorado Department of Human Services, Administrative Review Division, 3550 W. Oxford Ave., Denver CO, 80236, during regular business hours.

Pursuant to section 26-3.1-111(5)(h), C.R.S., a health oversight agency within DORA or a regulator as defined in section 12-20-102(14), C.R.S., may request appeal information from the State Department for the purpose of a regulatory investigation conducted pursuant to section 12-20-401, C.R.S. when making the request to the State Department, a health oversight agency within DORA or regulator must include the information provided to DORA through the notification process outlined in 30.520(E)(2), if such notification occurred. If such notification did not occur, a health oversight agency within DORA or regulator must include, at minimum, the following information:

1. The professional’s name,

2. The name of the mistreated adult, and

3. The nature of the allegation(s), to include the type and severity of the mistreatment, if known.

[1]Section 26-3.1-111(5)(h), C.R.S., refers to a health oversight agency defined in federal regulation at 42 CFR 164.501. This appears to be a typographical error as no such regulation exists. The definition for health oversight agency can be found at 45 CFR 164.501.

P. After the State Department receives the request from a health oversight agency within DORA or a regulator, the State Department will provide that agency with the appeal summary for the purposes of the regulatory investigation.

Q. Appeal information provided to a health oversight agency within DORA or a regulator is confidential, not subject to part 2 of article 72 of title 24, C.R.S., and must be used only for purposes of a regulatory investigation conducted pursuant to section 12-20-401.

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. The office of administrative courts shall also issue a protective order which will protect and govern the handling of all pleadings, discovery, and evidence. The order must be signed by an administrative law judge and must state that:

a. Any documents exchanged by the parties containing confidential information, including, but not limited to pleadings, APS reports and investigative records, medical records, law enforcement investigation records, and documents regarding at-risk adults will be used for the sole purpose of proceeding with this appeal.

b. The parties may disclose confidential information to their attorneys or any expert witness only as necessary for the prosecution or defense of the appeal. The appellant is not authorized to disclose or use confidential information for any other purpose.

c. The parties may exchange discovery containing information that is confidential under department rule 12 CCR 2518-1, § 30.920.

d. To the extent that the parties may disclose confidential records to expert witnesses, the parties shall provide a copy of the protective order to the expert witnesses and advise the expert witness of his or her obligation not to disclose the records or information learned from the confidential records.

e. The exchange and use of the confidential information or records does not waive the right of either party to object to the admission of the documents into evidence on any grounds.

f. If the parties use or offer confidential information or records as evidence during the course of the hearing, counsel and the parties shall take reasonable measures to protect such information or records from public disclosure including but not limited to filing records under seal.

g. The appellant must return to the department all protected health information (including all copies made) at the end of the appeal or, should the appellant choose to pursue any further administrative remedies, when those remedies have been exhausted.

h. The hearing regarding the factual basis for the adult mistreatment finding shall be closed to the public.

i. This order does not prohibit the department from using documents or information as authorized, required, or permitted by law.

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 and/or severity level 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 and/or severity level 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.

30.960 EMPLOYER CAPS CHECKS

A. Pursuant to Section 26-3.1-111(6)(a)(I), C.R.S., beginning January 1, 2019, the following employers shall request a CAPS check prior to hiring a new employee who will provide direct care to an at-risk adult and may request a CAPS check for existing employees or volunteers who provide direct care to an at-risk adult.

1. Health facilities licensed pursuant to Section 25-1.5-103, C.R.S, including those wholly owned and operated by any governmental unit;

2. Adult day care facilities, as defined in Section 25.5-6-303(1), C.R.S.;

3. Community integrated health care service agencies, as defined in Section 25-3.5-1301(1);

4. Community-Centered Boards or program-approved service agencies that provide or contract for services and supports, pursuant to C.R.S. Article 10 OF Title 25.5;

5. Single Entry Point agencies, as described in Section 25.5-6-106, C.R.S.;

6. Area Agencies on Aging, as defined in Section 26-11-201(2), C.R.S., and any agency or provider the Area Agency on Aging contracts with to provide services;

7. Facilities operated by the State Department for the care and treatment of persons with mental illness, pursuant to C.R.S. Article 65 OF Title 27;

8. Facilities operated by the State Department for the care and treatment of persons with intellectual and developmental disabilities, pursuant to C.R.S. Article 10.5 OF Title 27;

9. Veterans Community Living Centers, operated pursuant to C.R.S. Article 12 OF Title 26; and,

10. The Office of Public Guardianship Pursuant to Section 13-94-105(6), C.R.S.

B. Employers identified in Section 30.960.A shall cooperate with and provide access to county departments conducting investigations of mistreatment of at-risk adults pursuant to Section 26-3.1-103(1.3), C.R.S and Section 30.520.B.

C. Pursuant to Section 26-3.1-111(8), beginning January 1, 2019, individuals receiving Consumer-Directed Attendant Support Services (CDASS), pursuant to C.R.S. Article 10 of Title 25.5, may request a CAPS check for a new or existing employee.

D. Information obtained through a CAPS check by an employer, or a person or entity conducting the employee or volunteer CAPS check on behalf of the employer, shall only be released pursuant to Section 26-3.1-111(6)(d), C.R.S. Section 26-3.1-111(6)(e), C.R.S., creates a criminal penalty for any person who improperly releases or who willfully permits or encourages the release of data or information obtained through a CAPS check to persons not permitted access to the information pursuant to C.R.S. Title 26, Article 3.1.

E. Employers, or a person or entity conducting the employee CAPS check on behalf of the employer, shall register prior to requesting a CAPS check to allow for verification of the employer's legal authority to request the check.

1. The employer, or a person or entity conducting the employee or volunteer CAPS check on behalf of the employer, is responsible for ensuring the registration information is up to date.

2. There shall be no fee to the employer to register.

F. Using a form developed by the State Department, employers, or a person or entity conducting the employee CAPS check on behalf of the employer, shall obtain written authorization and any required identifying information from the new or existing employee or volunteer prior to requesting a CAPS check. Required identifying information necessary to request the CAPS check includes information such as name, date of birth, and email address, etc.

1. The form must be completed and signed by the employee or volunteer.

2. Knowingly providing inaccurate information on the written authorization form is a class 1 misdemeanor as set forth in Section 26-3.1-111(6)(e.7), C.R.S.

3. The CAPS Check Unit (CCU) may request the employee's written authorization form from the employer as supporting documentation.

G. Employers, or a person or entity conducting the employee or volunteer CAPS check on behalf of the employer, shall request a CAPS check using an online or hard copy form developed by the State Department.

1. If more than thirty (30) days have elapsed between an employer's request for a CAPS check for a potential employee or volunteer, and the employer's decision to initiate hiring, the employer must request a new CAPS check prior to hiring the employee or volunteer.

2. If an employee or volunteer leaves employment but is considered for rehire after more than thirty (30) days have elapsed since leaving employment, the employer must request a new CAPS check prior to rehire.

3. If the information provided for the CAPS check is incomplete the CCU may request additional information from the employer.

a. If the additional information is not provided by the employer the CCU will close the request and will not conduct the CAPS check.

b. The fee for the CAPS check shall not be refunded to the employer.

4. If an employer provides information the CCU has reason to believe is inaccurate:

    a. The CCU will contact the employer regarding the information believed to be inaccurate.

    b. The CCU may request the employer to provide the written authorization form to the CCU. If the employer does not provide the written authorization form, the CCU will close the request and will not conduct the CAPS check. The CAPS check fee will not be refunded.

    c. If the CCU identifies a pattern of inaccurate information being provided by an employer, the CCU will implement steps to address the pattern, which may include, but are not limited to, contacting the agency administrator, requiring submission of the written authorization form with each CAPS check request, and/or requesting legal assistance to resolve the concerns.

    d. Knowingly providing inaccurate information on a CAPS check request is a class 1 misdemeanor, as outlined in Section 26-3.1-111(6)(e.7), C.R.S.

5. If a screening company that requests CAPS checks on behalf of an employer provides information the CCU has reason to believe is inaccurate:

    a. The CCU will contact the employer and/or screening company regarding the information believed to be inaccurate.

    b. The CCU may request the screening company to provide the written authorization form to the CCU. If the screening company does not provide the written authorization form, the CCU will close the request and will not conduct the CAPS check. The CAPS check fee will not be refunded.

    c. If the CCU identifies a pattern of inaccurate information being provided by a screening company hired by an employer, the CCU will implement steps to address the pattern, which may include, but are not limited to, contacting the employer that hired the screening company, requiring submission of the written authorization form with each CAPS check request, prohibiting the screening company from requesting CAPS checks, and/or requesting legal assistance to resolve the concerns.

    d. Knowingly providing inaccurate information on a CAPS check request is a class 1 misdemeanor, as outlined in Section 26-3.1-111(6)(e.7), C.R.S.

6. Submitting a CAPS check request for an individual who is not being considered for an employee or volunteer position providing direct care to at-risk adults or providing care through Consumer Directed Support Services is a class 1 misdemeanor, as outlined in Section 26-3.1-111(6)(e.3), C.R.S.

H. The fee for the CAPS check shall be:

1. Established to provide adequate revenue to support all direct and indirect costs related to the administrative appeals processes for substantiated perpetrators and the employer CAPS checks.

2. No greater than $16.50 per CAPS check, unless the State Board of Human Services approves an increased fee based upon increased direct and indirect costs of the administrative appeals and employer CAPS checks.

a. The current CAPS check fee shall be posted to a CAPS check website.

b. The current CAPS check fee may be adjusted with 30 days' notice, provided via the CAPS check website.

3. Paid by the employer, or the person or entity conducting the employee CAPS check on behalf of the employer, at the time of the request.

a. If the employer, or the person or entity conducting the employee CAPS check on behalf of the employer, chooses to request the CAPS check via the online form, payment must be made through the online payment system at the time of the request. A CAPS check will not be completed without payment.

b. If the employer, or the person or entity conducting the employee CAPS check on behalf of the employer, chooses to request the CAPS check via first class mail, payment in the form of an agency warrant or bank check must be attached to the form. A CAPS check will not be completed without payment.

c. Employers, or a person or entity conducting the employee CAPS check on behalf of the employer, may choose to request that the applicant or volunteer reimburse the employer, or the person or entity conducting the employee CAPS check on behalf of the employer, for the cost of the check.

I. The State Department shall complete the CAPS check and respond to the request as soon as possible, but no later than five (5) business days from the receipt of the request.

1. The State Department shall provide the CAPS check results to the employer, or the person or entity conducting the employee or volunteer CAPS check on behalf of the employer, via email, unless receipt of the results via first class mail is requested by the employer, or the person or entity conducting the employee CAPS check on behalf of the employer.

a. If the employee is also the employer who requested the CAPS check on themselves, such as a facility administrator or owner, or an independent owner operator, and the employee/employer is determined not to have a substantiated finding of mistreatment, the results will be provided to the employee/employer.

b. If the employee is also the employer who requested the CAPS check on themselves, such as a facility administrator or owner, or an independent owner operator, and the employee/employer is determined to have a substantiated finding of mistreatment, the results will be provided to the employee/employer and to the parent company and/or oversight agency(ies).

2. A person or entity conducting the employee CAPS check on behalf of the employer shall provide the results of the CAPS check to the employer.

L. The CAPS check results shall indicate:

1. Whether there is or is not a substantiated finding for the new or existing employee or volunteer;

2. The purposes for which the information in CAPS may be made available;

3. The consequences of improper release of the information in CAPS; and,

4. For CAPS checks in which there is a substantiated finding, the CAPS check results will include the date(s) of the finding(s), county department(s) that completed the investigation(s), and the type(s) and severity level(s) of the mistreatment.

M. Notification of any substantiated mistreatment finding made after the initial CAPS check shall be provided to the employer, or the person or entity conducting the employee CAPS check on behalf of the employer, or to the employee/employer's parent company and/or oversight agency(ies), as outlined in Section 30.960.H.1.b, at the time the new finding is completed in CAPS.

N. Findings shall not be included in CAPS check results when:

1. The finding was made prior to July 1, 2018 when due process for substantiated perpetrators began, as outlined in Section 30.910; and/or,

2. The finding was expunged or overturned through the appeals process, as outlined in Section 30.920; and/or,

3. The substantiated perpetrator was under 16 years old at the time the mistreatment occurred; and/or,

4. A positive match of at least two data points between the employee and a substantiated perpetrator in CAPS, such as name, date of birth, or address, cannot be determined with certainty.

Editor's Notes

History

Entire rule eff. 08/01/2012.

Rules SB&P, 30.250, 30.640, 30.645 eff. 04/01/2013.

Rules SB&P, 30.100, 30.210, 30.330, 30.410, 30.520, 30.610-30.620, 30.830 eff. 04/01/2014.

Rules SB&P, 30.100-30.220 B.5, 30.230-30.310, 3.330-30.640, 30.650-30.810, 30.830 eff. 09/01/2014.

Entire rule eff. 02/01/2017.

Rules 30.100, 30.250 B, 30.250 E-30.250 G, 30.320 B, 30.330, 30.510 A, 30.510 B, 30.520, 30.620 C.4 eff. 04/01/2018.

Rules 30.100, 30.250 E.10, 30.260 E-F, 30.340 A-B, 30.410 D.6, 30.520 A.7-11, 30.520 B, 30.900 eff. 06/01/2018.

Rules 30.100, 30.250 E.11, 30.320, 30.960 eff. 07/30/2018.

Rules 30.100, 30.250, 30.520 A.2.d-f emer. rules eff. 08/02/2019.

Rules 30.100, 30.250, 30.520 A.2.d-f eff. 10/01/2019.

Rules 30.100, 30.210 B, 30.260 A-B, 30.330 B.4, 30.340 A.4, 30.340 D.1, 30.410 C, 30.420 F-G, 30.430 C, 30.510, 30.520, 30.530, 30.610, 30.620 K.3, 30.660 B,D 30.910 B.4,C eff. 12/30/2019. Rule 30.430 E repealed eff. 12/30/2019.

Rules 30.920 I, 30.930 A.2 emer. rules eff. 05/08/2020.

Rules 30.920 I, 30.930 A.2 eff. 08/01/2020.

Rules 30.100, 30.230-30.250, 30.310-30.330, 30.410-30.430, 30.510-30.530, 30.610-30.630, 30.660, 30.810, 30.830, 30.910, 30.930, 30.960 emer. rules eff. 09/13/2020.

Rules 30.100, 30.230-30.250, 30.310-30.330, 30.400, 30.500, 30.610-30.630, 30.660, 30.810, 30.830, 30.910, 30.930, 30.960 eff. 11/30/2020.

Rule 30.220 eff. 06/30/2021.

Rules 30.920 O-30.920 Q emer. rules eff. 12/03/2021.

Annotations

The definition of “self-neglect” in Rule 30.100 (adopted 02/02/2018) was not extended by Senate Bill 19-168 and therefore expired 05/15/2019.