TITLE 463 ADULT PROTECTIVE SERVICES

CHAPTER 1

1-001 LEGAL BASIS

Authority for the provision of Adult Protective Services (APS) by the Nebraska Department of Health and Human Services is found in the Adult Protective Services Act, Neb. Rev. Stat. sections 28-348 to 28-387.

1-002 DEFINITIONS

For purposes of the Adult Protective Services regulations, the definitions found in Neb. Rev. Stat. sections 28-348 to 28-387, the Adult Protective Services Act, are hereby adopted.

1-003 CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

1-003.01 Confidentiality. Registry Information and other information pertaining to Adult protective Services is confidential and will not be released to any person except as authorized by state law or when ordered by a court of competent jurisdiction.

1-003.02 Persons or Agencies Allowed Access to Records: The Department will allow access to Adult Protective Services records to any person legally authorized under Nebraska law. Such request shall be in writing, dated, signed, notarized and will identify the person's authority to receive such records.

1-003.03 Format of Request: The request must be submitted using the Department approved form and must describe with sufficient detail regarding the information sought.

1-003.04 Request by or on Behalf of Vulnerable Adult: Upon request, a vulnerable adult who is the subject of a report or legal representative of the vulnerable adult is entitled to receive a copy of all information contained in the registry and documents produced by the Department pertaining to his or her case. If the vulnerable adult or legal representative requests Department information to be shared with a third party, a signed HIPAA compliant authorization to release information is required. The Department will not release information that would be harmful or detrimental to the vulnerable adult or that would identify or locate a person who, in good faith, made a report or cooperated in a subsequent investigation unless ordered to do so by a court of competent jurisdiction.

1-003.05 Summary of Findings and Actions: Upon request, a physician or the person in charge of an institution, facility, or agency making a legally mandated report, will receive a written summary of the findings and actions taken by the Department in response to such report.

The summary will contain the following:

1. The date of the report;
2. The name of the alleged victim;
3. The name of the alleged perpetrator;
4. The allegations; and
5. The findings.

If the report is substantiated, the summary may include the following:

1. Whether any services were offered and provided by the Department;
2. A description of practices that may have contributed to the abuse, neglect, or exploitation, if identified; and
3. Recommendations of actions to prevent abuse, neglect, or exploitation and to respond to allegations of abuse, neglect, or exploitation.

1-003.07 Background Checks. Background checks must be requested on a form approved by the Department, which must include the name, date of birth, and social security number of the subject of the background check. Information is released from the Registry only when a valid signed authorization to release information is obtained from the individual who is the subject of the background check. Information released to a third party is limited to:

1. Record Found; or
2. No Record Found.

1-004 CENTRAL REGISTRY CLASSIFICATIONS

1-004.01 Central Registry Classifications: The following findings are available to the Department:

Court-Substantiated – When a court of competent jurisdiction has validated finding of abuse, neglect, or exploitation of a vulnerable adult or has entered a judgment of guilty against the subject of the report of the abuse, neglect, or exploitation. An allegation with this finding will list the perpetrator on the Registry.

Agency-Substantiated – When the Department determines based upon an investigation that a preponderance of evidence supports the allegation of abuse, neglect, or exploitation and the victim is a vulnerable adult. An allegation with this finding will list the perpetrator on the Registry.

1-004.02 Non-Central Registry Determinations

Unfounded – When the Department determines through the investigation that there is insufficient evidence that abuse, neglect, or exploitation occurred. An allegation with this finding will not list any persons on the Central Registry.

Not a Vulnerable Adult – When the alleged victim does not meet the definition of a vulnerable adult during the investigation. This finding does not make a determination regarding the allegation. An allegation with this finding will not list any persons on the Registry.

1-004.03 Self-Neglect Determinations

Confirmed – When the alleged victim meets the definition of a vulnerable adult and the inability to obtain essential services has reached the point that the vulnerable adult is subject to physical injury or imminent danger of physical injury or death. An allegation with this finding will not list any persons on the Registry.

Not Confirmed – When the alleged victim meets the definition of a vulnerable adult, but the vulnerable adult is not subject to physical injury or imminent danger of physical injury or death and is able to make decisions and to obtain essential services. An allegation with this finding will not list any persons on the Registry.

Not a Vulnerable Adult – When the alleged victim does not meet the definition needed to be considered a vulnerable adult during the assessment. . This finding does not make a determination regarding the allegation. An allegation with this finding will not list any persons on the Registry.

1-005 NOTIFICATIONS

1-005.01 Perpetrator Notification: Upon completion of an investigation, the Department will provide notification to the person who allegedly abused, neglected, or exploited a vulnerable adult as require by Neb. Rev. Stat, § 28-374.01.

1-005.02 Vulnerable Adult Notification: The Department will provide the vulnerable adult or his/her legal representative a written notice of the finding or determination and if the person alleged to have abused, neglected, or exploited him/her will be listed on the Registry.

1-006 EXPUNGEMENTS

1-006.01 Requests for Amendment, Removal, or Expungement of Registry Information: At any time subsequent to the completion of the Department's investigation, a vulnerable adult, his or her legal guardian, or a person who is mentioned in a report as having allegedly abused, neglected, or exploited a vulnerable adult believes the information in the report is inaccurate or being maintained in a manner inconsistent with the APS Act; he or she may request the Department to amend or expunge identifying information from the report or remove the record of such report from the Registry. Requests must be written and submitted to the Department on a form approved by the Department.

1-006.02 Expungement Process: After receiving a written expungement request, investigation information will be reviewed by the Department and a response will be sent to the party requesting expungement. An individual requesting an administrative hearing to appeal a decision by the Department must send a written request for a hearing in writing to the Department's Hearing Office within 90 days of the date the letter denying the request was mailed. Administrative hearings will be carried out in accordance with the Administrative Procedure Act and 465 NAC 6.