

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
NOTICE OF PUBLIC HEARING

September 27, 2019  
10:00 a.m. Central Time  
Gold's Building, Room 534  
1033 O Street, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to Title 463, Chapter 1 of the Nebraska Administrative Code (NAC) –*Adult Protective Services*. The proposed changes update definitions; set requirements for adult abuse and neglect central registry checks; establish fees for central registry checks as allowed under Nebraska Revised Statute § 28-718(3); set out fees for research and auditing records; set out the appeal process for denial of an expungement or amendment request; and update formatting.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Interested persons may attend the hearing and provide verbal or written comments or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or [dhhs.regulations@nebraska.gov](mailto:dhhs.regulations@nebraska.gov), respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

## FISCAL IMPACT STATEMENT

Agency: <b>Department of Health and Human Services</b>	
Title:463	Prepared by: Sherri Haber
Chapter:1	Date prepared: 11/07/18
Subject: Adult Protective Services	Telephone:402-471-7989

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	( <input checked="" type="checkbox"/> )	( <input checked="" type="checkbox"/> )	( <input checked="" type="checkbox"/> )
Increased Costs	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Decreased Costs	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Increased Revenue	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Decreased Revenue	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Indeterminable	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )

Provide an Estimated Cost & Description of Impact:

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

TITLE 463  
ADULT PROTECTIVE SERVICES

Chapter 1-000 Adult Protective Services

- 1-001 Legal Basis
- 1-002 Definitions
- 1-003 Confidentiality and Disclosure of Information
  - 1-003.01 Confidentiality
  - 1-003.02 Persons or Agencies Allowed Access to Records
  - 1-003.03 Format of Request
  - 1-003.04 Request by or on Behalf of Vulnerable Adult
  - 1-003.05 Summary of Findings and Actions
    - 1-003.05A The summary will contain the following
    - 1-003.05B If the report is substantiated, the summary may include the following
  - 1-003.06 Central Registry Checks
    - 1-003.06A Registration to Conduct Central Registry Checks Electronically
    - 1-003.06B Central Registry Checks by Unregistered Organizations or Individuals
- 1-004 Central Registry Classifications
  - 1-004.01 Central Registry Classifications
  - 1-004.02 Non-Central Registry Determinations
  - 1-004.03 Self-Neglect Determinations
- 1-005 Notifications
  - 1-005.01 Perpetrator Notification
  - 1-005.02 Vulnerable Adult Notification
- 1-006 Expungements
  - 1-006.01 Requests for Amendment, Removal or Expungements of Registry Information
  - 1-006.02 Expungement Process

TITLE 463            ADULT PROTECTIVE SERVICES

CHAPTER 1         ADULT PROTECTIVE SERVICES

~~1-001. AUTHORITY. 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. §§ 28-348 to 28-387.~~

~~1-0021. DEFINITIONS. For purposes of the Adult Protective Services regulations, the definitions found in Neb. Rev. Stat. §§ 28-348 to 28-387, the Adult Protective Services Act, and the following definitions apply: are hereby adopted.~~

~~001.01 CENTRAL REGISTRY CHECK. A Central Registry check is a review of the child abuse and neglect Central Registry, a review of the adult abuse and neglect Central Registry, or a review of both registries. The individual authorizing the Central Registry check, must identify which review is being authorized.~~

~~1-0032. 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 (unless notarization is not required under 1-003.07A) and will identify the person's authority to receive such records.~~

~~1-003.03 FORMAT OF REQUEST. 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 A 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.~~

~~1-0032.051 SUMMARY OF FINDINGS AND ACTIONS. 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.~~

~~1-0032.051(A) The summary will contain the following:~~

- ~~(i)1. The date of the report;~~
- ~~(ii)2. The name of the alleged victim;~~
- ~~(iii)3. The name of the alleged perpetrator;~~
- ~~(iv)4. The allegations; and~~
- ~~(v)5. The findings.~~

~~1-0032.051(B) If the report is substantiated, the summary may include the following:~~

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

## 002.02 ADULT ABUSE AND NEGLECT CENTRAL REGISTRY CHECKS.

002.02(A) REQUIREMENTS. Central Registry Checks must be requested utilizing a process approved by the Department. The individual must use the Central Registry request check form or provide the following information: individual's name, current address, date of birth, social security number, the names of any children with whom the subject resided, all names the individual may have had or used, and former addresses (minimum of city and state).

002.02(B) AUTHORIZATION. A Central Registry Check will not be performed on an individual's name without the Department first having the authorization of the individual, unless otherwise provided for in the Nebraska Revised Statutes.

002.02(B)(i) VERIFICATION OF IDENTITY. Every Central Registry request check form must include verification of the identity of the person authorizing the Central

Registry request. The Central Registry request check form must be notarized or the individual must use the Department approved identity proofing process. Any Central Registry request made by or on behalf of an individual under the age of 19, must have the minor child's parent or legal guardian's identity verified.

002.02(C) SELF CHECKS. Individuals may request a Central Registry check by completing and submitting the Central Registry request check form. The Central Registry request check form must include verification of the identity of the individual.

002.02(D) CENTRAL REGISTRY CHECKS. Individuals who want to authorize a Central Registry check and have the results of the check sent directly to a third party must complete and submit the Central Registry request check form that identifies the third party with whom the results may be shared. The Central Registry request check form must include verification of the identity of the individual authorizing the check.

002.02(D)(i) Third parties must enroll with the Department in order to receive the results of a Central Registry check.

002.02(E) RELEASING RESULTS. Information is released from the Central Registry only when a signed authorization to release information is obtained from the individual who is the subject of the Central Registry check.

002.03 CENTRAL REGISTRY CHECK FEE. A fee for each Central Registry check will be assessed as set forth in 395 Nebraska Administrative Code (NAC) 2-004.

~~1-003.06 Central Registry Checks: Central Registry 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 Central Registry 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 Central Registry check. Information released to a third party is limited to:~~

1. Record Found;
  - a. Classification;
  - b. Date of the incident; or
2. No Record Found.

~~1-003.06A. Registration to Conduct Central Registry Checks Electronically: Organizations may register with the Department to conduct Central Registry checks electronically. An organization may request registration on a the form provided by the Department. The organization must agree to follow all terms of registration and must not use the system to access any information without both the legal authority to do so and the express written consent of the individual who is the subject of the Central Registry check. Prior to conducting a Central Registry check, an employee or other representative of the registered organization must verify the identity of the individual consenting to the Central Registry check and attest in writing that the individual's identity has been verified.~~

~~1-003.06B Central Registry Checks by Unregistered Organizations or Individuals: Organizations and individuals which are not registered to conduct Central Registry checks electronically may submit such requests to the Department. Such requests must be made on a form provided by the Department and must include the notarized signature of the individual who is the subject of the Central Registry check.~~

1-0043. CENTRAL REGISTRY CLASSIFICATIONS.

1-0043.01 CENTRAL REGISTRY CLASSIFICATIONS. Central Registry Classifications: The following findings are available to the Department:

0043.01(A) COURT-SUBSTANTIATED. 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 Central Registry.

0043.01(B) AGENCY-SUBSTANTIATED. 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 Central Registry.

1-0043.02 NON-CENTRAL REGISTRY DETERMINATIONS. Non-Central Registry Determinations

0043.02(A) UNFOUNDED. 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.

0043.02(B) NOT A VULNERABLE ADULT. 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 Central Registry.

1-0043.03 SELF-NEGLECT DETERMINATIONS. Self-Neglect Determinations

0043.03(A) CONFIRMED. 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~~ that is Confirmed will not list any persons on the Central Registry.

0043.03(B) NOT CONFIRMED. 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~~ that is Not Confirmed will not list any persons on the Central Registry.

0043.03(C) NOT A VULNERABLE ADULT. ~~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 of Confirmed or Not Confirmed regarding the allegation. An allegation with this finding will not list any persons on the Central Registry.

1-0054. NOTIFICATIONS.

1-0054.01 PERPETRATOR NOTIFICATION. ~~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 required by Neb. Rev. Stat. § 28-374.01.

1-0054.02 VULNERABLE ADULT NOTIFICATION. ~~Vulnerable Adult Notification:~~ The Department will provide the vulnerable adult or ~~his/her~~ his or her guardian or guardian ad litem legal representative a written notice of the finding or determination and if the person alleged to have abused, neglected, or exploited ~~him/her~~ him or her will be listed on the Central Registry.

1-0065. EXPUNGEMENTS.

1-0065.01 REQUESTS FOR AMENDMENT, REMOVAL, OR EXPUNGEMENT OF CENTRAL REGISTRY INFORMATION. ~~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 may be submitted by individuals as set forth in Neb. Rev. Stat. § 28-380. Requests must be written and submitted to the Department, ~~on a form approved by the Department.~~

1-0065.02 PROCESS. ~~Expungement Process:~~ After receiving a written expungement or amendment 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.~~

005.02(A) DENIAL. When a decision is made to deny the expungement or amendment request, an individual may request an administrative hearing to appeal the decision by the Department. The individual must send a written request for a hearing 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.



006. RECORDS ACCESS.

006.01 COSTS OF RESEARCH OR AUDITING RECORDS. Estimated costs will be provided to the researcher for approval, prior to producing the information requested. If the costs associated with the research exceeds \$50.00, the Department may require the researcher to furnish a deposit. Such costs include but are not limited to:

- (A) The actual costs of reproduction of records at a per page fee in accordance with the rate used to calculate the costs for public records requests;
- (B) Actual postage costs associated with the research;
- (C) Staff time calculated using the employee's hourly rate of pay. Staff time may include, but is not limited to time spent locating records, reviewing records, redacting information, copying records, and returning the records to their original location;
- (D) Any actual costs and payment obligations to contractors as a result of the research;
- (E) Charge for electronic records, including charges for computer run time, programming time, and the time for any analysis for the records; and
- (F) The actual costs of any media provided to the requestor, including DVDs, CDs, and USB drives.