

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
NOTICE OF PUBLIC HEARING

November 29, 2021  
10:00 a.m. Central Time  
Nebraska State Office Building – Lower Level A  
301 Centennial Mall South, Lincoln, Nebraska  
Phone call information: 888-820-1398; Participant code: 3213662#

The purpose of this hearing is to receive comments on the amendment and repeal of the following regulations:

The following regulations are proposed for REPEAL:

Title 465 NAC 1 – *General Information*

This chapter is being repealed as it contains an outdated numbering system and appendices system that are obsolete and no longer necessary.

The following regulations are proposed for AMENDMENT:

Title 465 NAC 2 – Grievances and Fair Hearings

Title 465 NAC 3 – Procedures for Negotiated Rulemaking

Title 465 NAC 4 – Petitioning for Rule Making

Title 465 NAC 5 – Request for a Declaratory Order

Title 465 NAC 6 – Practice and Procedure for Hearings in Contested Cases Before the Department

The proposed changes remove duplicate statutory language from the regulations; remove unnecessary and outdated language; remove directions to agency staff; clarify the right to an appeal and incorporate federal hearing requirements; update formatting and restructure the regulatory chapter. Additional proposed changes include aligning the regulations with the Nebraska Attorney General's model rules for rule making; declaratory orders; and rules of procedure in administrative hearings. These model rules can be found in Title 53 of the Nebraska Administrative Code.

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

In order to encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide oral comments. Interested persons may provide verbal comments by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

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 who are deaf or hard of hearing 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.



TO: Executive Board  
Room 2108 State Capitol  
Legislative Council

FROM: Marge Respeliers, Paralegal I  
Legal Services  
Department of Health and Human Services (DHHS)

DATE: October 20, 2021

RE: Notice of Rulemaking under Neb. Rev. Stat. § 84-907.06

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The Department of Health and Human Services (DHHS) will be holding a public hearing on amending and repealing the following regulations:

TITLE:	465	Introduction to the Program Manual
CHAPTER:	1	General Information (Repeal)
CHAPTER:	2	Grievances and Fair Hearings (Amend)
CHAPTER:	3	Procedures for Negotiated Rulemaking (Amend)
CHAPTER:	4	Petitioning for Rulemaking (Amend)
CHAPTER:	5	Request for a Declaratory Order (Amend)
CHAPTER:	6	Practice and Procedure for Hearings in Contested Cases Before the Department (Amend)

These regulations are scheduled for public hearing on November 29, 2021.

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Department

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The following items are enclosed for your referral to the chair of the relevant standing committee of the Legislature:

1. A copy of the notice of public hearing;
2. A copy of the proposed regulations;
3. A copy of the Policy Pre-Review Checklist; and
4. The estimated fiscal impact of this rulemaking action on state agencies, political subdivisions or persons being regulated.

## FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 465	Prepared by: Wes Nespor
Chapter: 1, 3, 4, 5, & 6	Date prepared: 07/22/21
Subject: Introduction to the Program Manual	Telephone: 402-471-7237

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 465 INTRODUCTION TO THE PROGRAM MANUAL

CHAPTER 1 (Repealed)



~~1-002.01B The Appendix:~~ The Department has added an appendix to each Title of the Manual to include supportive materials including forms, charts, listings, examples, miscellaneous procedures and other issuances which are not germane to the State NAC system. These supportive materials, though not regulatory, are binding on Department staff.

~~Recommend changing language to refer to Guidance Documents required by Neb. Rev. Stat. 84-901.03~~

### 1-002.02 Numbering System

~~1-002.02A The NAC System:~~ NAC is the numbering system adopted by the Secretary of State. Nebraska statute requires that all state agencies with certified regulations adopt this uniform system. The Nebraska Department of Social Services is assigned NAC Titles 390 through 406 and Titles 463 through 482.

For a listing of current Program Manuals and assigned Titles, see 465-000-202.

1-002.02A1 Citations: The following is a breakdown of portions of a citation. Each successive breakdown represents more detail.

465 NAC 1-002      Title: The first three digits represent the Nebraska Administrative Code. This number identifies both the agency and the program within the agency.

465 NAC 1-002      Chapter: The first digit or digits following NAC.

465 NAC 1-002      Section: The three digits following the hyphen.

465 NAC 1-002.03      Subsection: The two digits following the section number.

465 NAC 1-002.03A      Part: The upper case letter following the subsection number.

465 NAC 1-002.03A4      Subpart: The digit following the part indicator.

465 NAC 1-002.03A4b      Division: The lower case letter following the subpart number.

465 NAC 1-002.03A4b(5)      Subdivision: The number in parentheses following the division letter.

465 NAC 1-002.03A4b(5)(c)      Segment: The lower case letter, enclosed in parentheses, which follows the subdivision number.

465 NAC 1-002.03A4b(5)(c)[1]      Subsegment: The number, enclosed in brackets, following the segment letter.

1-002.02B Appendices System: The appendix is coded with the Title number followed by three zeros, followed by a sequential number. For example, 465-000-3 is the third form in the appendix of Title 465.

The appendix may vary in different Manuals, however, the usual division is as follows:

1 - 199 Forms  
200 - 299 Charts and Listings  
300 - 399 Examples  
400 - 499 Miscellaneous

Title 465 follows this division for its appendix.

Comment: Eliminate references to appendices. May refer to Guidance Documents if necessary.

### 1-003 Legal Basis

1-003.01 State: The Nebraska Department of Social Services became the official name of the Department by legislation on August 26, 1983. The Department was formerly the Nebraska Department of Public Welfare established as an executive department by the Legislature (Section 68-701 - 68-715, et seq. of the Nebraska Revised Statutes). The Department consists of a Director appointed by the Governor and "such additional employees as may be necessary to perform the functions of the Department in an efficient manner."

1-003.01A State Administration: The 1982 Nebraska Legislature passed Legislative Bill (LB) 522 which changed the Department from county administration with state supervision to a department that is state administrated. On January 1, 1983, the Department became the sole agency for administration of welfare programs (Section 68-309, et seq. of the Nebraska Revised Statutes). Other state statutes related to specific program areas may be cited in the Title covered by that program.

Comment: The State statutory basis for the Department is contained in the Health and Human Services Act, Neb. Rev. Stat. §§ 81-3110 to 81-3124 and §§81-3133.01 to 81-3133.03

1-003.02 Federal Authorities: Federal laws and regulations serve as the federal directives from federal agencies which monitor the programs administered by the Department.

1-003.02A Federal Laws: The federal statutory authority governing each program is covered at the beginning of the NAC title that contains the program regulations. The majority of the laws are contained in the Social Security Act of 1935 and subsequent amendments.

~~1-003.02B Federal Regulations: The Code of Federal Regulation (CFR) is codification of rules published in the Federal Register by executive departments and agencies of the federal government. The Department, in order to receive federal funding, must comply with regulations of the appropriate federal monitoring agencies. CFR citations governing programs administered by NDSS may appear in each NAC manual.~~

~~1-003.02C State Plans: State plans are prepared either in narrative form or in "pre-prints." Pre-printed plans are statements prepared by the federal government which describe conditions under which federal funds are available. The state agency indicates its agreement with federal requirements by submitting properly completed plans to the appropriate federal regional office for approval. Manual material is submitted to the federal agency as a supplement to preprinted plans.~~

~~1-004 Forms: Copies of forms referred to in Title 465 and instructions for their use will appear in the Appendix to this Title.~~

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TITLE 465            REGULATIONS OF GENERAL APPLICATION

CHAPTER 2            GRIEVANCES AND FAIR HEARINGS

~~CHAPTER 2-000 PROGRAM UNIVERSALS:~~ This chapter contains policies that are common to all benefit and services programs administered by the Nebraska Department of Social Services. These policies also have general application to other Department functions such as licensing, certification, and provider authorization.

~~Form DA-100, "Application for Assistance," which is used as the application form for most programs of the Department, includes a listing of the rights and responsibilities of applicants and clients.~~

001. SCOPE AND AUTHORITY. The former Department of Social Services merged into, and became part of, the Nebraska Department of Health and Human Services (Department). This chapter contains regulations relating to benefit and services programs administered by the Department. These regulations have general application. To the extent other applicable titles of Department regulations are in conflict with this title, those other titles shall control. To the extent this chapter conflicts with Title 465 Nebraska Administrative Code (NAC) 6, this chapter shall control.

~~2-001 Client Rights:~~ Each applicant for, or client of any program(s) administered by the Nebraska Department of Social Services has the following rights:

- ~~1. To receive action on his/her application for benefits within 45 days (for expedited food stamps see 475 NAC 2-004.01);~~
- ~~2. To have his/her information treated confidentially (see 465 NAC 2-005);~~
- ~~3. To receive adequate notice of any action affecting his/her application or case;~~
- ~~4. To receive equal protection under the law. No person may be discriminated against on the basis of race, color, national origin, sex, age, handicap, religion, or political belief;~~
- ~~5. To have program requirements and benefits fully explained;~~
- ~~6. To receive assistance in the application process from a person of his/her choice;~~
- ~~7. To be referred to other human service agencies;~~
- ~~8. To apply for assistance or services (see 465 NAC 2-001.01); and~~
- ~~9. To appeal to the Director for a fair hearing (see 465 NAC 2-001.02).~~

~~2-001.01 Right to Apply:~~ Anyone who wishes to request or apply for any Nebraska Department of Social Services program must be given the opportunity to do so without delay.

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~~2-001.02 Right to Appeal: Every applicant for or recipient of assistance or services provided through the Nebraska Department of Social Services has the right to appeal any action, inaction, or failure to act with reasonable promptness with regard to the assistance or services. The individual may appeal because—~~

002. APPEAL. Each applicant for, or recipient of assistance administered by the Department may request a fair hearing to appeal a Department action, or failure to act with reasonable promptness, with regard to assistance or services. The individual may appeal because:

- ~~1.(A)His/her An~~ application for financial or medical assistance or services is denied;
- ~~2.(B)His/her An~~ application for financial or medical assistance or services is not acted upon with reasonable promptness;
- ~~3.(C)His/her a~~Assistance is suspended;
- ~~4.(D)His/her a~~Assistance or services are reduced;
- ~~5.(E)His/her a~~Assistance or services are terminated;
- ~~6.(F)His/her A~~ form of payment or services is changed to be more restrictive; or
- ~~7.(G)S/he thinks the staff's~~ The individual asserts that a Department action was erroneous.

~~Exception: The client is not entitled to a fair hearing when either state or federal law requires automatic case adjustments for classes of clients unless the reason for an individual appeal is incorrect eligibility determination.~~

002.01 AUTOMATIC ADJUSTMENTS. A fair hearing is not required when either state or federal law requires automatic case adjustments for classes of applicants or recipients unless the request for a fair hearing is based on a belief that a benefit level was computed incorrectly under the change in law or that the change in law was misapplied or misinterpreted.

002.02 GRIEVANCES. The fair hearing provisions of this title do not apply to ordinary grievance procedures such as: grievances relating to alternative and traditional response to allegations of abuse or neglect; grievances for youth in the care of the Office of Juvenile Services; grievances relating to procurement; grievances for foster parents; patient grievances at Department facilities; employment grievances; grievances to local entities under the Community Services Block Grant; and child welfare grievances.

~~2-001.02A Appeal Time Limits: The applicant or client must request a fair hearing within 90 days following the date the notice of adverse action is mailed. If an applicant wishes to appeal due to inaction, s/he must request a fair hearing within 90 days of the date the application was signed.~~

~~If the client submits a request for a hearing within ten days following the date the notice is mailed, the staff shall not take the adverse action until a fair hearing decision is rendered.~~

~~If the client submits a request for a hearing within ten days following the date the notice is mailed, the client must be allowed an opportunity to decline receipt of continued assistance pending the appeal decision.~~

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~~2-001.02B Filing an Appeal: See 465 NAC 6-004.01.~~

002.03 APPEAL TIME LIMITS. A request for hearing is allowed on any adverse action by the Department or loss of benefits which occurred in the prior 90 days. Action by the Department includes a denial of a request for restoration of any Supplemental Nutrition Assistance Program (SNAP) benefits lost more than 90 days but less than a year prior to the request. The applicant or recipient must request a fair hearing within 90 days following the date the notice of adverse action is mailed. If an applicant or recipient wishes to appeal due to inaction, the request for fair hearing must be made within 90 days of the date the application was submitted.

002.03(A) TIMELY APPEAL, STAY. If the appellant submits a request for a hearing within ten days following the date the notice is mailed, or such other period set forth in the notice of action, the adverse action will be stayed until a fair hearing decision is rendered to the extent allowed under the applicable program. The appellant may decline receipt of continued assistance pending the appeal decision.

002.04 REQUESTING A FAIR HEARING. If applicable laws and regulations relating to specific assistance and services do not provide the manner for requesting a fair hearing, the provisions for requesting a fair hearing contained in Chapter 6 of this title will apply.

~~2-001.02C Notice to the Petitioner: Upon receiving a request for an appeal, the Director acknowledges the appeal by sending a letter to the petitioner, stating that the appeal has been received and informing him/her -~~

- ~~1. Of the time and the place the hearing will be held on his/her appeal; or~~
- ~~2. That the basis of the appeal is inappropriate or that the appeal request has been received after the deadline for appealing an action. (See 465 NAC 2-001.02A regarding appeal time limits.)~~

~~The hearing must be scheduled not less than one week nor more than six weeks from the date of the request, unless the time is waived by the petitioner. (See 468 NAC 6-012.01 Emergency Assistance appeals.) The letter must include a detailed explanation of the petitioner's rights and duties at the hearing (see 465 NAC 6-000).~~

002.05 NOTICE TO THE APPELLANT. Notice will be provided to the appellant of the time, date, and place the hearing will be held. Telephonic hearings are deemed held in Lincoln, Nebraska where the hearing officer presides. A party may make a request for reasonable accommodation in advance of the hearing and the Department will provide reasonable accommodation so that the hearing is accessible to the requestor.

002.06 FEDERAL REQUIREMENTS. To the extent applicable, Medicaid hearings will be conducted in a manner consistent with 42 CFR § 431, Subpart E. To the extent applicable, Supplemental Nutrition Assistance Program (SNAP) hearings will be conducted in a manner consistent with 7 CFR § 273.15 and 7 CFR § 273.16. To the extent applicable, hearings

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relating to Aid to Families with Dependent Children and federally funded programs for the aged, blind, and disabled will be conducted in a manner consistent with 45 CFR § 205.10.

002.07 HEARINGS, ADDITIONAL REQUIREMENTS. In addition to the practices and procedures for fair hearings and disqualification hearings set forth in other provisions of this Title, the following shall apply:

002.07(A) PLEADINGS IN A CONTESTED CASE. At the discretion of the hearing officer, pleadings filed by a pro se party or non-attorney representative may be received even if they do not meet the formal requirements set forth in this title. At the discretion of the hearing officer, pleadings may be received electronically.

002.07(B) HEARINGS NOT PUBLIC. The hearing is not open to the public, persons who are not parties or witnesses may attend if the appellant or person accused of an intentional program violation so chooses. The hearing official has the authority to limit the number of persons in attendance at the hearing if space is limited or if persons in attendance must be limited to ensure an orderly hearing.

002.07(C) RECORDING THE HEARING. Hearings are recorded by either equipment or a stenographer.

002.07(D) RECESSING THE HEARING. If the hearing official orders a recess to request, receive, or obtain additional testimony or evidence, the parties and any representatives will be advised of the reason for the recess and the nature of the additional information that is required. The hearing will be reconvened when the witness, document, or other evidence is available so that the parties will have an opportunity to question or refute any testimony or other evidence received. When reconvened, the hearing will be conducted as any other hearing.

002.07(E) ADMISSION OF EVIDENCE AFTER HEARING IS CLOSED. At the hearing officer's discretion, evidence may be received by the hearing official after a hearing is closed for good cause shown. Copies of any new evidence will be sent to interested parties together with an explanation of the right to explain or refute new evidence.

002.07(F) GROUP HEARINGS. The Department may respond to a series of individual requests for hearings on an issue of policy by holding a single group hearing. In such instances, individuals have the right to withdraw from the group hearing in favor of an individual hearing. The Department may also grant a group hearing on an issue of policy when requested by recipients.

002.07(G) SUMMARY DISPOSITION. The Department may on its own motion summarily dismiss an appeal for any of the following reasons:

- (i) The appeal is not timely filed as shown by Department records; or
- (ii) The appeal raises no appealable issue as provided by law.

~~2-002 Client Responsibilities: Each applicant for, or client of, a Nebraska Department of Social Services program has the responsibility to—~~

- ~~1. Provide timely and accurate information. Failure to provide complete and accurate information may result in criminal penalties under applicable state or federal laws;~~
- ~~2. Report a change in circumstances no later than ten days following the change. This includes information regarding—~~
  - ~~a. Income and expenses;~~
  - ~~b. Resources or other financial matters;~~
  - ~~c. The purchase or trade of a car or other licensed vehicle;~~
  - ~~d. Employment status;~~
  - ~~e. Household composition such as the addition or loss of a household member;~~
  - ~~f. Living arrangement;~~
  - ~~g. Address; or~~
  - ~~h. Incapacity or disability status;~~
- ~~3. Ask questions if s/he does not understand the programs;~~
- ~~4. Comply with the requirements specific to the program for which s/he is applying or receiving benefits; and~~
- ~~5. Cooperate with state and federal quality control and audit processes.~~

~~2-003 Department Responsibilities: The DSS staff shall—~~

- ~~1. Allow anyone who requests assistance to complete an application;~~
- ~~2. Give an explanation of the program requirements;~~
- ~~3. Collect and review the information entered on the application form;~~
- ~~4. Explain fully the eligibility and benefit factors and how changes will affect eligibility and benefits;~~
- ~~5. Explain the eligibility and benefit factors that require verification;~~
- ~~6. Obtain the client's written consent for the needed verification;~~
- ~~7. Explore income that may be currently or potentially available;~~
- ~~8. Give information about other programs and services available through the agency for which the client may be eligible;~~
- ~~9. Inform the client about his/her rights and responsibilities (see 465 NAC 2-001 and 2-002);~~
- ~~10. Complete necessary reports and forms;~~
- ~~11. Act within 30 days on the client's application (for food stamp households entitled to expedited processing of the application, see 475 NAC 2-004.01);~~
- ~~12. Provide adequate notice to the client of any case action;~~
- ~~13. Maintain case records;~~
- ~~14. Inform the client of legal services available in the community if the client requests a fair hearing;~~
- ~~15. Uphold the client's civil rights. No person may be subjected to discrimination on the grounds of his/her race, color, national origin, sex, age, handicap, religion, or political belief;~~
- ~~16. Treat the client's information confidentially (see 465 NAC 2-005); and~~

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~~17. Exercise the prudent person principle (see 465 NAC 2-003.01).~~

~~2-003.01 Prudent Person Principle: The prudent person principle is defined as the practice of assessing all circumstances regarding a case and using good judgment in requiring further verification, information, or clarification.~~

~~2-004 Other Responsibilities: The Director and designated staff must ensure that all Department programs are administered in accordance with the rules and regulations of the Department, State Statutes, and Federal laws and regulations.~~

~~2-005 Confidentiality: Confidential information which identifies individuals who apply for or receive assistance, benefits, or services from the Department must be safeguarded. The following information is considered confidential:~~

- ~~1. All information contained in the files or available to staff members concerning applicants, clients, or other persons, under any program administered by the Nebraska Department of Social Services; and~~
- ~~2. All records and information including nursing facility cost reports for report periods ending on or before September 30, 1990, in the files of the Nebraska Department of Social Services pertaining to providers and vendors, other than aggregate statistical information which does not disclose services to individual recipients. Nursing facility cost reports filed for report periods ending October 1, 1990 or thereafter are public information and are available for inspection at the Central Office of the Department of Social Services. The Department may charge for copies of the cost reports.~~

~~003. CONFIDENTIALITY. Information, regardless of form, concerning applicants, recipients, or other persons, under any program providing assistance, benefits, or services is confidential. The use of such information by any other person, agency, or department of government to which information is furnished shall be limited to the purposes for which it is furnished.~~

~~2-005.01 General Information~~

~~2-005.01A Authority: Authority is given to the Nebraska Department of Social Services by Sections 68-312 through 68-314, et seq. of the Nebraska Revised Statutes, to establish and enforce reasonable rules and regulations covering the custody, use, and preservation of records, files, and communications of the Department.~~

~~2-005.01B Limitations: Section 68-313, et seq. of the Nebraska Revised Statutes states that all records, files, papers, and communications must be limited to purposes directly connected with the administration of -~~

- ~~1. Assistance to the Aged, Blind, or Disabled;~~
- ~~2. Aid to Dependent Children;~~
- ~~3. Medical Assistance;~~
- ~~4. Social Services;~~

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5. ~~Medically Handicapped Children's Program;~~
6. ~~Food Stamp Program;~~
7. ~~Food Distribution Program;~~
8. ~~Energy Assistance Programs;~~
9. ~~Matters concerned with proposed legislation or in relation to administration of state or county government; or~~
10. ~~Rules and regulations of the Department.~~

~~Other programs of the Department are covered by these limitations.~~

~~2-005.01C Penalties: Any person who knowingly misuses any public assistance information may be found guilty of a misdemeanor.~~

~~As a condition of employment, each employee is require to complete Form PT-40, "Confidential Information Agreement". By signing this form, the employee certifies that s/he has read and understands the disclosure of information policies of the Department (see 465-000-40).~~

~~2-005.01D Specific Program Requirements: Information regarding disclosure requirements for the Department's programs is found within specific titles of the Program Manual.~~

~~2-005.02 Disclosure~~

~~2-005.02A By Staff: Staff members of the Nebraska Department of Social Services shall discuss cases and clients only in case conferences and never through informal exchange of information with other staff or persons, whether with employees in the same agency or staff from another state agency.~~

~~2-005.02B Situation Allowing Disclosure: In the administration of any of the Department's programs, situations may arise which justify the disclosure of information about applicants, recipients, or beneficiaries of aid or services to other agencies or individuals. Administrative purposes of the Department include-~~

1. ~~The determination of need and amount of financial assistance, medical care, social services, and food stamps or food distribution; and~~
2. ~~Providing assistance or benefits under any of the Department's programs.~~

~~The Director holds exclusive control over the release of all records, files, papers, correspondence, and documents containing information about individuals requesting or receiving aid and/or services.~~

~~Before releasing information about a client, staff shall obtain the client's written permission. Authorized personnel having charge of the Department's records may release information which is public record, or which the public is legally entitled to~~

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~~receive. According to Section 68-313.01, et seq. of the Nebraska Revised Statutes, "The public shall have free access to all information concerning lists of names and amounts of payments, which appear on any financial records except that no list shall be used for commercial or political purposes."~~

~~Staff may confirm a client's receipt and amount of payment if an inquiry is received from the public. Staff shall not release any information regarding clients who do not receive cash payments.~~

~~Staff may confirm the names of social services or medical providers. Questions regarding amounts of payments to providers must be referred to the appropriate program division or unit of the Department.~~

~~2-005.02C Other Agencies: The Director may delegate to administrators authority to disclose case information to other agencies that administer federal or federally assisted programs which provide assistance, in cash or in kind, or services, directly to the individual on the basis of need. These designated staff are also responsible to see that staff under their supervision observe rules and regulations regarding the safeguard of confidential information. Staff may release information to other agencies when the applicant or client has requested services of the agency, or when the agency's objective in obtaining the information is to provide services to the applicant or client. An applicant's or client's request for services includes permission for a release of information. Whenever possible, the staff shall inform the client of a request for information from an outside agency before releasing the information. In emergency situations, the staff may release information to an outside agency without first notifying the client. In these instances, the staff shall inform the client as soon as possible after the information has been released.~~

~~2-005.02D Client's Case Record: If a client requests a fair hearing or furnishes a written request, staff must make the client's application and case record available. The information may be furnished to the client and/or his/her representative.~~

~~If the client has requested a fair hearing, staff must make available confidential information which will be presented by the agency at the fair hearing. Confidential information which will not be presented at the fair hearing is not released.~~

~~If the client has not requested a fair hearing, confidential information is not released.~~

~~The client or his/her representative must not remove case records from the agency. If the client's representative requests to review the file, s/he must furnish a written release from the client authorizing the review. The staff will retain the release in the case file.~~

~~2-005.02E Law Enforcement Officials: Unless directly connected with the administration of Department programs, staff may not disclose confidential information to law enforcement officials, except upon authorization by the applicant/client or by a~~

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~~court order. For ADC cases, see 468 NAC 1-005.02A for disclosure of information regarding fugitive felons. Information regarding abandonment, desertion, or nonsupport in connection with the Child Support Enforcement Program or information concerning program fraud may be disclosed to the appropriate law enforcement officials.~~

~~2-005.02F Persons Having Legal Access to Records: State and county officials and members of the Nebraska Legislature are by law given access to assistance records. These officials may use information from assistance records only for matters directly connected with the administration of public assistance, state or county government, or proposed legislation.~~

~~Note: County officials may not have access to food stamp only files unless the client is applying for general assistance or other program which involves county funds. Federal requirements prohibit the release of food stamp records to county officials. Other federally funded programs may have the same restrictions.~~

~~2-005.02G Utility Companies: Because utility companies provide essential services to clients, staff shall answer promptly inquiries from utility companies regarding a client's receipt of assistance. Utility companies to which information may be released are those which provide water, natural gas, or electricity.~~

~~2-005.03 Staff Investigations: Most of the application forms used to apply to the Department for benefits or services authorize the staff to investigate any information provided on the application. By signing the application, the client authorizes investigations or verifications. However, some organizations will not release information without a specific release form. In these situations and when the program application does not provide authorization for investigation, the staff shall use Form ASD-46, "Authorization for Release of Information."~~

~~2-005.04 Storage Requirements for Confidential Material: In order to protect confidential information about persons requesting or receiving aid and/or services, the Department shall~~

- ~~1. Store and process confidential information including computer records, in secured areas so that such information can be acquired or retrieved only by authorized personnel;~~
- ~~2. Provide adequate supervision of secured areas to ensure proper use and prevent unauthorized removal or loss of confidential data; and~~
- ~~3. Safeguard information obtained from Internal Revenue (IRS) and other government or public agencies, in accordance with special procedures set forth by these agencies.~~

~~2-006 Fair Hearings: See 465 NAC 6-000.~~

~~2-007 Fraud and Abuse and Intentional Program Violations: This section establishes policy and procedure for reporting suspected fraud and abuse cases and intentional program violations to the Special Investigation Unit for follow-up which includes investigation and possible prosecution.~~

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~~Fraud is defined by Section 68-1017, Reissue Revised Statutes of Nebraska, 1943. Federal regulations regarding fraud and abuse are 45 CFR 235.110 and 42 CFR Part 455. Intentional program violations are addressed in 7 CFR 273.16.~~

~~2-007.01 Definitions: The following definitions apply to fraud and abuse and intentional program violations:~~

~~Abuse (Medicaid): Provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the Nebraska Medical Assistance Program (NMAP) or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. Abuse also includes recipient practices that result in unnecessary cost to NMAP.~~

~~Complainant: Any individual, including a Department employee, who initiates a referral for investigation of a suspected fraud case using Form ASD-63, "Referral for Investigation," or any other method.~~

~~Fraud: As defined by state law, fraud includes, but is not limited to, the willful false statement or representation, or impersonation or other device, made by a recipient or applicant, provider, Departmental employee, or any other person, for the purpose of obtaining or attempting to obtain, or aiding or abetting any person to obtain -~~

- ~~1. Any commodity, food stuff, food coupons, or payment to which the individual is not entitled;~~
- ~~2. A larger amount of payment than that to which the individual is entitled;~~
- ~~3. Any other benefit administered by the Nebraska Department of Social Services to which the individual is not entitled; or~~
- ~~4. Assistance in violation of any statutory provision relating to programs administered by the Nebraska Department of Social Services.~~

~~As defined by federal Medicaid regulation, fraud is an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself/herself or some other person. It includes any act that constitutes fraud under applicable federal or state law.~~

~~Intentional Program Violation (Food Stamp Program): Intentional program violation consists of any action by an individual to purposely:~~

- ~~1. Make a false statement, either verbally or in writing, or conceal information to obtain benefits to which the household is not entitled;~~
- ~~2. Use or receive food stamp benefits in a transaction involving the sale of a controlled substance;~~
- ~~3. Use or receive food stamp benefits in a transaction involving the sale of firearms, ammunition, or explosives;~~
- ~~4. Traffic food stamp benefits for an aggregate amount of \$500 or more;~~

5. ~~Commit and be convicted of a drug-related felony with the following exceptions:
  - a. ~~Remain eligible after first conviction when participating in or have completed a national-licensed or state-approved substance abuse treatment program;~~
  - b. ~~Remain eligible after second conviction when participating in or have completed a national-licensed or state-approved substance abuse treatment program after the conviction;~~~~
6. ~~Fleeing to avoid prosecution or custody for a crime or an attempt to commit a crime that would be classified as a felony or violating a condition of probation or parole; or~~
7. ~~Make a fraudulent statement or representation with respect to his/her identity or place of residence to receive multiple food stamp benefits simultaneously.~~

~~Special Investigation Unit (SIU): A unit within the Division of Enforcement Services whose purpose is to investigate and prepare for prosecution all cases of fraud, except Medicaid provider fraud.~~

~~Surveillance and Utilization Review Unit (SURS): A unit within the Medicaid Division of Health and Human Services, Finance and Support, responsible for investigation and appropriate disposition of all cases of Medicaid provider fraud and program abuse.~~

~~2-007.02 Policies: Staff of the Nebraska Department of Health and Human Services must report suspected fraud and abuse or intentional program violation by completing Form ASD-63 and submitting the completed form to the Special Investigation Unit or the Surveillance and Utilization Unit, as appropriate.~~

~~Staff outside the Lincoln telephone exchange may call Medicaid Inquiry at (877) 255-3092 to obtain assistance when reviewing Medicaid services which are being considered for submittal as suspected fraud and abuse cases. Staff within the Lincoln telephone exchange may call 471-9128 and ask for Medicaid Inquiry. Medicaid Inquiry refers policy questions to the appropriate health care representative or program and planning specialist.~~

~~Each Department office must designate a position to coordinate referrals to the State Investigation Unit.~~

~~All referrals are considered confidential and must be safeguarded as described in 465 NAC 2-005.~~

~~Methods used for investigation of referrals must not infringe on the legal rights of the persons involved and must afford due process of law.~~

~~2-007.03 Procedure for Reporting Suspected Fraud and Abuse or Intentional Program Violations: Suspected fraud and abuse or intentional program violations are reported and investigated as follows:~~

- ~~1. Departmental staff must complete Form ASD-63, "Referral for Investigation," and must submit the completed form in a sealed envelope marked "confidential" to the Special Investigation Unit (referral for investigations initiated within the Omaha Office will be submitted to the Omaha Special Investigation Unit). Departmental staff retain one copy of Form ASD-63. Persons not employed by the Department may report suspected fraud and abuse or intentional program violation to the SIU by letter, phone call, or any other means;~~
- ~~2. When a report of suspected fraud and abuse or intentional program violation is received, the Special Investigation Unit shall conduct a preliminary investigation to determine if there is sufficient merit to warrant a full investigation;~~
- ~~3. Once a report has been referred to the SIU, the Department shall take no further action with regard to the suspected fraud and abuse or intentional program violation except in accordance with instructions or approval by the Special Investigation Unit. This does not preclude normal case action or recoupment of any overpayment through grant reduction or issuance reduction. Normal case actions include closing a case that is found to be ineligible and recovering overpayments;~~
- ~~4. If the results of the preliminary investigation show sufficient merit to conduct a full investigation, the SIU shall conduct a full investigation of the suspected fraud and abuse or intentional program violation;~~
- ~~5. If the results of the preliminary investigation do not show sufficient merit to conduct a full investigation, the SIU shall inform the appropriate staff in writing. The case may be referred to a program division for administrative action; and~~
- ~~6. The SIU shall inform the appropriate administrator from whose office the complaint originated of the status of each case referred.~~

~~2-007.04 Penalties: Individuals who make false claims, statements, or documents, or conceal material facts may be prosecuted under applicable state and federal laws.~~

~~An individual convicted under Section 68-1017, R.R.S., 1943, may incur imprisonment for not more than five years, or a fine of not more than \$10,000, or both. An individual convicted under Federal law, 42 United States Code 1396h, also known as the Medicare-Medicaid Anti-Fraud and Abuse Amendments, may incur imprisonment for not more than five years, or a fine of not more than \$25,000, or both.~~

~~An individual convicted of intentional program violation in the Food Stamp Program may be disqualified from the Food Stamp Program as required by 7 CFR 273.16 for 6 months for the first violation, 12 months for the second violation, and permanently for the third violation. Only the individual found to have committed the intentional program violation, not the entire household, is disqualified. Any remaining household members may be certified for the Food Stamp Program if otherwise eligible. The individual shall also repay the fraudulent claim, either by cash payments or by a reduction in the monthly food stamp allotment. If repayment is not made, the individual is disqualified from the Food Stamp Program until the payments begin (see 475 NAC 1-008).~~

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~~2-007.05 Records and Reports: The Special Investigation Unit shall maintain records and prepare reports as required by federal regulation.~~

~~The Special Investigation Unit shall maintain records of all investigations.~~

004. FRAUD, ABUSE, AND INTENTIONAL PROGRAM VIOLATIONS. Department employees must report cases of suspected fraud, abuse, and intentional program violations to the individuals designated by the Department to receive such reports or to conduct investigations. The following definitions apply:

004.01 FRAUD. Fraud includes, but is not limited to, obtaining, or attempting to obtain, or aiding or abetting any person in obtaining, by means of a willful false statement or representation, or by impersonation, or other fraudulent device:

- (A) Any commodity, food stuff, food coupons, or payment to which the individual is not entitled;
- (B) A larger amount of payment than that to which the individual is entitled;
- (C) Any other benefit administered by the Department to which the individual is not entitled; or
- (D) Public assistance in violation of any lawful provision relating to programs administered by the Department of Health.

004.02 INTENTIONAL PROGRAM VIOLATION. Intentional program violation consists of any action by an individual to purposely:

- (A) Make a false statement, either verbally or in writing, or conceal information to obtain, or attempt to obtain, benefits to which the household is not entitled;
- (B) Use or receive supplemental nutrition benefits in a transaction involving the sale of a controlled substance;
- (C) Use or receive supplemental nutrition benefits in a transaction involving the sale of firearms, ammunition, or explosives;
- (D) Traffic supplemental nutrition benefits for an aggregate amount of \$500 or more; or
- (E) Make a fraudulent statement or representation with respect to the individual's identity or place of residence to receive multiple supplemental nutrition benefits simultaneously.

004.03 PROGRAM ABUSE. Provider practices that do not meet the definition of civil or criminal fraud under applicable state law, but nonetheless are inconsistent with sound fiscal, business, or medical practices.

~~2-007.06 Disqualification Hearings for Intentional Program Violations (IPV) for ADC and Child Care Subsidy~~

~~2-007.06A Initiating the Disqualification Hearing:~~

~~2-007.06A1 Reporting Requirements: The worker must report cases of suspected IPV to the Special Investigations Unit (SIU), Central Office.~~

~~2-007.06A1a Central Office Guidelines:~~ The Central Office uses the following guidelines in determining the need for a disqualification hearing:

- ~~1. A disqualification hearing must be initiated regardless of the current eligibility status of the individual;~~
- ~~2. The burden of proving IPV is on the Department;~~
- ~~3. The Central Office will not initiate a disqualification hearing against an accused individual whose case is currently being referred for prosecution or after any action taken against the accused individual by a court, if the factual issues of the case arise out of the same, or related, circumstances.~~

~~2-007.06B Disqualification Hearing Procedures:~~ The Nebraska Department of Health and Human Services Director must designate either an employee of the state agency or an individual under contract to the Department to conduct disqualification hearings.

~~2-007.06B1 Timeliness Standards:~~ The following timeliness standards must be followed in the disqualification hearing process:

- ~~1. The individual suspected of IPV must be given at least 30 days' written advance notice of the hearing unless the household requests a waiver of the advance notice in situations when the disqualification and fair hearings are combined (see 465 NAC 2-007.06B2).~~
- ~~2. The Central Office has 90 days from the date the accused individual is notified of the hearing to:
  - ~~a. Conduct the hearing;~~
  - ~~b. Arrive at a decision; and~~
  - ~~c. Initiate administrative action to make the decision effective.~~~~
- ~~3. If the hearing is postponed (see 465 NAC 2-007.06B2), the time limits of item 2 are extended for as many days as the hearing is postponed.~~

~~2-007.06B2 Scheduling of Hearings:~~ The time and place of the hearing must be arranged so that the hearing is accessible to the individual suspected of IPV. The following guidelines must be observed in scheduling disqualification hearings:

- ~~1. The individual or representative is entitled to one postponement of a maximum of 30 days of the scheduled hearing if the request for postponement is made at least ten days before the scheduled hearing~~
- ~~2. If the individual or his/her representative cannot be located or fails to appear at a hearing without good cause, the hearing will be conducted without representation for the individual. Even though the individual is not represented, the Nebraska Department of Health and Human Services Director will carefully consider the evidence and determine if IPV was committed based on clear and convincing evidence.~~

- ~~3. If the individual is found to have committed IPV, but it is later determined by the Director that the individual had good cause for not appearing, the previous decision is no longer valid and the Central Office will conduct a new hearing.~~
- ~~4. The individual has ten days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. The Director must enter the good cause decision into the record.~~

~~2-007.06B3 Consolidated Hearings: A disqualification hearing may be combined with a fair hearing when:~~

- ~~1. The factual issues of both hearings arise out of the same (or related) circumstances; and~~
- ~~2. The individual is notified in advance that the hearings will be combined in a single hearing.~~

~~If a disqualification hearing and a fair hearing are combined, the Central Office must follow the timeliness standards for disqualification hearings (see 465 NAC 2-007.06B1).~~

~~If the hearings are combined for the purpose of settling the overpayment amount and determining if IPV has occurred, the household loses its right to a later fair hearing on the claim amount. However, upon the household's request, the local office must allow the household to waive the 30-day advance period required by 465 NAC 2-007.06B2 when the disqualification hearing and fair hearing are combined.~~

~~2-007.06C Advance Notice of Hearing: The Central Office must send an Advance Notice of Disqualification Hearing to the individual suspected of IPV at least 30 days in advance of the date of the disqualification hearing.~~

~~2-007.06D Waived Hearing: If the individual wishes to waive a hearing, the Central Office will send a waiver of hearing consent form to the household.~~

~~If the waiver form is returned by the deadline specified on the waiver form, the household must be disqualified according to disqualification penalties listed at 468 NAC 3-005.05C for ADC or 392 NAC 3-012.02D for Child Care Subsidy.~~

~~The Advance Notice of Disqualification Hearing contains information advising the household of its right to waive a disqualification hearing.~~

~~2-007.06E Participation While Awaiting a Hearing: A pending disqualification hearing does not affect the right of the individual or the household to continue to receive assistance. The local office must determine the eligibility in the same manner it would~~

~~be determined for any other household, until there is a determination that the individual has committed IPV.~~

~~If the pending disqualification action does not affect the individual's current circumstances, the individual would continue to receive assistance based on the latest program action or be redetermined based on a new application and the current circumstances.~~

~~The worker must also reduce or terminate the household's benefits if there is documentation which substantiates ineligibility or eligibility for reduced benefits and the household fails to request a fair hearing and continuation of benefits pending the hearing. These actions occur even if the documented facts led to the suspicion of IPV and the resulting disqualification hearing.~~

#### ~~2-007.06F The Hearing Official~~

~~2-007.06F1 Duties of the Hearing Official:~~ ~~The hearing official must ensure that:~~

- ~~1. All relevant issues are considered;~~
- ~~2. All persons who testify at the hearing present their evidence as completely and accurately as possible; and~~
- ~~3. The hearing record contains enough evidence to enable the Director to make a decision.~~

~~2-007.06F2 Powers of the Hearing Official:~~ ~~The hearing official has the power to:~~

- ~~1. Administer oaths;~~
- ~~2. Ask for additional witnesses and question witnesses;~~
- ~~3. Ask that additional documents be brought in;~~
- ~~4. Dismiss witnesses from the room for good and sufficient reason;~~
- ~~5. Recess, continue, or close the hearing at any time there is good and sufficient reason for so doing; and~~
- ~~6. Regulate the conduct and course of the hearing in accordance with due process and keep the hearing orderly and to the point by excluding and discouraging evidence which is not relevant.~~

~~2-007.06F3 Hearing Decision Authority:~~ ~~The power to make the final disqualification hearing decision is vested in the Director.~~

~~2-007.06G Conduct of the Hearing:~~ ~~Disqualification hearings are conducted by the hearing official as informal hearings, but witnesses must be placed under oath.~~

~~2-007.06G1 Attendance at the Hearing: The hearing is attended by a representative of the Department. The suspected household member and/or his/her representative are encouraged to attend, but their presence is not required.~~

~~The hearing is not open to the public, but friends or relatives of the household may attend if the household so chooses. However, the hearing official has the authority to limit the number of persons in attendance at the hearing if space is limited or if persons in attendance must be limited to ensure an orderly hearing.~~

~~2-007.06G2 Recording the Hearing: Disqualification hearings are recorded by either mechanical equipment and/or a stenographer.~~

~~2-007.06G3 Order of the Hearing: The hearing will begin with introductions by the hearing official. At this time the hearing official must advise the suspected household member or his/her representative that s/he may refuse to answer questions during the hearing. The Department's representative will present the state's case first. The household member or the representative will then present his/her case.~~

~~2-007.06H Recessing the Hearing: The hearing official may order a recess if s/he considers it necessary to request, receive, or obtain additional testimony or evidence in order for the Director to decide the issues being raised. The hearing official must advise the household member or his/her representative of the reason for the recess and the nature of the additional information that is required. The hearing must be reconvened when the witness, document, or other evidence is available so that the household member will have an opportunity to question or refute any testimony or other evidence received. When reconvened, the hearing is conducted as any other disqualification hearing.~~

~~2-007.06J Admission of Evidence After Hearing Is Closed: Evidence may be submitted after a hearing is closed. However, copies of any new evidence must be sent to interested parties, together with an explanation of the right to explain or refute new evidence.~~

#### 2-007.07 Hearing Decision

~~2-007.07A Criteria for Determining Intentional Program Violation: The Director must base the determination of IPV on clear and convincing evidence which demonstrates that the individual knowingly, willfully and with deceitful intent committed IPV.~~

~~2-007.07B Decision Format: On the basis of the evidence presented, the Director must enter a final decision which:~~

- ~~1. Specifies the reasons for the decision;~~
- ~~2. Identifies the supporting evidence;~~

3. Identifies the pertinent program regulation; and
4. Responds to reasoned arguments made by the individual or representative.

~~2-007.07C IPV Sanctions: For sanctions following a decision of IPV, see 468 NAC 3-005.05C for ADC and 392 NAC 3-012.02D for Child Care Subsidy.~~

~~2-007.08 Appeal Rights of the Household: No further administrative appeal procedure exists after a hearing decision is made which is adverse to the individual. A determination of IPV cannot be reversed by a subsequent fair hearing decision on the same level. However, the household member is entitled to seek relief in a court having appropriate jurisdiction under Neb. Rev. Stat. Section 84-917. The period of disqualification may be subject to stay or other injunctive remedy.~~

005. DISQUALIFICATION HEARING OFFICIAL. Hearings will be conducted by an impartial official who: Does not have any personal stake or involvement in the case; was not directly involved in the initial determination of the action which is being contested; and was not the immediate supervisor of the person who took the action that is the subject of the hearing. The hearing official will be either an employee of the Department or an individual under contract with the Department.

005.01 DISQUALIFICATION GUIDELINES. The following apply to disqualification proceedings:

- (A) A disqualification hearing may be initiated regardless of the current eligibility status of the individual;
- (B) The burden of proving intentional program violations is on the Department; and
- (C) A disqualification hearing will not be initiated against an accused individual whose case is currently being referred for prosecution or after any action taken against the accused individual by a court, if the factual issues of the case arise out of the same, or related, circumstances.

005.02 TIMELINESS STANDARDS. The following timeliness standards apply in the disqualification hearing process:

- (A) The individual suspected of intentional program violations will be given at least 30 days' written advance notice of the hearing unless the individual requests a waiver of the advance notice in situations when the disqualification and fair hearings are combined.
- (B) Within 90 days from the date the accused individual is notified of the hearing the Department will:
  - (i) Conduct the hearing;
  - (ii) Arrive at a decision;
  - (iii) Notify the individual of the decision; and
  - (iv) Take administrative action to implement the decision.

005.03 SCHEDULING OF HEARINGS. The following apply to disqualification hearings:

- (A) The individual or representative is entitled to a postponement of the scheduled hearing, provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. The hearing shall not be postponed for more than a total of 30 days and the Department may limit the number of postponements to one. If the hearing is postponed, the time limits for conducting a hearing, reaching a decision, and notifying the individual of the decision shall be extended for as many days as the hearing is postponed.
- (B) If the individual or individual's representative cannot be located or fails to appear at a hearing without good cause, the hearing will be conducted without representation for the individual. Even though the individual is not represented, the hearing official will carefully consider the evidence and determine if an intentional program violation was committed based on clear and convincing evidence.
- (C) If the individual is found to have committed an intentional program violation but it is later determined that the individual had good cause for not appearing, the previous decision will no longer remain valid and the Department will conduct a new hearing.
- (D) In instances where good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice, the individual has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, the individual has 10 days from the date of the scheduled hearing to present reasons showing good cause for failure to appear. The good cause decision will be entered into the record.

005.04 CONSOLIDATED HEARINGS. A disqualification hearing may be combined with a fair hearing when the factual issues of both hearings arise out of the same or related circumstances and the individual is notified in advance that the hearings will be combined in a single hearing.

005.04(A) TIMELINESS STANDARDS. If a disqualification hearing and a fair hearing are combined, the timeliness standards for disqualification hearings apply.

005.04(B) OVERPAYMENTS. If the hearings are combined for the purpose of settling an overpayment amount and determining if an intentional program violation has occurred, the individual loses the right to a later fair hearing on the overpayment amount. The individual may waive the 30-day advance notice period when the disqualification hearing and fair hearing are combined.

005.05 NOTICE OF THE OPTION TO WAIVE HEARING. The Department will provide written notification to the individual suspected of an intentional program violation that the individual can waive the right to an administrative disqualification hearing. Prior to providing this written notification, the Department will review the evidence against the individual by someone other than the eligibility worker assigned to the accused individual's household to verify that such evidence warrants scheduling a disqualification hearing. The notification will be provided in a manner consistent with 7 CFR § 273.16.

005.06 WAIVED HEARINGS. If the individual wishes to waive a hearing, the Department will send a waiver of hearing consent form. If the waiver form is returned by the deadline specified on the waiver form, the individual will be disqualified in accordance with the disqualification periods specified in the regulations for the assistance program for which the intentional program violation is alleged.

005.07 PARTICIPATION WHILE AWAITING A HEARING. A pending disqualification hearing does not affect the right of the individual or the household to continue to receive assistance. Eligibility will be determined in the same manner it would be determined for any other household until there is a determination that the individual has committed an intentional program violation.

005.07(A) CONTINUATION OF ASSISTANCE. If the misstatement or action that is the basis of the alleged violation does not affect the individual's current circumstances, the individual would continue to receive assistance based on the latest program eligibility determination or be redetermined based on a new application and the current circumstances. Benefits will be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply.

005.07(B) TERMINATION OF ASSISTANCE. The individual's or household's benefits will be reduced or terminated if there is documentation which substantiates ineligibility or eligibility for reduced benefits and the household fails to request a fair hearing and continuation of benefits pending the hearing. These actions occur even if the documented facts led to the suspicion of an intentional program violation and the resulting disqualification hearing.

005.08 HEARING OFFICIAL POWERS AND DUTIES. In fair hearings and disqualification hearings the hearing official will:

- (A) Consider all relevant issues;
- (B) Administer oaths;
- (C) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;
- (D) Regulate the conduct and course of the hearing in accordance with due process and keep the hearing orderly;
- (E) Provide a hearing record and recommendation for final decision by the Chief Executive Officer or delegated final decision maker; and
- (F) At the hearing officer's discretion:
  - (i) Ask for additional witnesses and question witnesses;
  - (ii) Ask that additional evidence be presented;
  - (iii) Dismiss witnesses from the room for good and sufficient reason;
  - (iv) Recess, continue, or close the hearing at any time there is good and sufficient reason for so doing; and
  - (v) Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the Department.

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005.09 HEARING DECISION AUTHORITY. Unless delegated according to state statute or regulation, the power to make the final disqualification hearing decision is vested in the Chief Executive Officer.

005.10 CONDUCT OF THE HEARING. Disqualification hearings are conducted by the hearing official as informal hearings, but witnesses will be placed under oath.

005.10(A) ATTENDANCE AT THE HEARING. The hearing will be attended by a representative of the Department. If the suspected individual fails to appear, the decision of the Department regarding the intentional program violation will be based solely on information provided by the Department.

005.10(B) ORDER OF THE HEARING. The hearing will begin with introductions by the hearing official. The hearing official will advise the suspected individual or representative that the suspected individual may refuse to answer questions during the hearing. The Department's representative will present the state's case first. The suspected individual or the representative will then present the individual's case.

005.11 HEARING DECISION. The following apply to hearing decisions:

005.11(A) CRITERIA FOR DETERMINING INTENTIONAL PROGRAM VIOLATION. The determination of an intentional program violation must be based on clear and convincing evidence which demonstrates that the individual knowingly, willfully and with deceitful intent committed an intentional program violation.

005.11(B) DECISION FORMAT. On the basis of the evidence presented, a final decision will be entered which:

- (i) Specifies the reasons for the decision;
- (ii) Identifies the supporting evidence;
- (iii) Identifies the pertinent program regulation; and
- (iv) Responds to reasoned arguments made by the individual or representative.

005.12 APPEAL RIGHTS. No further administrative appeal procedure exists after a hearing decision is made which is adverse to the individual. A determination of intentional program violation cannot be reversed by a subsequent fair hearing decision on the same level.

~~2-008 Protective Payee, Guardian, Conservator, and Power of Attorney~~

~~2-008.01 Definitions~~

~~Conservator: A person or corporation appointed by a county court to control and manage the estate, property, and/or other business affairs of a person who, the court has determined, is unable to do so.~~

~~Guardian: A person appointed by a court of competent jurisdiction to control and manage the financial and/or personal affairs of an individual who is found incapacitated and requires continuing care or supervision.~~

~~Power of Attorney: A written authorization for a person to legally act on behalf of another individual.~~

~~Protective Payee: A person assigned to receive the assistance grant for a client because the client has established a pattern of mismanaging his/her grant (see 468 NAC 3-008.04), or whose physical or mental impairment causes inability to manage AABD or SDP payments (see 469 NAC 3-007.02B).~~

~~2-008.02 Appointment and Discharge of Guardians and Conservators: A petition for guardianship may be filed by any competent person who is able to show cause as to why the individual named needs a guardian. If a conservator is being requested, the individual himself or herself or a person showing good cause files the petition. In either case, the court may—~~

- ~~1. Grant or dismiss the petition at its discretion;~~
- ~~2. Select the person who is to serve;~~
- ~~3. Issue letters of guardianship/conservatorship as evidence of the appointment; or~~
- ~~4. Establish a full or limited guardianship at its discretion.~~

~~A guardian or conservator may be removed only by court order.~~

~~2-008.02A Duties of Guardians and Conservators: The court may establish a full guardianship which will give the guardian full responsibility in all ten areas described in 473 NAC 5-015.11C or may establish a limited guardianship if it decides the client only needs assistance in some of these areas. A conservatorship gives the conservator responsibility for the estate, property, and/or other business affairs of the client.~~

~~2-008.02B Department Responsibility: If an Adult Protective Services (APS), AABD, or ADC client is unable to handle his/her finances or personal affairs, the appropriate staff, on its own initiative, in cooperation with the individual's relatives or friends, may arrange for the appointment of a guardian or conservator, power of attorney, or protective payee. See 473 NAC 5-015.11 for procedures to follow in Adult Protective Services.~~

~~If a guardian is needed and the client has no relatives or friends to act on his/her behalf and best interest, the appropriate staff person may file a petition requesting that a guardian be appointed.~~

~~If the court requests its services, the Department shall assist in locating a suitable person to act as guardian or conservator.~~

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465 NAC 2

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~~While the appointment of a guardian or conservator for a client who needs one is desirable, it is not an eligibility requirement. Assistance may not be suspended or terminated due to the absence of a guardian or conservator.~~

~~2-008.03 Assignment of Power of Attorney: A power of attorney may be limited to a single transaction or it may be general, covering several transactions. It is a written authorization entered into voluntarily by the individual giving the power of attorney; the individual must be competent in order to create a valid power of attorney.~~

~~A power of attorney may be revoked by the individual to whom it is granted. It may also be terminated by the request, death, disability, or incapacity of the client giving the power of attorney. The power of attorney may remain effective when the adult becomes disabled or incompetent if s/he specifies in the document that the power should continue if disability or incompetence occurs. Caution should be exercised when suggesting this course of action to a client. If a court finds the client was incapacitated at the time s/he gave the power of attorney, the power of attorney may be terminated and all actions transacted under that power of attorney declared null and void. The power of attorney must be notarized when real property is involved.~~

~~A Department employee may not have power of attorney for a client.~~

~~2-008.04 Assignment of Protective Payee, Guardian, or Conservator Status~~

~~2-008.04A Employee's Role: An employee of the Nebraska Department of Social Services may not serve as a guardian or conservator for a client for whom s/he~~

- ~~1. Determines eligibility;~~
- ~~2. Authorizes services or assistance;~~
- ~~3. Provides direct service; or~~
- ~~4. Has any other professional relationship which may be considered a conflict of interest.~~

~~A request for an employee to act as a guardian or a conservator must be approved by the Director or his/her designee.~~

~~2-008.04B Worker as Protective Payee: A worker may act as protective payee for a client only if s/he does not determine eligibility for a categorical program for that client (see 468 NAC 3-008.04A and 469 NAC 3-007.02B2). All other community resources must be explored before a worker may accept the payee assignment.~~

~~2-008.04C Service Provider's Role: The worker shall obtain approval from the Human Services Division before a service provider who contracts with the Department may act as protective payee for a client s/he serves.~~

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~~2-008.05 — Payments to Guardians or Conservators: — Letters of guardianship, or conservatorship are filed in the client's case record. After receipt of the guardianship or conservatorship papers, the worker shall make necessary changes to ensure that assistance payments are made to the guardian or conservator. For guardianship/conservatorship fees, see 469 NAC 3-004.03G.~~

~~2-008.05A — Beatrice State Developmental Center and Regional Centers: — The superintendent of the Beatrice State Developmental Center and other state regional centers may serve as payees for the patients and may receive assistance payments on behalf of the patients.~~

~~2-008.06 — Court Costs and Attorneys' Fees: — When the appointment of a guardian or conservator for an assistance recipient, payee, or APS client is initiated by Department of Social Services staff, administrative funds may be used to pay court costs involved. Court costs may include —~~

- ~~1. — An attorney fee for appointment of a guardian or conservator;~~
- ~~2. — An attorney fee for closing a guardianship or conservatorship;~~
- ~~3. — The guardian's bond; and~~
- ~~4. — The court-set fee for a guardian ad litem.~~

~~See 465-000-203 for the maximum amounts for attorney fees for appointing a guardian or conservator or closing a guardianship or conservatorship.~~

~~The worker shall, whenever possible, encourage relatives, friends, legal services staff, private attorneys as a "pro bono" service, and state and local lawyer referral programs to absorb the court costs and attorney fees.~~

~~In APS cases when the client possesses an estate, the worker shall encourage the court to order that the court costs and attorney fees be paid by the estate of the client.~~

~~2-008.07 — Billing: — Bills for attorney fees and bonds (along with a copy of letters of guardianship/conservatorship) must be submitted to Finance and Accounting using the appropriate disbursement document.~~

~~2-008.08 — Use of Department Staff as Court Visitors: — Department staff may accept appointment to serve in the capacity of a court appointed visitor when:~~

- ~~1. The adult for whom a guardianship/conservatorship is being petitioned receives no benefits or services from the Department;~~
- ~~2. Adult Protective Services have not been involved in the petitioning for the guardianship/conservatorship; and~~
- ~~3. The Department staff member would not be executing his/her court appointed duties while on agency time.~~

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~~2-009 Provider Payment: Providers of all benefit and services programs shall accept electronic payment when required by the Department.~~

~~2-010 Client Payment: Payments to clients will be made by electronic means. The Department will notify individuals in advance of a change to electronic payment. The Department reserves the right to issue warrants when appropriate.~~

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465 NAC 3

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CHAPTER 3-000 PROCEDURES FOR NEGOTIATED RULEMAKING

TITLE 465            REGULATIONS OF GENERAL APPLICATION

CHAPTER 3            PROCEDURES FOR NEGOTIATED RULEMAKING

~~3-001 Negotiated Rulemaking Generally: The purpose of these regulations is to establish a framework for the conduct of negotiated rulemaking consistent with the Administrative Procedure Act and the Negotiated Rulemaking Act contained in LB 446, Neb. Laws, 1994. The negotiated rulemaking process can be used by state agencies, whenever appropriate, to resolve controversial issues prior to the commencement of formal rulemaking. Negotiated rulemaking is not a substitute for the requirements of the Administrative Procedure Act, but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new rules or the amendment or repeal of existing rules. The negotiated rulemaking process also does not preclude other Department efforts or processes designed to reach consensus with affected or interested persons concerning the content of rules or regulations. A consensus agreement on a proposed rule reached by a negotiated rulemaking committee may be modified by the Department as a result of a subsequent formal rulemaking process.~~

001. SCOPE AND AUTHORITY. The purpose of these regulations is to establish a framework for the conduct of negotiated rulemaking consistent with the Administrative Procedure Act and the Negotiated Rulemaking Act. These rules are adopted from the model rules of the Attorney General pursuant to Nebraska Revised Statute (Neb. Rev. Stat.) § 84-909.01 and apply to procedures for negotiated rulemaking before the Nebraska Department of Health and Human Services.

002. MODEL RULES ADOPTED. The Nebraska Department of Health and Human Services follows the model rules adopted by the Attorney General for regulations and procedures governing negotiated rulemaking found in Title 53 Nebraska Administrative Code (NAC).

~~3-002 Definitions: For purposes of this Chapter of these model procedural rules:~~

~~APA shall mean the Administrative Procedure Act, Neb. Rev. Stat. §§ 84-901 through 84-920.~~

~~Department Director shall mean the Director of the Department of Social Services.~~

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~~Consensus shall mean unanimous concurrence among the interests represented on a negotiated rulemaking committee unless the committee agrees upon another specified definition.~~

~~Convener shall mean a person who impartially assists the Department in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure.~~

~~Facilitator shall mean a person who impartially aids in the discussion and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator shall not have decision making authority.~~

~~Interest shall mean, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.~~

~~Negotiated rulemaking shall mean rulemaking through the use of a negotiated rulemaking committee.~~

~~Negotiated rulemaking committee or committee shall mean an advisory committee established to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.~~

~~Person shall mean an individual, partnership, limited liability company, corporation, association, governmental subdivision, Department, or public or private organization of any character.~~

~~Rule or regulation shall mean any rule, regulation, or standard issued by the Department, including the amendment or repeal thereof whether with or without prior hearing and designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure, but not including rules and regulations concerning the internal management of the Department not affecting private rights, private interests, or procedures available to the public and not including permits, certificates of public convenience and necessity, franchises, rate orders and rate tariffs, and any rules of interpretation thereof, and for the purpose of the APA, every rule and regulation which shall prescribe a penalty shall be presumed to have general applicability or to affect private rights and interests.~~

~~3-003 Establishment of a Negotiated Rulemaking Committee; Criteria: The Department of Social Services may establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the director determines that the use of the negotiated rulemaking procedure is in the public interest. In making that determination, the director shall consider whether—~~

- ~~1. There is a need for the rule.~~
- ~~2. There are a limited number of identifiable interests that will be significantly affected by the rule.~~
- ~~3. There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who—~~
  - ~~a. Can adequately represent the interests identified; and~~
  - ~~b. Are willing to negotiate in good faith to reach a consensus on the proposed rule.~~
- ~~4. There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time.~~
- ~~5. The negotiated rulemaking procedure will not unreasonably delay the notice of proposed formal rulemaking and the issuance of the final rule pursuant to the APA.~~
- ~~6. The Department has adequate resources and is willing to commit those resources, including technical assistance, to the committee.~~
- ~~7. The Department of Social Services, to the maximum extent possible consistent with the legal obligations of the Department, will use the consensus of the committee as the basis of the rule proposed by the Department in the formal rulemaking process of the APA.~~

~~3-004 Conveners; Selection; Duties:~~ The Department of Social Services, at the discretion of the director, may use the services of a convener.

~~The Department of Social Services may employ or contract for an organization or an individual to serve as a convener, or may use the services of a state employee to act as a convener. A convener shall not have a financial or other interest that would preclude him or her from serving in an impartial and independent manner. The Department shall determine whether a person under consideration as a convener has such an interest. A person disqualified under this criterion shall be dropped from further consideration.~~

~~The convener may assist the Department in making the determination of need for a negotiated rulemaking process discussed in 465 NAC 3-003. The convener may also assist the Department in-~~

- ~~1. Identifying persons who will be significantly affected by a proposed rule; and~~
- ~~2. Conducting discussions with affected persons on the issues of concern and ascertaining whether the establishment of a negotiated rulemaking committee is feasible and appropriate for the particular rulemaking.~~

~~The convener shall report findings and make recommendations to the Department. Upon request of the Department, the convener shall ascertain the names of persons who are willing and qualified to represent the interests that will be significantly affected by the proposed rule. That report by the convener and any recommendations of the convener shall be public records and made available to the public for review upon request.~~

~~3-005 Petitions for the Use of a Negotiated Rulemaking Committee:~~ Any person may petition the Department to request the use of a negotiated rulemaking committee in the development or revision of a rule, as provided below.

~~3-005.01 Request:~~ A negotiated rulemaking process may be requested on any topic appropriate for a rule or regulation by the Department.

~~A negotiated rulemaking process may be requested only to develop or revise rules which carry out statutes that are within the authority of the Department of Social Services to implement.~~

~~A negotiated rulemaking process may not be requested to develop a rule or regulation to vary or change the specific terms of a statute.~~

~~A negotiated rulemaking process may not be requested to negotiate a rule on a matter which is not within the definition of a rule or regulation as set forth in 465 NAC 3-002.~~

~~3-005.02 Petition:~~ A request for the use of a negotiated rulemaking procedure shall be made by a petition that meets the requirements of form set out in this subsection. In the event that it does not, the Department may refuse to accept it.

~~A petition may be in the form of a pleading that contains a caption, heading, and name as set forth on form found at 465-000-11.~~

~~A petition may also be made in the form of a letter so long as the letter contains all of the information required by these regulations and is clearly delineated as a petition for negotiated rulemaking.~~

~~All petitions must be on white, letter sized paper (8 1/2 by 11) of standard weight.~~

~~Petitions must be legible, and may be typewritten, photostatically reproduced, printed, or handwritten. If handwritten, petitions must be in ink. Only one side of a page of a petition shall contain any writing.~~

~~Any documents that are intended to accompany a petition shall be securely fastened, clearly marked as attachments to the petition, and meet the other requirements of this section as to size, print and legibility.~~

~~3-005.03 Requirements for Content and Substance of a Petition:~~ A petition for a negotiated rulemaking procedure shall meet the following requirements for content and substance. In the event that it does not, the Department may refuse to accept it.

~~The petition must identify the general subject matter about which the negotiated rulemaking procedure is requested, including the statutes or legislative bill(s) which provide authority for the desired regulation, and, if amendments to existing regulations are sought, identification of the regulations by title, chapter and name.~~

~~The petition must identify the specific issue(s) proposed for inclusion in the negotiated rulemaking process.~~

~~The petition must discuss the facts surrounding each problem or issue proposed for inclusion in the negotiated rulemaking process.~~

~~The petition must discuss why a negotiated rulemaking process is in the public interest, including information on each of the criteria set out in 465 NAC 3-003.01 through 465 NAC 3-003.05 above. The petition may also include information on the criteria included in 465 NAC 3-003.06 and 3-003.07 above, to the extent such information is available to the petitioner. The petitioner may also submit such other information as may assist the Department in making a decision.~~

~~The petition must identify persons who will be significantly affected by any rule which might result from the proposed negotiated rulemaking process, to the extent known by the petitioner. The petitioner may also suggest the names of persons who are willing and qualified to represent the interests that will be significantly affected by the negotiated rulemaking process and the proposed rule.~~

~~3-005.04 Filing of a Petition:~~ A petition for a negotiated rulemaking process shall be filed with the director. Filing may be made by personal delivery during regular Department office hours or by mail.

~~3-005.05 Recommendation to the Director:~~ Upon the filing of a petition for a negotiated rulemaking procedure, the Director may designate a Department employee or use the services of a convener to recommend to the Director whether a negotiated rulemaking process should be initiated.

~~3-005.06 Department Action on a Petition:~~ With sixty (60) days after submission of a petition for a negotiated rule making procedure, the Department shall

- ~~1. Deny the petition in writing, stating the reason(s) for denial; or~~
- ~~2. Initiate the negotiated rulemaking process as provided in these rules.~~

~~3-005.07 Department Decision on Petition:~~ The decision of the Department with respect to a petition for a negotiated rule making procedure may be made in the form of a pleading or a letter clearly designated as the decision on the petition. The petitioner shall be served with a copy of the Department's final decision by certified mail, return receipt requested.

~~A decision by the Department with respect to a petition for a negotiated rulemaking procedure is not subject to judicial review, although nothing herein shall bar a judicial review if such is otherwise provided by law.~~

~~3-006 Notice of a Negotiated Rulemaking Committee; Comment; Applications for Membership:~~ If the Department decides to go forward with the establishment of a negotiated rulemaking committee, the Department shall proceed with the following process.

~~3-006.01 Notice:~~ The Department shall give notice to the Secretary of State, publish notice in a newspaper having general circulation in the state, and, as appropriate, publish notice in other newspapers and publications. The notice shall include

- ~~1. An announcement that the Department intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;~~
- ~~2. A description of the subject and scope of the rule to be developed and the issues to be considered;~~
- ~~3. A list of interests likely to be significantly affected by the proposed rule;~~
- ~~4. A list of the persons proposed to represent the affected interests and the Department;~~
- ~~5. A proposed schedule for completing the work of the committee; and~~
- ~~6. An explanation of how a person may apply for or nominate another person for membership on the committee.~~

~~3-006.02 Comments on Rulemaking Committee: Persons interested in making comments upon the formation of a particular proposed negotiated rulemaking committee shall have 30 days from the date of publication of the notice concerning that committee to do so. Such comments shall be in writing, and shall either be personally delivered to the Department or mailed to the Department at its business office.~~

~~3-006.03 Committee Membership: Persons interested in applying for membership on a particular proposed negotiated rulemaking committee or in nominating other persons for such membership shall have 30 days from the date of publication of the notice concerning that committee to do so. Persons making application for membership or nominations for membership shall do so on Form 465-000-12 or Form 465-000-13, which shall be provided by the Department. Persons making application for membership or nominations for membership may also do so by letter, so long as the letter contains all of the information set out in Form 465-000-12 and is clearly delineated as an application or nomination for membership on a specific negotiated rulemaking committee.~~

~~3-007 Establishment of a Negotiated Rulemaking Committee; Procedure: After publication of notice and termination of the comment and membership application period, the Department will consider the comments and membership applications for a particular negotiated rulemaking committee and determine whether such a committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule, and whether such a committee is feasible and appropriate in the particular rulemaking. In making the final determination as to creation of a negotiated rulemaking committee, the Department may use the services of a convener as set out in 465 NAC 3-004. In making the final determination as to creation of a negotiated rulemaking committee, the Department will apply the criteria set out in 465 NAC 3-003.~~

~~If, after such a determination, the Department decides that a negotiated rulemaking procedure is feasible, it shall establish a negotiated rulemaking committee as provided in these regulations. The committee will negotiate issues and develop proposed rules for use by the Department in formal rulemaking.~~

~~If, after such a determination, the Department decides not to establish a negotiated rulemaking committee, the Department shall~~

- ~~1. Notify the persons who commented on, applied for membership on or nominated persons for membership on the particular negotiated rulemaking committee of the reasons for the decision not to establish such a committee; and~~
- ~~2. Publish notice of the decision not to establish the particular negotiated rulemaking committee in a newspaper having general circulation in the state, and, as appropriate, in other newspapers and publications.~~

~~3-008 Negotiated Rulemaking Committee; membership: All members of a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities as other members.~~

~~3-008.01 Members: Members of a negotiated rulemaking committee may include:~~

- ~~1. A person designated by the Department to represent it. This person shall be authorized to fully represent the Department in the discussions and negotiations of the committee.~~
- ~~2. Persons selected by the Department as willing and qualified to represent the interests that will be significantly affected by the proposed rule.~~
- ~~3. Persons contacted and recruited by the negotiated rulemaking committee itself by consensus as essential to the success of the negotiated rulemaking process.~~
- ~~4. Persons selected by the negotiated rulemaking committee by consensus upon committee review of a petition for membership or nomination as set out in 465 NAC 3-008.02~~

~~3-008.02 Petition or Nomination for Membership: Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person on a negotiated rulemaking committee may petition for or nominate another person for membership on the negotiated rulemaking committee.~~

~~Each petition or nomination for committee membership shall be in writing and be submitted to the negotiated rulemaking committee by delivering or mailing the same to the Department. All such petitions or nominations shall include-~~

- ~~1. Identification of the applicable negotiated rulemaking proceeding.~~
- ~~2. The name of the petitioner or nominee, and a description of the interests the person represents.~~
- ~~3. Evidence that the petitioner or nominee is authorized to represent parties related to the interests the person proposes to represent.~~
- ~~4. A written commitment that the petitioner or nominee will actively participate in good faith in the development of the rule under consideration.~~
- ~~5. An explanation of reasons that the persons already on the negotiated rulemaking committee do not adequately represent the interests of the person submitting the petition or nomination.~~

~~Persons wishing to file such a petition for membership or nomination to a negotiated rulemaking committee may use Form 465-000-12 or 465-000-13. Persons wishing to file such a petition for membership or nomination to a negotiated rulemaking committee may also do so by letter, provided that the letter contains the information set forth above.~~

~~Upon receiving a petition for membership or nomination to a particular negotiated rulemaking committee, the committee in question shall decide, by consensus at its next meeting, whether or not to expand its membership.~~

~~3-009 Negotiated Rulemaking Committee; Operation:~~ A negotiated rulemaking committee established under these rules shall consider the matter proposed by the Department for consideration and shall attempt to reach consensus concerning a proposed rule and any other matter the committee determines is relevant to the proposed rule.

~~A negotiated rulemaking committee may adopt procedures or ground rules for the operation of the committee consistent with these rules and the pertinent Nebraska statutes.~~

~~The Department shall provide appropriate administrative support to a negotiated rulemaking committee including technical assistance and support.~~

~~The person representing the Department on a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities as other members of the committee and shall be authorized to fully represent the Department in the discussions and negotiations of the committee.~~

~~If a negotiated rule making committee achieves consensus on a proposed rule at the conclusion of the negotiations, the committee shall transmit to the Department a report containing the proposed rule.~~

~~If a negotiated rulemaking committee does not reach a consensus on the proposed rule, the committee shall transmit to the Department a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations or materials.~~

~~3-010 Facilitators; Selection; Duties:~~ A facilitator shall be selected to assist a negotiated rulemaking committee with its duties.

~~3-010.01 Nomination of Facilitator:~~ The Department may nominate a person to serve as a facilitator for the negotiations of a negotiated rulemaking committee, subject to the approval of the committee by consensus. If the committee does not approve the Department's nomination for facilitator, the Department shall submit a substitute nomination. If the committee does not approve the substitute nomination of the Department for facilitator, the committee shall select, by consensus, a person to serve as facilitator.

~~3-010.02 Employment or Contracting of Facilitator:~~ The Department may employ or contract for an organization or an individual to serve as a facilitator for a negotiated rulemaking committee or the Department may use the services of a state employee to act as a facilitator. A person designated by the Department to represent it on a negotiated rulemaking committee with respect to substantive issues may not serve as the facilitator. A facilitator shall not have a financial or other interest that would preclude him or her from serving in an impartial and independent manner. The Department shall determine whether a person under consideration for facilitator has such an interest. A person disqualified under this criterion shall be dropped from further consideration.

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~~3-010.03 Duties of Facilitator: A facilitator approved or selected by a committee shall -~~

- ~~1. Preside at the meetings of the committee in an impartial manner;~~
- ~~2. Impartially assist members in conducting discussions and negotiations and achieving consensus; and~~
- ~~3. Manage the keeping of minutes and records.~~

~~3-011 Negotiated Rulemaking Committee; Expenses: Members of a negotiated rulemaking committee shall be responsible for their own expenses of participation. However, the Department may pay for a committee member's actual and necessary expenses incurred in serving on the committee as provided in Neb. Rev. Stat. §§ 81-1174 through 81-1177 and a reasonable per diem rate of compensation if -~~

- ~~1. The committee member certifies a lack of adequate financial resources to participate on the committee using Form 465-000-14; and~~
- ~~2. The Department determines that the committee member's participation is necessary to assure an adequate representation of the interests of the members.~~

~~3-012 Grants or Gifts: The Department may accept grants or gifts from any source to fund a negotiated rulemaking process if -~~

- ~~1. Information on the name of the person giving the grant or gift and the amount of the grant or gift is available to the public;~~
- ~~2. The grant or gift is given to and accepted by the Department without placing any condition on the membership of a committee or the outcome of the negotiated rulemaking process; and~~
- ~~3. There is a consensus among the members of the negotiated rulemaking committee that the acceptance of the grant or gift will not diminish the integrity of the negotiated rulemaking process.~~

~~3-013 Negotiated Rulemaking Committee; Termination: A negotiated rulemaking committee shall terminate upon the adoption of the final rule under consideration by the Department pursuant to the APA, unless the Department, after consulting the committee, or the committee itself specifies an earlier termination date.~~

~~3-014 Negotiated Rulemaking Procedure; Judicial Review: Any action of the Department relating to establishing, assisting or terminating a negotiated rulemaking committee under the Negotiated Rulemaking Act shall not be subject to judicial review, except that nothing in this section shall bar judicial review if such judicial review is otherwise provided by law.~~

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465 NAC 4

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4-000 PETITIONING FOR RULE MAKING

TITLE 465            REGULATIONS OF GENERAL APPLICATION

CHAPTER 4        PETITIONING FOR RULE MAKING

4-001 Rule Making Petition

4-001.01 Petition: Any person may petition the Department requesting the promulgation, amendment, or repeal of a rule or regulation.—

4-001.02 Form: The petition shall—

- 1.— Be clearly designated as a petition for a rules change;
- 2.— In the case of a proposed new rule or amendment of an existing rule, set forth the desired rule in its entirety.;
- 3.— In the case of a petition for the repeal of an existing rule, be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by Department rule number;
- 4.— Describe the reason for the rules change;
- 5.— Include an address and telephone where the petitioner can be reached during regular work hours;
- 6.— Be signed by—
  - a.— The petitioner or his or her attorney in which case the attorney shall also state his or her address and telephone number; and
  - b.— A duly authorized officer of the petitioner, if petitioner is a corporation or other legal entity.

001. SCOPE AND AUTHORITY. The purpose of these regulations is to establish a framework for the conduct of negotiated rulemaking consistent with the Administrative Procedure Act and the Negotiated Rulemaking Act. These rules are adopted from the model rules of the Attorney General pursuant to Nebraska Revised Statute (Neb. Rev. Stat.) § 84-909.01 and apply to petitioning for negotiated rulemaking before the Nebraska Department of Health and Human Services.

002. MODEL RULES ADOPTED. The Nebraska Department of Health and Human Services follows the model rules adopted by the Attorney General for petitioning for negotiated rulemaking found in Title 53 Nebraska Administrative Code (NAC).

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~~4-002 Petition Consideration and Disposition: Within 60 days after submission of a petition, the Department shall-~~

- ~~1. Deny the petition in writing, stating its reasons therefor; or~~
- ~~2. Initiate rulemaking or regulation making proceedings in accordance with the Administrative Procedure Act; and~~
- ~~3. If otherwise lawful, adopt a rule or regulation.~~

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465 NAC 5

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~~5-000 REQUEST FOR A DECLARATORY ORDER~~

~~TITLE 465~~ ~~REGULATIONS OF GENERAL APPLICATION~~

~~CHAPTER 5~~ ~~REQUEST FOR A DECLARATORY ORDER~~

~~5-001 General Information~~

~~5-001.01 Scope of this Chapter:~~ This chapter pertains solely to the procedures to be used by any person or entity seeking issuance of a declaratory order by a Department.

~~5-001.02 Related Regulations:~~ In addition to this Chapter, related regulations pertaining to administrative procedures before agencies are: 53 NAC Chapter 1, Model Procedures for Negotiated Rulemaking, 53 NAC Chapter 2, Petitioning for Rulemaking, and 53 NAC Chapter 4, Rules of Practice and Procedure for Hearings in Contested Cases Before a Department.

001. SCOPE AND AUTHORITY. These rules are adopted from the model rules of the Attorney General pursuant to Nebraska Revised Statute (Neb. Rev. Stat.) § 84-909.01 and relate to procedures governing agency declaratory orders.

002. MODEL RULES ADOPTED. The Nebraska Department of Health and Human Services follows the model rules adopted by the Attorney General for regulations and procedures governing agency declaratory orders found in Title 53 Nebraska Administrative Code (NAC).

~~5-002 Definitions:~~ As used in this chapter:

~~Department~~ shall mean the Nebraska Department of Social Services as defined in ~~Neb. Rev. Stat. §84-901(1).~~

~~Director~~ shall mean the Director of the Nebraska Department of Social Services.

~~Argument~~ shall mean the oral statement of the petitioner or any other party which explains his or her view of the facts and issue to be decided, the law applicable to the question presented, and the reasoning that connects the facts and law.

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NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

465 NAC 5

~~AUGUST 21, 1995~~ ~~NEBRASKA DEPARTMENT OF~~ ~~INTRODUCTION~~  
~~MANUAL LETTER # 61-95~~ ~~SOCIAL SERVICES MANUAL~~ ~~465 NAC 5-000~~

~~Contested case shall mean a proceeding before the Department in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after hearing before the Department.~~

~~Declaratory order proceeding shall mean a proceeding initiated by a petitioner seeking issuance of a binding order by the Department as to the applicability of specified circumstances to a statute, rule, regulation, or order within the primary jurisdiction of the Department.~~

~~Hearing officer shall mean the person or persons conducting a declaratory order proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title.~~

~~Intervenor(s) shall mean persons, political subdivisions, corporations, organizations, or other entities who have or claim to have any interest, legal right, duty, privilege, or immunity, which would be directly affected by the Department's issuance of a binding declaratory order.~~

~~Necessary party shall mean a person who or an entity which has a specific interest in the applicability of the statute, rule, regulation, or order, as distinguished from a general interest such as may be the concern of the public at large. A necessary party is one who is or would be adversely affected in a legally cognizable way by the uncertainty sought to be resolved.~~

~~Parties shall mean persons, political subdivisions, corporations, organizations, or other entities subject to the jurisdiction of the Department who are involved in a declaratory order proceeding according to the procedures set forth in this chapter.~~

~~Petition shall mean the document filed in accordance with 465 NAC 5-003 to initiate a declaratory order proceeding.~~

~~Petitioner(s) shall mean a party or parties who have filed a petition with the Department seeking issuance of a declaratory order.~~

~~Pleading shall mean any written petition, answer, or motion used in any declaratory order proceeding before the Department as set forth in this chapter.~~

### 5-003 Petition for Declaratory Order

~~5-003.01 General Requirement: A request for a declaratory order must be made by a petition that meets the requirements of 465 NAC 5-003.04.~~

~~5-003.02 Who May File: Any person may petition the Department for issuance of a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order which is within the primary jurisdiction of the Department.~~

~~5-003.03 When Orders Appropriate: A declaratory order may be requested on the applicability of a statute, rule, regulation, or order enforced by the Department. "Applicability" refers to the appropriateness of the relation of the law to the person, property, or state of facts, or its relevance under the circumstances given. It may include such questions as whether the law applies at all, to whom it applies, when it applies, how it applies, or which law applies. Considerations as to whether issuance of a declaratory order is appropriate include-~~

- ~~1. A declaratory order may be requested only on the applicability of existing statutes and rules and regulations.~~
- ~~2. A declaratory order may be requested to obtain a determination of proposed conduct, not to obtain a determination of the effect of conduct that has already occurred.~~
- ~~3. A declaratory order is not a mechanism for review or appeal of a decision made by the Department in a contested case.~~
- ~~4. A declaratory order may not be requested to obtain a declaration by the Department that a statute or regulation is unconstitutional or that a regulation of the Department is invalid.~~
- ~~5. A declaratory order may not be issued by the Department that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.~~

~~5-003.04 Form of Petition:~~ A petition for declaratory order shall be in the form of either a pleading or letter which shall contain each of the following:

- ~~1. A caption, which shall include-~~
  - ~~a. The venue: BEFORE THE DEPARTMENT OF SOCIAL SERVICES, STATE OF NEBRASKA;~~
  - ~~b. A heading specifying the subject matter and the name of the petitioner; and~~
  - ~~c. The name of the pleading: PETITION FOR DECLARATORY ORDER.~~
- ~~2. The statements required in 465 NAC 5-003.05;~~
- ~~3. The signature of the petitioner, or when represented by an attorney, the signature of the attorney;~~
- ~~4. The name and address of the petitioner, and when represented by an attorney, the name, address, telephone number, and bar number of the attorney;~~
- ~~5. Size and Paper: The petition shall be made on white, letter-sized (8-1/2" x 11") paper;~~
- ~~6. Print: The petition shall be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, the petition must be written in ink. Only one side of a page shall contain any writing;~~
- ~~7. Attachments: Any documents attached to a petition shall be securely fastened to the pleading and shall meet the requirements of 465 NAC 5003.04 (5) and (6) and, when possible, be reproduced on 8-1/2" x 11" paper or placed in an 8-1/2" x 11" envelope and clearly marked as an attachment to the petition.~~

~~5-003.05 Contents of Petition:~~ To be considered, the petition shall include the following:

- ~~1. The name and address of the petitioner.~~
- ~~2. The name and address of all persons or entities, known to the petitioner, who may have a specific interest in the applicability of the statute, rule, regulation, or order or who may be adversely affected by the issue sought to be resolved by the petitioner.~~
- ~~3. The statute, rule, regulation, or order upon which the petitioner seeks issuance of a declaratory order.~~
- ~~4. A detailed statement of all of the material facts and specific circumstances which apply to petitioner's request for issuance of a declaratory order.~~
- ~~5. All propositions of law or contentions asserted by the petitioner.~~
- ~~6. A demand for the relief to which the petitioner alleges entitlement. The petition shall state the petitioner's position as to how the Department should rule and why the Department should rule in the manner requested.~~
- ~~7. Any documents pertinent to the petition that the petitioner wishes to be considered by the Department.~~

~~5-003.06 Subscription and Verification of Petition:~~ The petition shall be subscribed and verified by the petitioner. If the petitioner is a corporation, political subdivision, or other entity, then the petition shall be subscribed and verified by a duly authorized agent of the petitioning entity.

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~~5-003.07 Sample Petition:~~ The petitioner may use the sample form of a petition (465-000-15). The petitioner may also prepare a reasonable facsimile of Form 465-000-15" so long as the requirements of subsections 465 NAC 5-003.04, 5-003.05, and 5-003.06 are satisfied.

~~5-003.08 Written Consents:~~ The petitioner shall also attach to the petition any written consents obtained from any necessary party that the petition may be determined by use of a declaratory order proceeding.

~~5-004 Submission and Service of Declaratory Order Petition:~~ The original petition for declaratory order shall be filed with the Director by mail or in person during the Department's normal business hours.

~~The petition shall be deemed as filed when it is actually received by the Department. The Department shall date stamp all petitions upon receipt.~~

~~At the same time the petition is filed with the Department, the petitioner shall serve a copy of the petition by certified mail, return receipt requested, on all necessary parties, including all persons, political subdivisions, corporations, organizations, or other entities who are known to have or claim any interest, legal right, duty, privilege, or immunity which would be directly affected by issuance of a declaratory order in this matter by the Department.~~

#### ~~5-005 Disposition of the Petition~~

~~5-005.01 General Requirements:~~ Upon the filing of a petition, the Director may consider the petition, refer the petition to an appropriate licensing or governing board, or delegate the matter to a designated hearing officer, board, or Department employee to consider the petition and recommend a decision to the Director. In reviewing the petition, the Department may, in its discretion, do one or more of the following:

- ~~1. Require that additional information be submitted before the petition will be further considered.~~
- ~~2. Require a petitioner to provide notice to persons or entities who may be necessary parties and other persons that a request for a declaratory order has been filed with the Department.~~
- ~~3. Schedule a date, time, and location at which the petitioner and any other parties to the proceeding may make an oral presentation on the petition.~~
- ~~4. Consider the petition and any attachments without oral presentation.~~

~~5-005.02 Requirements Within 30 Days:~~ Within 30 days after the petition is filed, the Department shall, in writing:

- ~~1. Issue an order declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances;~~
- ~~2. Agree to issue an order by a specified time declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances.~~
- ~~3. Set the matter for specified proceedings as set forth in 465 NAC 5-005.01; or~~
- ~~4. Decline to issue a declaratory ruling, stating the reasons for the Department's decision.~~

~~5-005.03 Decision Not to Issue a Declaratory Order:~~ Notwithstanding ~~465 NAC 5-005.02~~, the Department may determine at any time that it will not issue a declaratory order if issuance of an order under the circumstances would be contrary to any provisions of ~~465 NAC 5-006.02~~. The Department shall notify the petitioner and, if applicable, any intervenor or necessary party in writing when the Department determines not to issue a declaratory order.

#### 5-006 Intervention in Declaratory Order Proceeding

~~5-006.01 Requirements for Intervention:~~ Intervention by any person or entity in a declaratory order proceeding shall be allowed when the following requirements are met:

- ~~1. A petition for intervention must be submitted in writing to the Department. Copies must be mailed to all parties to the proceeding.~~
- ~~2. The contents of the petition must be as specified in 465 NAC 5-006.02.~~
- ~~3. The Department must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.~~

~~5-006.02 Contents of Petition:~~ The petition for intervention shall be submitted to the Department, in writing, on 8 1/2" x 11" white paper, and shall include each of the following:

- ~~1. The statute, regulation, rule, or order that may apply to or affect the person, property, entity, or facts at issue in the matter.~~
- ~~2. A statement of facts sufficient to show the intervenor's interest.~~
- ~~3. A statement of facts which demonstrate that the intervenor's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the intervenor may intervene pursuant to a provision of law.~~
- ~~4. All propositions of law or contentions asserted by the intervenor.~~
- ~~5. A statement of the specific relief requested by the intervenor.~~

~~5-006.03 Invitation for Intervention:~~ The Department may, at its discretion, invite any person or entity to file a petition for intervention.

~~5-006.04 Granting of Petition:~~ The Department shall grant a petition for intervention if the requirements of ~~465 NAC 5-006.01, #3~~, are satisfied.

~~5-006.05 Notice of Granting or Denial of Petition:~~ The Department shall deny a petition for intervention upon determining that the interests of justice or the orderly and prompt conduct of the proceedings would be impaired by allowing the intervention.

~~5-006.06 Department Decision on Petition:~~ The Department's decision to grant or deny a petition for intervention shall be in writing and served upon all parties.

~~5-007 Declaratory Order Proceedings~~

~~5-007.01 Oral Argument, When:~~ Oral argument shall be had only on specific order of the Department. A petitioner, intervenor, necessary party, or the Department may submit a motion for oral argument to the Director. If opportunity for oral argument is granted, then argument shall be scheduled to be conducted not more than 45 days after filing of the petition. Petitioner and all other parties or, when represented, their attorneys, shall be served by the Department with a notice of the date, time, and location for oral argument. The Department shall provide each of the parties with notice of the proceeding not less than 7 days in advance of the scheduled date. Service shall be made by certified mail, return receipt requested.

~~5-007.02 Oral Argument, Procedure:~~ Oral argument will be made before a hearing officer or before any representative of the Department who is authorized to render or to recommend a decision to the Department. The hearing officer or Department representative shall be in control of the proceeding and shall-

- ~~1. Identify the proceeding and introduce himself or herself and identify each party for the record;~~
- ~~2. Hear the oral argument of the petitioner, intervenor, or necessary parties; and~~
- ~~3. Close the proceedings.~~

~~5-007.03 Department Oral Argument:~~ At the declaratory order proceeding, Department staff shall have the right to present oral argument.

~~5-007.04 Time Limits:~~ The hearing officer or representative may impose reasonable time limits on the amount of time allocated to each party for oral argument.

~~5-007.05 Filing of Briefs:~~ The parties and Department staff may file briefs in support of their respective positions. The hearing officer may fix the time and order of filing briefs and may direct that briefs be submitted prior to the date of oral argument.

~~5-007.06 Form of Oral Argument:~~ The oral argument may be conducted either in person or by telephone conference call.

~~5-008 Issuance of Declaratory Order~~

~~5-008.01 Time Limit for Issuance of Declaratory Order:~~ ~~The Department shall issue its declaratory order within 60 days of the date on which the petition was filed.~~

~~5-008.02 Contents of Declaratory Order:~~ ~~The declaratory order shall be in writing and shall include the following-~~

- ~~1. The names of all parties to the proceeding upon which the order is based;~~
- ~~2. The facts upon which the order is based;~~
- ~~3. The statute, regulation, rule, or order at issue in the matter;~~
- ~~4. The Department's conclusion as to the applicability of the statute, regulation, rule, or order to the facts;~~
- ~~5. The Department's conclusion as to the legal effect or result of applying the statute, regulation, rule, or order to the facts; and~~
- ~~6. The reasons relied upon by the Department to support its conclusions.~~

~~5-008.03 Serving Copy of Declaratory Order:~~ ~~A copy of the declaratory order shall be served upon each party by certified mail, return receipt requested.~~

~~5-008.04 Effect of Declaratory Order:~~ ~~A declaratory order shall have the same status and binding effect as any other order issued in a contested case.~~

~~5-008.05 No Response within 60 Days:~~ ~~If the Department has not issued a declaratory order within 60 days after the petition has been filed, then the petition shall be deemed to have been denied by the Department.~~

~~5-009 Circumstances Under Which the Department Will Not Issue Declaratory Orders~~

~~5-009.01 When the Department Shall Refuse:~~ ~~Grounds upon which the Department shall refuse to issue a declaratory order include, but are not limited to, the following:~~

- ~~1. The petition requests a declaratory order on a matter that is outside the scope of authority of the Department.~~
- ~~2. The petition requests review or appeal of a decision made by the Department in a contested case.~~
- ~~3. The petition requests a declaratory order on the effect of past conduct.~~
- ~~4. An investigation for purposes of a formal adjudication, a contested case, or a petition to issue, amend, or repeal regulations is pending before the Department involving the petitioner on substantially the same or similar facts or issues raised in the petition.~~
- ~~5. The petition seeks a declaration that a statute or rule or regulation is unconstitutional or invalid.~~

- ~~6. The issue raised in the petition has been settled by a change in circumstances or other means so as to render moot the need for a declaratory order.~~
- ~~7. An order would substantially prejudice the rights of a person or entity who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.~~
- ~~8. An order would not resolve the controversy or uncertainty.~~
- ~~9. The question posed or facts presented are insufficiently specific, overly broad, or are otherwise inappropriate as a basis upon which to decide the matter.~~

~~5-009.02 When the Department May Refuse: Grounds upon which the Department may determine to refuse to issue a declaratory order include, but are not limited to, the following:~~

- ~~1. Refusal is necessary to assure adequate allocation of Department resources are available for issuing rulings on petitions raising questions of greater urgency or significance.~~
- ~~2. The question presented is of such complexity that the Department has had insufficient opportunity or resources to develop a fully matured ruling.~~
- ~~3. The petitioner fails to submit any additional information requested by the Department or submits such information after the date established by the Department.~~

~~5-010 Appeal: A declaratory order is subject to review in the manner provided for review of contested cases by the Administrative Procedure Act, Neb. Rev. Stat. §84-901 – §84-920. Specific procedures for appeal are set forth in Neb. Rev. Stat. § 84-917.~~

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06-30-2021

NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

465 NAC 6

AUGUST 21, 1995 \_\_\_\_\_ NEBRASKA DEPARTMENT OF \_\_\_\_\_ INTRODUCTION  
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TITLE 465                    REGULATIONS OF GENERAL APPLICATION

CHAPTER 6                    PRACTICE AND PROCEDURE FOR HEARINGS IN CONTESTED CASES  
BEFORE THE DEPARTMENT

6-000 PRACTICE AND PROCEDURE FOR HEARINGS IN CONTESTED CASES BEFORE THE  
DEPARTMENT

001. SCOPE AND AUTHORITY. The former Department of Social Services merged into, and became part of, the Nebraska Department of Health and Human Services (Department). This chapter relates to hearings conducted by the Department. These regulations are adopted from the model rules of the Attorney General pursuant to Nebraska Revised Statute (Neb. Rev. Stat.) § 84-909.01 have general application. To the extent other applicable titles and chapters of the Department regulations are in conflict with this title, those other titles and chapters shall control. Other applicable titles and chapters include, but are not limited to, regulations relating to the Division of Public Health.

002. MODEL RULES ADOPTED. The Department follows the model rules adopted by the Attorney General for practice and procedure governing hearings in contested cases found in Title 53 Nebraska Administrative Code (NAC).

6-001 General Provisions

6-001.01 Definitions: The following definitions shall apply as used throughout these rules and regulations.

Contested case shall mean a proceeding before the Department in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after the Department hearing.

Department shall mean the Department of Social Services.

Ex parte communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communication shall not include:

1. Communications which do not pertain to the merits of a contested case;

- ~~2. Communications required for the disposition of ex parte matters as authorized by law;~~
- ~~3. Communications in a rate making or rule making proceeding; or~~
- ~~4. Communications to which all parties have given consent.~~

~~A hearing is an orderly proceeding before the Director or his/her representative. During the hearing a client, applicant, or his/her representative may present his/her case with or without the help of witnesses to show why an action or inaction should be corrected by the Department.~~

~~Hearing officer shall mean the person or persons conducting a hearing, contested case, or other proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title designation.~~

~~Party means the person by or against whom a contested case is brought or a person allowed to intervene in a contested case.~~

~~Petition means the initial document filed by or with the Department that sets forth a claim and request for Department action or appeal from Department action or inaction.~~

#### ~~6-002 Prohibitions Against Ex Parte Communications~~

~~6-002.01 Prohibitions; When Applicable: The prohibitions found in this section shall apply beginning at the time notice for hearing is given. The Department may designate an earlier time, but such earlier time shall be required to be set forth in the Department's rules of procedure.~~

#### ~~6-002.02 Prohibitions; To Whom Applicable~~

~~6-002.02A Parties and Public: No party in a contested case or other person outside the Department having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer or to a Department head or employee who is or may reasonably be expected to be involved in the decision making process of the contested case.~~

~~6-002.02B Persons in Decision Making Roles: No hearing officer or the Director or other employee who is or may reasonably be expected to be involved in the decision making process of the contested case shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the Department having an interest in the contested case.~~

~~6-002.02C Investigators: Neither the Director nor any employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer or the Director or employee who~~

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~~is or may reasonably be expected to be involved in the decision making process of the contested case.~~

~~6-002.03 Disclosure of Contacts:~~ The hearing officer, the Director or any other Department employee who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in 465 NAC 6-002.02A through 6-002.02G shall file in the record of the contested case:

- ~~1. All such written communications;~~
- ~~2. Memoranda stating the substance of all such oral communications; and~~
- ~~3. All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.~~

~~The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record. Filing and notice of filing shall not be considered on the record and reasonable notice for purposes of the definition of ex parte communication.~~

#### ~~6-003 Intervention in a Contested Case~~

~~6-003.01 Intervention Allowed:~~ Intervention in a contested case shall be allowed when the following requirements are met:

- ~~1. A petition for intervention must be submitted in writing to the hearing officer or designee at least five days before the hearing. Copies must be mailed by the petitioner for intervention to all parties named in the hearing officer's notice of the hearing.~~
- ~~2. The petition must state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law.~~
- ~~3. The hearing officer or designee must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.~~

~~6-003.02 Petition for Intervention:~~ The hearing officer or designee may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

~~6-003.03 Conditions on Intervenor's Participation:~~ If a petitioner qualifies for intervention, the hearing officer or designee may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. These conditions may include:

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- ~~1. Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;~~
- ~~2. Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and~~
- ~~3. Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.~~

~~6-003.04 Order on Petition for Intervention: The hearing officer or designee, at least 24 hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order:~~

- ~~1. The hearing officer or designee may modify the order at any time, stating the reasons for the modification.~~
- ~~2. The hearing officer or designee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.~~

#### ~~6-004 Commencement of a Contested Case:~~

~~6-004.01 Filing of Petition and Request for Hearing: The contested case begins with the filing of a petition and request for hearing, if applicable, with the Department. The petition is the initial document filed by or with the Department that sets forth a claim and request for Department action or appeal from Department action or inaction. Form DA-6, "Notice and Petition for Fair Hearing," is available for filing an appeal to anyone who requests it at any office of the Department. (The Food Stamp Program uses notices with a tear-off section which may be used instead of Form DA-6.) Staff shall make every effort to help an individual who wishes to file an appeal. An individual's request for a hearing may also be made in the form of a simple letter or written request to the Department, provided the request identifies the basis for appeal.~~

~~The individual's request for a hearing is made to the Director of the Department of Social Services and forwarded to the attention of the Legal Services Division.~~

~~6-004.02 Parties to a Contested Case: The parties to a contested case shall be the petitioner or person by whom a contested case is brought and the Department or other decision maker whose decision is subject to appeal or a person or party granted leave to intervene.~~

~~A party may appear on his or her own behalf in a contested case proceeding or may be represented by an attorney or other representative as permitted by law.~~

~~6-004.03 Pleadings in a Contested Case: The pleadings in a contested case may include a petition, answer, reply, notice, motion, stipulation, objection or order or other formal written~~

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~~document filed in a proceeding before the Department. Except when pleadings are filed by a pro se party or non-attorney representative, any pleading filed in a contested case shall meet the following requirements:~~

- ~~1. The pleading shall contain a heading specifying the name of the Department of Social Services and the title or nature of the pleading, shall state material factual allegations and state concisely the action the Department is being requested to take, shall contain the name and address of the petitioner, and shall be signed by the party filing the pleading, or when represented by an attorney, the signature of that attorney. Attorneys shall also include their address, telephone number and bar number. The initial petition shall also contain the name and address of the respondent.~~
- ~~2. All formal pleadings shall be made on white, letter-sized (8½ x 11) paper and shall be legibly typewritten, photostatically reproduced, printed or handwritten. If handwritten, a pleading must be written in ink or on Form DA-6.~~

~~6-004.04 Filing of Pleadings: All pleadings shall be filed with the Department at any of its offices. Filing may be accomplished by personal delivery or mail and will be received during regular office hours of the Department of Social Services.~~

~~6-004.05 Pleadings Subsequent to Initial Petition: All pleadings subsequent to the initial petition shall be served by the party filing such pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service shall be made personally or by first-class or certified mail. Written proof of such service shall be filed with the Department of Social Services.~~

~~6-004.06 Hearing Date: Unless state law provides that a hearing is not required, a hearing date shall be set by the Department in accordance with statutory or regulatory requirements unless waived by agreement of the parties. See also 465 NAC 2-001.02. A written notice of the time and place of hearing and the name of the hearing officer, if known, shall be served by the Department upon all attorneys of record or other representatives of record and upon all unrepresented parties.~~

~~6-004.07 Conducting Hearings: Hearings are held either by telephone or at a Department office. In special circumstances hearings may be held at another location. In case the applicant is living outside the state, the hearing may be held at any point within the state which is convenient for him/her. A petitioner who is unable to be present at the hearing may, in writing, designate a representative to represent him/her.~~

~~6-004.08 Computation of Time: In computing time prescribed or allowed by Chapter 6 of these rules and regulations or by any applicable statute or regulation in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or state holiday, the period shall include the next working day.~~

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~~6-005 Hearing Officer; Criteria:~~ The Director may delegate to a hearing officer the functions of conducting a prehearing conference and/or a hearing and submitting a recommended decision to the Director of Social Services.

~~A person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding unless all parties consent.~~

~~A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or advise a hearing officer in the same proceeding unless all parties consent. If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.~~

~~A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.~~

~~A person may serve as hearing officer at successive stages of the same contested case.~~

#### 6-006 Prehearing Procedures

~~6-006.01 Prehearing Conferences and Orders:~~ The hearing officer designated to conduct a hearing may determine, on his or her own or upon the motion of any party, whether a prehearing conference will be conducted. If a prehearing conference is not held, the hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

~~If a prehearing conference is conducted:~~

- ~~1. The hearing officer shall promptly notify the parties of the determination that a prehearing conference will be conducted. The Department may assign another hearing officer for the prehearing conference; and~~
- ~~2. The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The Department of Social Services shall give notice to other persons entitled to notice.~~

~~6-006.01A Notice:~~ The notice of a prehearing conference shall include the following:

- ~~1. The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;~~

- ~~2. The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the Department of Social Services;~~
- ~~3. The official file or other reference number, the name of the proceeding, and a general description of the subject matter;~~
- ~~4. A statement of the time, place, and nature of the prehearing conference;~~
- ~~5. A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;~~
- ~~6. The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;~~
- ~~7. A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act; and~~
- ~~8. Any other matters that the hearing officer considers desirable to expedite the proceedings.~~

~~6-006.01B Subjects for Prehearing Conference: The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matter as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.~~

~~6-006.01C Conference by Electronic Means: The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.~~

~~6-006.02 Discovery in Contested Cases: The hearing officer or a designee, at the request of any party or upon the hearing officer's own motion, may issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.~~

~~Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall -~~

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- ~~1. Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;~~
- ~~2. State the reasons supporting the motion;~~
- ~~3. Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve by agreement the issues raised and that agreement has not been achieved; and~~
- ~~4. Be filed with the Department. The moving party must serve copies of all such motions to all parties to the contested case.~~

~~Other than previously stated, discovery materials need not be filed with the Department.~~

~~6-006.03 Continuances: The hearing officer may, in his or her discretion, grant extensions of time or continuances of hearings upon the hearing officer's own motion or at the timely request of any party for good cause shown.~~

~~6-006.03A Good Cause: Good cause for an extension of time or continuance may include, but is not limited to, the following:~~

- ~~1. Illness of the party, legal counsel or witness;~~
- ~~2. A change in legal representation; or~~
- ~~3. Settlement negotiations are underway.~~

~~6-006.04 Amendments: A petition may be amended at any time prior to the hearing.~~

~~A hearing officer may also allow, in his or her discretion, the filing of supplemental pleadings alleging facts material to the case occurring after the original pleadings were filed. A hearing officer may also permit amendment of pleadings where a mistake appears or where amendment does not materially change a claim or defense.~~

~~6-006.05 Informal Disposition: Unless otherwise precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.~~

#### 6-007 Conducting a Contested Case Hearing

~~6-007.01 The Hearing Officer: The hearing officer is designated by, and acts on behalf of, the Director.~~

~~6-007.01A General Duties of the Hearing Officer: The hearing officer has three primary duties:~~

- ~~1. To help all persons who testify at the hearing to present their evidence as completely and accurately as possible;~~

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- ~~2. To keep the hearing orderly and to the point by excluding and discouraging evidence which is irrelevant. The hearing officer should not answer questions which have no bearing on the appeal; and~~
- ~~3. To complete a record of the hearing which contains sufficient evidence to enable the Director to make a decision.~~

~~6-007.01B Authority of the Hearing Officer: The hearing officer has broad authority to conduct the hearing in a manner which will bring out the pertinent facts in an orderly manner. S/he may-~~

- ~~1. Exclude irrelevant evidence;~~
- ~~2. Ask for additional evidence or witnesses;~~
- ~~3. Question witnesses regarding their competency;~~
- ~~4. Ask that additional documents be provided;~~
- ~~5. Dismiss witnesses from the room for good and sufficient reason;~~
- ~~6. Compel the attendance of witnesses by subpoena; and~~
- ~~7. Administer oaths.~~

~~6-007.01C Recess, Continuance, Closing and Reopening of Hearing: The hearing officer has authority to recess, continue, or close a hearing at any time there is good and sufficient reason for so doing. The hearing officer shall consider anything which would aid in establishing or clarifying pertinent facts as a "good and sufficient reason." Any interested person may ask to have a hearing reopened. The request is addressed to the Director. The Director has authority to reopen a hearing upon his/her own motion, or upon the request of any interested person. Notice of a decision to reopen the hearing shall be served to all parties by the Department and the parties will be afforded the opportunity to present rebuttal evidence.~~

#### 6-007.02 Persons at the Hearing

~~6-007.02A Department Staff and Witnesses: The Department may bring representatives of the Department and any witnesses who are able to give relevant testimony concerning the facts which are in question. Witnesses may be asked to leave after their testimony is given.~~

~~6-007.02B Petitioner and Witnesses: The petitioner may bring any witnesses s/he chooses. There are no limitations as to the persons who the petitioner may have present. Confidential information learned by these persons is with the implied consent of the petitioner.~~

~~6-007.02C Spectators: No spectator may be present at the hearing without the consent of the petitioner or the hearing officer. The hearing officer shall inform the petitioner of the option to exclude spectators. If the petitioner prefers, the hearing officer shall exclude the spectators from the hearing.~~

~~6-007.02D Petitioner's Representative or Attorney:~~ If the petitioner does not wish to represent himself/herself, the petitioner may designate any person to represent him/her at the hearing. The petitioner has the right to be represented by an attorney or such other person as may be permitted by law.

~~6-007.03 Group Hearings:~~ The Director or designee may respond to a series of individual requests for hearings on an issue of policy by holding a single group hearing. In such instances, individuals have the right to withdraw from the group hearing in favor of an individual hearing. The Director or designee may grant a group hearing on an issue of policy when requested by recipients. Policies covering hearings must be followed in all group hearings, whether initiated by the client, or by the Director or his/her designee.

~~6-007.04 Order:~~ At the discretion of the hearing officer, the hearing may be conducted in the following order:

- ~~1. The hearing is called to order by the hearing officer. Any preliminary motions, stipulations or agreed orders are entertained.~~
- ~~2. Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.~~
- ~~3. Presentation of evidence. Evidence will be received in the following order:~~
  - ~~a. Evidence is presented by the Department or other decision maker;~~
  - ~~b. Evidence is presented by the petitioner;~~
  - ~~c. Rebuttal evidence is presented by the Department or other decision maker; and~~
  - ~~d. Surrebuttal evidence is presented by the petitioner.~~
- ~~4. With regard to each witness who testifies, the following examination may be conducted:~~
  - ~~a. Direct examination conducted by the party who calls the witness;~~
  - ~~b. Cross-examination by the opposing party;~~
  - ~~c. Redirect examination by the party who called the witness;~~
  - ~~d. Recross-examination by the opposing party; and~~
  - ~~e. Further redirect and cross as allowed by the hearing officer.~~

~~After the evidence is presented, each party may have opportunity to make a closing argument. Closing arguments shall be made in the same order as the presentation of evidence. The hearing officer may request that the parties submit briefs in lieu of closing arguments.~~

~~6-007.05 Evidence:~~ In contested cases the hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

~~6-007.05A Hearing Record Exhibits:~~ When a hearing is scheduled to be heard by telephone, the staff involved shall forward the exhibits to be presented at the hearing to

~~the Legal Services Division before the hearing. The staff shall clearly identify the exhibits on a note or cover letter. For other hearings, the staff involved will present exhibits at the time of the hearing. Copies of the exhibits must be made available to the petitioner. As appropriate to the type of case involved, the following exhibits must be furnished:~~

- ~~1. A case summary: This is a brief memo outlining important events, dates, and other facts involved in the case;~~
- ~~2. A copy of the notice sent to the client or applicant;~~
- ~~3. Budgets, worksheets, and computer printouts;~~
- ~~4. Verifications regarding income, resources, etc.;~~
- ~~5. Relevant narrative;~~
- ~~6. Pertinent state regulations or manual references; and~~
- ~~7. Other relevant material such as copies of contracts or deeds.~~

~~6-007.05B Request for Rules of Evidence: Any party to a formal hearing before the Department, from which a decision may be appealed to the courts of this state, may request that the Department be bound by the rules of evidence applicable in district court by delivering to the Department at least three days prior to the holding of the hearing a written request therefore. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing.~~

~~6-007.05C Documentary Evidence: Documentary evidence may be received in the form of originals, or copies, or excerpts of documents or excerpts thereof.~~

~~6-007.05D Evidence in Department's Possession: All evidence including records and documents in the possession of the Department of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case. See 465 NAC 2-006.01B.~~

~~6-007.05E Oaths and Subpoenas: A hearing officer may administer oaths and issue subpoenas in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court unless otherwise provided by law.~~

~~6-007.05F Rules of Privilege: The Department shall give effect to the rules of privilege recognized by law.~~

~~6-007.05G Official Notice: The Department may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by the Department of Social Services.~~

~~Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.~~

~~Parties shall be afforded an opportunity to contest facts so noticed.~~

~~The record shall contain a written record of everything officially noticed.~~

~~6-007.05H Evaluation of Evidence: The Department may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.~~

~~6-007.05J Medical Evidence: When the hearing issue involves medical evidence, the petitioner or hearing officer may request a medical examination and report by any available medical authority other than the one involved in the decision being appealed.~~

~~6-007.06 Conducting the Hearing by Electronic Means: Unless otherwise provided by law, the hearing officer may conduct all or part of the hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.~~

~~6-007.07 Official Record: The Department shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of rehearing or appeal, in which event the transcript and record shall be furnished by the Department upon request and tender of the cost of preparation unless otherwise provided by law.~~

~~The Department shall maintain an official record of each contested case under the Administrative Procedure Act for at least four years following the date of the final order.~~

~~The Department record shall consist only of the following:~~

- ~~1. Notices of all proceedings;~~
- ~~2. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Department pertaining to the contested case;~~
- ~~3. The record of the hearing before the Department, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the Department during the proceeding, and all proffers of proof and objections and rulings thereon; and~~
- ~~4. The final order.~~

~~As provided above or in 465 NAC 6-002 et. seq., the hearing officer or the Director or other employee who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made~~

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~~an ex parte communication as set forth in that subsection shall make the appropriate filings which shall be included in the official record of the contested case.~~

~~Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the Department record shall constitute the exclusive basis for Department action in contested cases under the act and for judicial review thereof.~~

~~6-007.08 Costs: All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered. Cost shall mean the cost of court reporting services in cases where the formal rules of evidence have been involved pursuant to 465 NAC 6-007.05B.~~

#### ~~6-008 Decision and Order in a Contested Case~~

~~6-008.01 Summary Disposition: The Department may on its own motion summarily dismiss any appeal for the following reasons:~~

- ~~1. The appeal is not timely filed as shown by Department records; and/or~~
- ~~2. The appeal raises no appealable issue as provided by law.~~

~~Any Department records relied upon for a summary dismissal shall be attached to the Order of Dismissal and shall become part of the record of the proceedings.~~

~~6-008.02 Time Frames: The Director shall make the decision on the hearing as soon as possible and, in the absence of special or unusual circumstances, shall make the decision within 60 days from the date that the petitioner requests a hearing. Emergency assistance decisions must be made within seven days of the hearing.~~

~~If applicable, a decision in favor of the petitioner applies retroactively to the date of the inaction or incorrect action.~~

~~6-008.03 Adverse Decision: Every decision and order adverse to a party to the proceeding, rendered by the Department in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.~~

~~6-008.04 Contents of Decision and Order: The decision and order should include~~

- ~~1. The Nebraska Department of Social Services and name of the proceeding;~~
- ~~2. The date and place of the hearing;~~
- ~~3. The names of all parties or their attorneys who entered an appearance at the hearing;~~
- ~~4. The findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact;~~
- ~~5. The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising therefrom; and~~

~~6. The order consisting of the action taken by the Department as a result of the facts found and the legal conclusions arising therefrom.~~

~~6-008.05 Notification of Decision: Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.~~

~~6-008.06 Mandatory Effect: Unless appealed to the District Court, the decision of the Director is final. The Division, District, or Local Office Administrator (as appropriate) shall take immediate steps to enforce the Director's decision in the office to which the finding and order applies.~~

~~6-008.07 Administrative Finality (Res Judicata): When a final decision is entered by the Director, the issues may not be reappealed to the Department unless there has been a change in circumstances and additional action by Department staff. Any appeals which are found to be based wholly or partially upon issues decided in a previous appeal, must be wholly or partially dismissed, as appropriate.~~

~~6-009 Appeals: Any person aggrieved by a final decision in a contested case is entitled to judicial review under the Administrative Procedure Act or to resort to such other means of review as may be provided by law.~~

~~Parties desiring to appeal a Department decision must file a petition for review in the district court of the county where the Department action is taken within 30 days after the service of the final decision by the Department. The 30-day period for appeal commences to run from the date of mailing of the notice of order and decision to the parties or their attorneys of record. Service of the petition and summons must be made in accordance with Nebraska law.~~

~~Unless otherwise provided by statute, the procedures of Neb. Rev. Stat. §84-917 govern the procedure for taking an appeal.~~



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