

Title of Proposed Rule: Adult Protective Services Program Revisions

CDHS Tracking #: 17-06-26-03

Office, Division, & Program:
OCAI, AAS

Rule Author:
Peggy Rogers

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STATEMENT OF BASIS AND PURPOSE

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

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

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

Specifically, HB17-1284 added the following language to statute in Section 26-3.1-111(5) "The State Department shall promulgate rules for the implementation of this section, which rules must include the following: (a) the employer process for requesting a CAPS check for an employee who has an active application for employment for a position in which the person will provide direct care to an at-risk adult; (b) the state department or county department employees or employee positions granted access to CAPS; (c) the process for completing a CAPS check and the parameters for establishing and collecting the fee charged to an employer for each CAPS check; (d) the information in CAPS that will be made available to an employer requesting a CAPS check; (e) the purposes for which the information in CAPS may be made available; and (f) the consequences of the improper release of the information in CAPS." The rule changes proposed in this rule packet address this statutory requirement.

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

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

Code	Description
26-3.1-108	The State department shall promulgate rules for the implementation of this article 3.1.
26-3.1-111(5), C.R.S. (2017)	The state department shall promulgate rules for the implementation of this article.

Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

Definitions from statute and the confidentiality exception related to employer checks are included in the rules, consistent with statute language.

DOCUMENT 8

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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

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

Groups that will benefit from these rules are at-risk adults, county APS staff, and employers required to request a CAPS check prior to hiring employees. At-risk adults will benefit from reduced risk of exposure to substantiated perpetrators of mistreatment. County APS staff will be able to conduct a CAPS check for prospective new APS employees. Employers will benefit from the additional information that will be available through the CAPS check in making employment decisions.

2. Describe the qualitative and quantitative impact.

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

The rules adopted to implement this legislation will impact the county department APS staff, the State Department, substantiated perpetrators of mistreatment, and employers who must request a CAPS check for job applicants. County department APS supervisors will be responsible for conducting CAPS checks for prospective APS employees or the county department may elect to use the APS CAPS Check Unit (CCU). Employers will be required to request a CAPS check through the CCU prior to hiring a new employee who will provide direct care to at-risk adults. The State Department will need to modify the existing data system to accommodate the process for conducting CAPS checks for employers, including compiling and providing search results to employers.

When employers request a check of the CAPS database, they will receive information about whether a person applying for a job providing direct care to at-risk adults at their organization has been substantiated in an APS case of mistreatment against an at-risk adult. In FY 2016-17, there were a total of 9,121 APS cases. Of all the allegations in those cases, 62 percent were allegations of mistreatment (physical or sexual abuse, caretaker neglect, and exploitation) and 38 percent were allegations of self-neglect. There were 1233 people substantiated as perpetrators of mistreatment in APS cases in FY 2016-17 and of those, 308, or 25 percent, worked in a professional capacity related to the APS clients. In the long-term, at-risk adults in Colorado will benefit from these employer background checks as they will decrease the risk that those with a history of mistreating at-risk adults will be in positions that allow them to reoffend.

3. Fiscal Impact

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

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

The rule changes proposed in this packet related to HB17-1284 will have a fiscal impact on the Department. Funding to support the start-up costs of implementing the bill was provided for in the Fiscal Note and State General Funds were appropriated for these costs. The Colorado Department of Human Services, as an employer of persons who provide direct care to at-risk adults in regional centers and veterans community living centers, will have to pay for CAPS checks for new employees.

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County Fiscal Impact

County Departments may incur a cost in requesting CAPS checks for prospective APS employees. County department APS supervisors may choose to conduct the CAPS check themselves at no cost or request the CAPS check from the state department using the same process as other employers. If the county department chooses to request the CAPS check from the state department, they would incur the cost of the fee to request a CAPS check. In FY2016-17, there were seventy-nine (79) new APS employees in Colorado that, under the new legislation, would have required a CAPS check prior to employment. Given the option for conducting their own CAPS checks for county department APS staff, and the number of new APS caseworkers in the state each year, the fiscal impact to county departments will be minimal.

Federal Fiscal Impact

There is no federal fiscal impact.

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

The employers required to request a CAPS check prior to hiring an employee as identified in statute will be required to pay a fee for the CAPS check. Those employers include the following: health facilities licensed pursuant to section 25-1.5-103, C.R.S, including those wholly owned and operated by any governmental unit; Adult day care facilities, as defined in section 25.5-6-303(1), C.R.S.; community integrated health care service agencies, as defined in section 25-3.5-1301(1); Community-Centered Boards or program-approved service agencies that provide or contract for services and supports, pursuant to C.R.S. article 10 of title 25.5; Single Entry Point agencies, as described in section 25.5-6-106, C.R.S.; Area agencies on Aging, as defined in 26-11-201(2), C.R.S., and any agency or provider the Area Agency on Aging contracts with to provide services; facilities operated by the state department for the care and treatment of persons with mental illness, pursuant to C.R.S. article 65 of title 27; facilities operated by the State Department for the care and treatment of persons with intellectual and developmental disabilities, pursuant to C.R.S. article 10.5 of title 27; and, Veterans Community Living Centers, operated pursuant to C.R.S. article 12 of title 26.

Section 26-3.1-111(9), C.R.S. states that the State Department shall establish the fee and the fee must not exceed direct and indirect costs incurred for the administrative appeals process for persons appealing claims of mistreatment of at-risk adults and the direct and indirect costs of conducting employer-requested caps checks. This section of statute further states that the State Board shall establish in rules the maximum fee amount that the State Department shall not exceed without the express approval of the State Board. The maximum fee proposed in this rule package for the CAPS check is \$35. The Department will set the fee based on the costs for the appeals process and CAPS checks. Employers may also choose to request a CAPS check for existing employees. Depending on the employer's rate of turnover/hiring and whether or not they choose to request CAPS checks for existing employees, some employers may be impacted more than others. Employers also have the option of requiring the employee/applicant to reimburse for the cost of the CAPS check, which would lessen the fiscal impact to the employer. The exact fiscal impact to employers will vary by employer.

Recipients of the Consumer-Directed Attendant Support Services (CDASS) Medicaid waiver may also request a CAPS check prior to hiring a care provider. CDASS recipients are not required to request a check, but could request checks for more than one prospective care provider. CDASS recipients may also require the person they are hiring to pay for the CAPS check. The exact fiscal impact to CDASS recipients will vary by CDASS recipient based on their choice as to whether or not to request the checks.

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4. Data Description

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

FY 2016-17 data from CAPS was used as a reference guide to understand the number of new hires in the APS program.

5. Alternatives to this Rule-making

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

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

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OVERVIEW OF PROPOSED RULE

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

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
30.100	Addition	N/A	Adds definition of “direct care” consistent with definition in statute. Adds ability for employers to further define who in their agency would be providing direct care under this definition.	Necessary for the implementation of HB17-1284.	Yes
30.100	Addition	N/A	Adds definition of “employee” consistent with definition in statute.	Necessary for the implementation of HB17-1284.	
30.100	Addition	N/A	Adds definition of “employer” consistent with definition in statute.	Necessary for the implementation of HB17-1284.	
30.250, E, 11	Addition	N/A	Consistent with language in statute, this addition allows for confidential information to be shared with an employer or entity conducting a CAPS check on behalf of an employer, when a check is being conducted for active applications.	Necessary for the implementation of HB17-1284.	
30.320, A through C	Addition	N/A	Rule states that county departments must conduct a CAPS check for new APS employees hired on or after January 1, 2019, outlines the methods the county departments may use to conduct the check, and how the information from the CAPS check may be used.	Necessary for the implementation of HB17-1284.	
30.320, B through C	Renumbering	Current rules related to criminal background check requirements.	With the addition of the CAPS check rules at sections A-C, the remainder of this section 30.320 is renumbered.	Rules are being renumbered. The rule requirement is unchanged.	
30.960	Addition	N/A	Addition of rule section to cover which employers are required and authorized to request a CAPS check and the process for requesting the check.	Necessary for the implementation of HB17-1284.	
30.960, A	Addition	N/A	Rule outlines the employers required and authorized to request a CAPS check and the date the checks must begin. Per statute, rules also allow an employer to request a check on a current employee.	Necessary for the implementation of HB17-1284.	
30.960, B	Addition	N/A	Rule outlines that recipients of Consumer-Directed Attendant Support Services (CDASS) may request a CAPS check for new or existing employees, beginning January 1, 2019.	Necessary for the implementation of HB17-1284.	
30.960, C	Addition	N/A	Rule outlines the use of CAPS check information and the penalties for violating permitted use.	Necessary for the implementation of HB17-1284.	

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
30.960, D	Addition	N/A	Rule outlines the process for employers to register to conduct CAPS checks in order for the APS CAPS CHECK UNIT (CCU) to confirm that the requestor is allowed by statute to request and receive CAPS check information.	Necessary for the implementation of HB17-1284.	YES
30.960, E	Addition	N/A	Rule outlining the employer's responsibility to obtain written authorization from the prospective or current employee prior to requesting the check and the process for getting that authorization.	Necessary for the implementation of HB17-1284.	
30.960, F	Addition	N/A	Rule stating those requesting the CAPS check must use a state-developed online process or hard copy form to request the check.	Necessary for the implementation of HB17-1284.	
30.960, G	Addition	N/A	Rule outlines the basis for cost-setting for the CAPS checks, the process for notifying employers of any change to the cost, the maximum allowed without State Board prior approval, and the payment process for the employer.	Necessary for the implementation of HB17-1284.	YES
30.960, H	Addition	N/A	Rule outlines that the State Department must complete the CAPS check within 5 business days of the request and the process for providing the results to the employer.	Necessary for the implementation of HB17-1284.	YES
30.960, I	Addition	N/A	Rule outlines the information that will be contained in the CAPS check results that are provided to the employer.	Necessary for the implementation of HB17-1284.	
30.960, J	Addition	N/A	Rule outlines that substantiated mistreatment after the initial CAPS check request will be provided to the employer at the time of a new substantiation.	Necessary for the implementation of HB17-1284.	
30.960, K	Addition	N/A	Rule outlines findings that will not be included in CAPS check results.	Necessary for the implementation of HB17-1284.	YES

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STAKEHOLDER COMMENT SUMMARY

Development

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

Adult Protective Services Task Group, Aging and Adult Sub-PAC and PAC
County APS staff
Background Investigations Unit
Colorado Human Services Directors Association

This Rule-Making Package

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

APS Task Group County APS staff, Background Investigations Unit, Colorado Human Services Directors Association, Sub-PAC and PAC were involved in reviewing and providing feedback on drafts of this rule packet.

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

A meeting with employer stakeholders was held January 24, 2018 to provide a forum to review the draft rules and provide comment and input. Rules were also posted on the APS Task Group website at: <https://www.colorado.gov/pacific/cdhs-boards-committees-collaboration/adult-protective-services-task-group>

A meeting with stakeholders to receive feedback on this rule packet was held on March 28, 2018.

An additional meeting with stakeholders to discuss these proposed rules was held on May 11, 2018. The Department heard feedback from stakeholders and discussed possible revisions to this rule packet.

Other State Agencies

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

Yes No

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

Other agencies, such as CDPHE and HCPF will have a role in helping the APS CAPS CHECK UNIT (CCU) confirm that an employer who requests a CAPS check is a legitimate agency and/or CDASS recipient, per statute. Discussions are underway to determine a method for sharing information between these agencies and the APS CAPS CHECK UNIT (CCU) that will have the least impact on the other agencies as possible.

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Sub-PAC

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

Yes No

Name of Sub-PAC	Aging Sub-PAC		
Date presented	March 8, 2018		
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	15	0	0
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

Yes No

Date presented	March 8, 2018		
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	12	0	0
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

Yes No

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

Stakeholders asked that the definition of "direct care" be added to rule. This change was made. Stakeholders also asked that the definition be further defined. However, upon further research the Department determined that the definition of "direct care" in rule should be the same as the definition in statute and that further limiting the definition could have negative impacts on a business's ability to designate direct care staff based on their particular business need. Stakeholders also requested the addition of professionals currently not named as being required to conduct a CAPS check, such as transportation services or school personnel. Because the professions are defined in statute, these were not added. (30.100) **However, the Department was able to add clarifying language to the definition that will allow agencies to define their direct care staff, within specific guidance provided in the definition.**

Stakeholders were concerned that the definition of "employee" and "employer", which includes contractors, would be in conflict with labor laws related to contractors and asked that the bill be delayed and that Legislative Legal Services be asked to correct the statute. However, Section 26-3.1-111(2) clearly states that these definitions apply only to this section of the law, the CAPS check requirement. Therefore, the definitions were not changed. (30.100)

Stakeholders noted that some persons who provide services for adults with intellectual and developmental disabilities might be considered both an employer and an employee in situations where

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the provider is the only employee and is the licensed agency. The Department acknowledges that this could be a possibility but must use the definitions provided in by statute. (30.100)

A question arose as to whether an intern would be considered an “employee” and require a background check. The definition of employee includes persons employed by or contracted by an agency with the exception of volunteers. Interns would be evaluated within this definition depending on the intern’s pay status, i.e., paid interns would be considered an employee or contractor and non-paid interns would be considered volunteers. Rule was not adjusted. (30.100)

Stakeholders had concern that the word “willfully” was not in statute and therefore not in the rule that discusses “improper” release of information received from a CAPS check. Because this was statutorily based, no change was made in rule. (30.960.C)

A question was raised as to whether there would be a fee for agencies to register as a qualifying agency to request a CAPS check. There is not, that process is part of the CAPS check fee. Clarifying language was added to rule to be clear that there would be no fee to register. (30.960.D.2)

Stakeholders asked for more specifics as to the identifying information that would need to be provided for a CAPS check request. Rule has been updated to provide some examples. (30.960.E)

Stakeholders expressed concerns that the CAPS check will be a manual check conducted by Department staff and the proposed rules allow for up to 10 days for them to get a result. The stakeholders advocated for the ability to do a basic online check of the CAPS database. However, there is no statutory requirement for people substantiated as perpetrators in APS cases to provide information that could be used as a unique identifier in an online check such as a social security number. As a result, a basic online check using information such as name, date of birth, and address would increase the likelihood of an employer receiving either a false-positive or false-negative result from their search. In other words, a basic online check of CAPS by an employer could result in the employer receiving information about a person who is listed as a substantiated perpetrator in CAPS who is not the same person for whom the employer is requesting the check; or the employer could not receive a “match” when there is one for the person for whom they are requesting the check because the employer did not enter the correct spelling of the person’s name. No change was made in rule. (30.960.E)

Stakeholders had concerns about the \$35 maximum cap for the cost of the CAPS check. This is the maximum set in rule for the similar Trails checks. Stakeholders also had concerns that the Board could choose to raise the cap above \$35, if a new proposed rule packet was brought to the Board by the Department. This is a new process and while the Department has estimated the workload that will be generated, it is possible that some of the estimated figures, such as the number of substantiated perpetrators who will exercise their right to appeal or the number of employer checks that will be requested may be too low. Therefore, the Department recommends establishing the maximum fee at \$35 to ensure the Department’s ability to set a fee that allows the necessary resources to cover the costs of the administrative appeal process and CAPS checks. Further, Section 24-75-402, C.R.S. requires that the maximum reserve fund allowed from fees collected not exceed 16.5% of the costs of the program over the fiscal year, thus ensuring that the Department cannot charge exorbitant fees in order to build a large reserve fund. Based upon feedback at the State Board meeting during the initial reading, the proposed rules identify a maximum fee of \$16.50 per check. (30.960.G.2)

Stakeholders had concerns that CDASS recipients would not be able to bill the applicant for the CAPS check, as is allowed for other employers. After further research, we determined that CDASS recipients

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could bill the applicant. This change was made in rule. (30.960.G.3.c) Stakeholders also raised the question as to whether the CDASS recipient's provider's Employer of Record (EOR) would be required to request a check. EORs are not named employers under the statute and so would not be required to request the CAPS check. The CAPS check request would be made by the CDASS recipient, if they choose.

Stakeholders expressed concern for the 10 day time frame to return the results of a requested CAPS check. The Department is designing the CAPS check process so that it will have efficiencies in place to limit the time that it takes to receive a request, process the request, and return the request to the employer. The Department does not anticipate that the results will take a full 10 days to complete, but HB17-1284 provides for up to 10 days as a maximum time frame so no change was made in rule. Based upon feedback received at the State Board initial reading, the maximum time frame for returning results of a CAPS check has been changed to five business days. (30.960.H)

Some stakeholders are not in favor of including a severity level related to substantiated mistreatment and wanted reference to severity levels removed from 30.960.J. Other stakeholders requested that the severity levels be included in the rules. The reference to severity levels was not removed as severity levels were requested by employer stakeholders as an important tool to provide them some additional context should an applicant have a substantiated finding. The severity levels would also be a useful option for modification of a finding for the purposes of appeals in the case of a settlement. (30.960.I)

Stakeholders had concerns that a minor aged 11 to 17 could be included in a CAPS check if the minor had been a substantiated perpetrator. Upon further research, the Department determined that per Section 19-2-104, C.R.S., the youngest age a child could be charged with a crime is age ten (10), not eleven (11) as previously noted in rule. Based upon discussion at the State Board initial reading, the proposed rule was updated to reflect that a finding would not be provided during a CAPS check if the substantiated perpetrator was age 16 or younger at the time the mistreatment occurred. Per Section 19-2-517, C.R.S., this is the age at which a child's charges can be directly filed into adult court. (30.960.K)

Stakeholders were concerned about the workload impact on employers related to a draft rule requirement that the employer notify the CAPS Check Unit (CCU) if an employee for whom they requested a CAPS check either was not hired or left employment. This rule had been developed related to the flagged CAPS check process to notify the employer if their employee was substantiated after the CAPS check was conducted. The intent was to ensure that confidential information was not provided to an employer that no longer had a working relationship with the newly substantiated employee. The Department was able to identify a method for the CCU to do a manual check to ensure the employee is still working for the employer prior to notification of any new substantiated findings. This rule was removed from the final packet put forward for consideration by the Board. (30.960)

A question was raised about why the rules use the term "screening" in the phrase "conducting employee screening" rather than using "CAPS check" or "check". The term "screening" is used in statute for an agency conducting employment screening on behalf of a named employer (CAPS check, criminal background check, etc.). This term was left in rules in the confidentiality rules (30.250.E.11) but the phrase was updated to "conducting the employee CAPS check" throughout section 30.960 since that section is specific to CAPS checks.

(12 CCR 2518-1)

30.000 ADULT PROTECTIVE SERVICES

30.100 DEFINITIONS [Rev. eff. 1/30/17]

The following definitions shall apply to these rules.

“Abuse”, pursuant to Section 26-3.1-101(1), C.R.S., means any of the following acts or omissions committed against an at-risk adult:

- A. The non-accidental infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;
- B. Confinement or restraint that is unreasonable under generally accepted caretaking standards; or,
- C. Subjection to sexual conduct or contact classified as a crime under the “Colorado criminal code”, Title 18, C.R.S.

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

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

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

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

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

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

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

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

- A. Is responsible for the care of an at-risk adult as a result of a family or legal relationship;

- B. Has assumed responsibility for the care of an at-risk adult; or,
- C. Is paid to provide care, services, or oversight of services to an at-risk adult.

"Caretaker neglect", pursuant to Section 26-3.1-101(2.3)(a), C.R.S., means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, habilitation, supervision, or other treatment necessary for the health, safety, or welfare of the at-risk adult is not secured for an at-risk adult or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise, or when a caretaker knowingly uses harassment, undue influence, or intimidation to create a hostile or fearful environment for an at-risk adult. However, the withholding, withdrawing, or refusing of any medication, any medical procedure or device, or any treatment, including but not limited to resuscitation, cardiac pacing, mechanical ventilation, dialysis, artificial nutrition and hydration, any medication or medical procedure or device, in accordance with any valid medical directive or order, or as described in a palliative plan of care, is not deemed caretaker neglect. In addition to those exceptions identified above, access to Medical Aid in Dying, pursuant to Title 25, Article 48, C.R.S., shall not be considered caretaker neglect.

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

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

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

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

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

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

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

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

"DIRECT CARE", PURSUANT TO SECTION 26-3.1-101(3.5), C.R.S., MEANS SERVICES AND SUPPORTS, INCLUDING CASE MANAGEMENT SERVICES, PROTECTIVE SERVICES, PHYSICAL CARE, MENTAL HEALTH SERVICES, OR ANY OTHER SERVICE NECESSARY FOR THE AT-RISK ADULT'S HEALTH, SAFETY, OR WELFARE. AN EMPLOYER MAY IDENTIFY WHICH EMPLOYEES PROVIDE DIRECT CARE, CONSISTENT WITH THIS DEFINITION, IN AN INTERNAL POLICY, SUBJECT TO REVIEW BY ITS LICENSING AUTHORITY.

"EMPLOYEE", PURSUANT TO SECTION 26-3.1-111(2), MEANS A PERSON, OTHER THAN A VOLUNTEER, WHO IS EMPLOYED BY OR CONTRACTED WITH AN EMPLOYER AND INCLUDES A PROSPECTIVE EMPLOYEE.

"EMPLOYER", PURSUANT TO SECTION 26-3.1-111(2), MEANS A PERSON, FACILITY, ENTITY, OR AGENCY DESCRIBED IN SECTION 26-3.1-111(7), C.R.S., AND INCLUDES A PROSPECTIVE EMPLOYER. "EMPLOYER" ALSO INCLUDES A PERSON HIRING SOMEONE TO PROVIDE CONSUMER-DIRECTED ATTENDANT

SUPPORT SERVICES PURSUANT TO ARTICLE 10 OF TITLE 25.5, IF THE PERSON REQUESTS A CAPS CHECK.

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

30.250 CONFIDENTIALITY [Rev. eff. 1/30/17]

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

3. Courts and law enforcement agencies;
 4. Attorneys, guardians, conservators, agents under powers of attorney, representative payees, and other fiduciaries;
 5. Family members, reporting parties, or other interested parties;
 6. Any alleged perpetrator; and,
 7. Media representatives.
- D. In a criminal or civil proceeding or in any other circumstance in which the APS report and/or case record is subpoenaed or any request for disclosure has been made, or any county department or State Department representative is ordered to testify concerning an APS report or case, the court shall be advised, through proper channels, of the statutory provisions, rules, and policies concerning disclosure of information.
1. Confidential information shall not be released unless so ordered by the court for good cause.
 2. Courts with competent jurisdiction may determine good cause. Although it is not an exhaustive list, the following are examples of court proceedings in which a court may determine that good cause exists for the release of confidential information:
 - a. Guardianship or conservatorship proceeding in which either the county is the petitioner or has been ordered to testify;
 - b. Review of Power of Attorney under the Uniform Power of Attorney Act, as outlined at Title 15, Article 14, Part 7, Colorado Revised Statutes (C.R.S.);
 - c. Review of a fiduciary under Title 15, Article 10. Part 5, C.R.S.; and/or,
 - d. Criminal trial.
- E. Information held by the State Department or county department may be released without a court order only when:
1. Coordination with professionals and collateral contacts is necessary to investigate mistreatment, exploitation, or self-neglect and/or to resolve health and/or safety concerns.
 2. It is essential for the provision of protective services, including establishing eligibility for, arrangement and implementation of services and benefits, and appointment of a guardian and/or conservator.
 3. A review of a Power of Attorney is requested under the Uniform Power of Attorney Act, as outlined at C.R.S. Title 15, Article 14, Part 7 or review of a fiduciary under C.R.S. Title 15, Article 10, Part 5.
 4. A case is reviewed with the adult protection team, in accordance with the adult protection teams by-laws, and when in executive session with members who have signed a confidentiality agreement.
 5. A criminal complaint or indictment is filed based on the APS report and investigation.
 6. There is a death of a suspected at-risk adult and formal charges or a grand jury indictment have been brought.
 7. The coroner is investigating a death suspected to be a result of mistreatment or self-neglect.
 8. An audit of the county department of human or social services is being conducted pursuant to Section 26-1-114.5, C.R.S.

9. Notification is made to substantiated perpetrator(s) of mistreatment pursuant to Section 26-3.1-108, C.R.S.
 10. The disclosure is made for purposes of the appeals process relating to a substantiated case of mistreatment of an at-risk adult pursuant to Section 26-3.1-108(2), C.R.S.
 11. DISCLOSURE IS PROVIDED TO AN EMPLOYER, OR PERSON OR ENTITY CONDUCTING EMPLOYEE SCREENING ON BEHALF OF THE EMPLOYER, BY THE STATE DEPARTMENT AS PART OF A CAPS CHECK PURSUANT TO SECTION 26-3.1-111, C.R.S. OR BY A COUNTY DEPARTMENT PURSUANT TO SECTION 26-3.1-107, C.R.S.
- F. Whenever there is a question about the legality of releasing information the requestor shall be advised to submit a written request to the appropriate court to order the county department to produce the desired records or information within the custody or control of the county department.
- G. Information released under Section 30.250, D and E, shall be the minimum information necessary to secure the services, conduct the investigation, or otherwise respond to the court order. The county department shall:
1. Provide the information only to persons deemed essential to the court order, criminal or APS investigation, Adult Protection team activities, or the provision of services;
 2. Edit the information prior to its release to physically remove or redact sensitive information not essential to the court order, criminal or APS investigation, Adult Protection Team activities, or provision of services and benefits;
 3. Redact all information that would identify the reporting party unless ordered by the court, the reporting party has given written consent, or when sharing the report with law enforcement per, 26-3.1-102, (3); and,
 4. Always redact all HIPAA protected information and any other confidential information which is protected by law unless specifically ordered by a court; and,
 5. Redact all other report and case information not directly related to the court order.
- H. When a court order or other written request for the release of information related to an APS report or case is received, as outlined in Sections 30.250, D and E, the county department shall:
1. Comply within the time frame ordered by the court, or in accordance with county department policy; and,
 2. Provide a written notice with the information to be released regarding the legality of sharing confidential information.
- I. All confidential APS information and data shall be processed, filed and stored using safeguards that prevent unauthorized personnel from acquiring, accessing, or retrieving the information.
1. Client files shall be kept in a secured area when not in use.
 2. Passwords to CAPS shall be kept secured.
 3. The State Department shall ensure that only State Department and county department staff persons with a business need to do so shall have access to CAPS.
 4. Laptops and other mobile devices used to document in the field shall be protected and encrypted in compliance with HIPAA security requirements.

5. Email correspondence that contains APS confidential information shall be sent through secure encryption programs.
 6. All CAPS users must electronically sign the CAPS Security and Confidentiality Agreement annually.
- J. County departments shall not access information in CAPS that is not necessary to serve the client. Violations may result in loss of access to CAPS, at the discretion of the State Department.
- K. Any person who willfully violates confidentiality or who encourages the release of information related to the mistreatment-and self-neglect of an at-risk adult from CAPS or the APS case file, to persons not permitted access to such information, commits a Class 2 petty offense and shall be punished as provided in Section 26-3.1-102(7)(c), C.R.S.
- L. Clients shall be referred to the Colorado Address Confidentiality Program (ACP) as appropriate to determine their eligibility for services including the legal substitute mailing address and mail forwarding services. The State Department and county department shall comply with any applicable provisions for APS clients enrolled in the ACP.

30.300 STAFF QUALIFICATIONS, TRAINING, AND DUTIES

30.320 BACKGROUND CHECK REQUIREMENTS [Eff. 1/30/17]

- A. PURSUANT TO SECTION 26-3.1-107(2), C.R.S, BEGINNING JANUARY 1, 2019, COUNTY DEPARTMENTS SHALL COMPLETE A CAPS CHECK PRIOR TO HIRING A NEW APS EMPLOYEE WHO WILL HAVE DIRECT CONTACT WITH AT-RISK ADULTS, AND MAY COMPLETE A CAPS CHECK FOR EXISTING APS EMPLOYEES, USING ONE OF TWO METHODS:
1. METHOD ONE: THE COUNTY APS SUPERVISOR SEARCHES FOR THE NEW OR EXISTING EMPLOYEE IN CAPS TO DETERMINE IF THE EMPLOYEE HAS BEEN SUBSTANTIATED FOR MISTREATMENT IN AN APS CASE.
 - a. THE COUNTY DEPARTMENT APS SUPERVISOR SHALL EXCLUDE FINDINGS, AS OUTLINED IN SECTION 30.960.K.
 - b. THE COUNTY APS SUPERVISOR SHALL ATTEST TO COMPLETING THE CAPS CHECK WHEN SUBMITTING THE REQUEST FOR CAPS ACCESS FOR THE NEW APS EMPLOYEE.
 2. METHOD TWO: THE COUNTY DEPARTMENT REGISTERS AS AN EMPLOYER AND REQUESTS THE CAPS CHECK THROUGH THE PROCESS OUTLINED IN SECTION 30.960. THE COUNTY APS SUPERVISOR SHALL ATTEST TO UTILIZING METHOD TWO FOR THE CAPS CHECK WHEN SUBMITTING THE REQUEST FOR CAPS ACCESS FOR THE NEW APS EMPLOYEE.
- B. THE COUNTY DEPARTMENT MAY USE THE INFORMATION RECEIVED THROUGH A CAPS CHECK TO INFORM AN EMPLOYMENT DECISION OR AS GROUNDS TO CONDUCT FURTHER INVESTIGATION, AS OUTLINED IN SECTION 26-3.1-111(6)(c), C.R.S.
- C. INFORMATION OBTAINED THROUGH A CAPS CHECK SHALL ONLY BE RELEASED PURSUANT TO SECTION 26-3.1-111(6)(d), C.R.S.
- AD. The county department shall complete a criminal background check on all prospective APS employees who, while in their employment, have direct, unsupervised contact with any actual or potential at-risk adult.
- BE. If the county department has not previously requested and received a criminal background check on a current employee hired on or after May 29, 2012, the county department shall immediately request a fingerprint criminal background check. The county department shall pay the fee.

- GF. The county department shall require a fingerprint background check for all prospective employees.
1. The county department shall submit to the Colorado Bureau of Investigation (CBI) a complete set of fingerprints taken by a qualified law enforcement agency to obtain any criminal record held by the CBI.
 2. The background check shall include a check of the records at the Colorado Bureau of Investigation and the Federal Bureau of Investigation.
 3. The county department is strongly urged to require the background check be flagged for future notification of arrest and/or conviction.
 4. The prospective employee shall pay the fee for the criminal record check unless the county department chooses to pay the fee.
 5. The prospective employee's employment shall be conditional upon a satisfactory criminal background check.
 - a. The current employee or applicant shall be disqualified from employment, regardless of the length of time that may have passed since the discharge of the sentence imposed, for any felony criminal offenses as defined in Title 18, Articles 2-10, 12-13, 15-18, 20, 23 of the Colorado Revised Statutes, or any felony offense in any other state the elements of which are substantially similar to the elements of any of the offenses included herein.
 - b. At the county department's discretion, a person shall be disqualified from employment either as an employee or as a contracting employee if less than ten years have passed since the person was discharged from a sentence imposed for conviction of any of the following criminal offenses:
 - 1) Third degree assault, as described in Section 18-3-204, C.R.S.;
 - 2) Any misdemeanor, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;
 - 3) Violation of a protection order, as described in Section 18-6-803.5, C.R.S.;
 - 4) Any misdemeanor offense of child abuse, as defined in Section 18-6-401, C.R.S.;
 - 5) Any misdemeanor offense of sexual assault on a client by a psychotherapist, as defined in Section 18-3-405.5, C.R.S.;
 - 6) Any misdemeanor offense of arson, burglary and related offenses, robbery, or theft, as defined in Title 18, Articles 1-4, C.R.S.;
 - 7) A pattern of misdemeanor convictions within the ten years immediately preceding the date of submission of the application, or;
 - 8) Any misdemeanor offense in any other state, the elements of which are substantially similar to the elements of any of the offenses described above.
 6. Prospective employees who are transferring from one county department to another are not required to be re-fingerprinted if they complete the following process:
 - a. New employees must obtain their CBI clearance letter or a photocopy of their processed fingerprint card from their former employer. They must attach it to a new fingerprint card, with the top portion completed.

- b. The new fingerprint card must include the new employer's address. "Transfer – County Department" must be inserted in the "Reason Fingerprinted" block.
- c. The CBI clearance letter (or photocopy of the old fingerprint card) and the new fingerprint card shall be sent with payment by the county department to the CBI.
- d. County departments that have accounts with CBI are not required to send payment, but the county department shall enter its CBI account number in the OCA block of the new fingerprint card.

30.960 EMPLOYER CAPS CHECKS

- A. PURSUANT TO SECTION 26-3.1-111(6)(a)(I), BEGINNING JANUARY 1, 2019, THE FOLLOWING EMPLOYERS SHALL REQUEST A CAPS CHECK PRIOR TO HIRING A NEW EMPLOYEE WHO WILL PROVIDE DIRECT CARE TO AN AT-RISK ADULT AND MAY REQUEST A CAPS CHECK FOR EXISTING EMPLOYEES WHO PROVIDE DIRECT CARE TO AN AT-RISK ADULT.
 - 1. HEALTH FACILITIES LICENSED PURSUANT TO SECTION 25-1.5-103, C.R.S, INCLUDING THOSE WHOLLY OWNED AND OPERATED BY ANY GOVERNMENTAL UNIT;
 - 2. ADULT DAY CARE FACILITIES, AS DEFINED IN SECTION 25.5-6-303(1), C.R.S.;
 - 3. COMMUNITY INTEGRATED HEALTH CARE SERVICE AGENCIES, AS DEFINED IN SECTION 25-3.5-1301(1);
 - 4. COMMUNITY-CENTERED BOARDS OR PROGRAM-APPROVED SERVICE AGENCIES THAT PROVIDE OR CONTRACT FOR SERVICES AND SUPPORTS, PURSUANT TO C.R.S. ARTICLE 10 OF TITLE 25.5;
 - 5. SINGLE ENTRY POINT AGENCIES, AS DESCRIBED IN SECTION 25.5-6-106, C.R.S.;
 - 6. AREA AGENCIES ON AGING, AS DEFINED IN 26-11-201(2), C.R.S., AND ANY AGENCY OR PROVIDER THE AREA AGENCY ON AGING CONTRACTS WITH TO PROVIDE SERVICES;
 - 7. FACILITIES OPERATED BY THE STATE DEPARTMENT FOR THE CARE AND TREATMENT OF PERSONS WITH MENTAL ILLNESS, PURSUANT TO C.R.S. ARTICLE 65 OF TITLE 27;
 - 8. FACILITIES OPERATED BY THE STATE DEPARTMENT FOR THE CARE AND TREATMENT OF PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, PURSUANT TO C.R.S. ARTICLE 10.5 OF TITLE 27; AND,
 - 9. VETERANS COMMUNITY LIVING CENTERS, OPERATED PURSUANT TO C.R.S. ARTICLE 12 OF TITLE 26.
- B. PURSUANT TO SECTION 26-3.1-111(8), BEGINNING JANUARY 1, 2019, INDIVIDUALS RECEIVING CONSUMER-DIRECTED ATTENDANT SUPPORT SERVICES (CDASS), PURSUANT TO C.R.S. ARTICLE 10 OF TITLE 25.5, MAY REQUEST A CAPS CHECK FOR A NEW OR EXISTING EMPLOYEE.
- C. INFORMATION OBTAINED THROUGH A CAPS CHECK BY AN EMPLOYER, OR A PERSON OR ENTITY CONDUCTING **THE EMPLOYEE CAPS CHECK** ON BEHALF OF THE EMPLOYER, SHALL ONLY BE RELEASED PURSUANT TO SECTION 26-3.1-111(6)(d), C.R.S. **SECTION 26-3.1-111(6)(e), C.R.S., CREATES A CRIMINAL PENALTY FOR ANY PERSON WHO IMPROPERLY RELEASES OR WHO WILLFULLY PERMITS OR ENCOURAGES THE RELEASE OF DATA OR INFORMATION OBTAINED THROUGH A CAPS CHECK TO PERSONS NOT PERMITTED ACCESS TO THE INFORMATION PURSUANT TO TITLE 26, ARTICLE 3.1.**
- D. EMPLOYERS, OR A PERSON OR ENTITY CONDUCTING **THE EMPLOYEE CAPS CHECK** ON BEHALF OF THE EMPLOYER, SHALL REGISTER PRIOR TO REQUESTING A CAPS CHECK TO ALLOW FOR VERIFICATION OF THE EMPLOYER'S LEGAL AUTHORITY TO REQUEST THE CHECK.

1. THE EMPLOYER, OR A PERSON OR ENTITY CONDUCTING **THE EMPLOYEE CAPS CHECK** ON BEHALF OF THE EMPLOYER, IS RESPONSIBLE FOR ENSURING THE REGISTRATION INFORMATION IS UP TO DATE.
 2. THERE SHALL BE NO FEE TO THE EMPLOYER TO REGISTER.
- E. USING A FORM DEVELOPED BY THE STATE DEPARTMENT, EMPLOYERS, OR A PERSON OR ENTITY CONDUCTING **THE EMPLOYEE CAPS CHECK** ON BEHALF OF THE EMPLOYER, SHALL OBTAIN WRITTEN AUTHORIZATION AND ANY REQUIRED IDENTIFYING INFORMATION FROM THE NEW OR EXISTING EMPLOYEE PRIOR TO REQUESTING A CAPS CHECK. REQUIRED IDENTIFYING INFORMATION NECESSARY TO REQUEST THE CAPS CHECK INCLUDES INFORMATION SUCH AS NAME, DATE OF BIRTH, AND EMAIL ADDRESS, ETC.
- F. EMPLOYERS, OR A PERSON OR ENTITY CONDUCTING **THE EMPLOYEE CAPS CHECK** ON BEHALF OF THE EMPLOYER, SHALL REQUEST A CAPS CHECK USING AN ONLINE OR HARD COPY FORM DEVELOPED BY THE STATE DEPARTMENT.
- G. THE FEE FOR THE CAPS CHECK SHALL BE:
1. ESTABLISHED TO PROVIDE ADEQUATE REVENUE TO SUPPORT ALL DIRECT AND INDIRECT COSTS RELATED TO THE ADMINISTRATIVE APPEALS PROCESSES FOR SUBSTANTIATED PERPETRATORS AND THE EMPLOYER CAPS CHECKS.
 2. NO GREATER THAN **\$16.50** PER CAPS CHECK, UNLESS THE STATE BOARD OF HUMAN SERVICES APPROVES AN INCREASED FEE BASED UPON INCREASED DIRECT AND INDIRECT COSTS OF THE ADMINISTRATIVE APPEALS AND EMPLOYER CAPS CHECKS.
 - a. THE CURRENT CAPS CHECK FEE SHALL BE POSTED TO A CAPS CHECK WEBSITE.
 - b. THE CURRENT CAPS CHECK FEE MAY BE ADJUSTED WITH 30 DAYS' NOTICE, PROVIDED VIA THE CAPS CHECK WEBSITE.
 3. PAID BY THE EMPLOYER, OR THE PERSON OR ENTITY CONDUCTING **THE EMPLOYEE CAPS CHECK** ON BEHALF OF THE EMPLOYER, AT THE TIME OF THE REQUEST.
 - a. IF THE EMPLOYER, OR THE PERSON OR ENTITY CONDUCTING **THE EMPLOYEE CAPS CHECK** ON BEHALF OF THE EMPLOYER, CHOOSES TO REQUEST THE CAPS CHECK VIA THE ONLINE FORM, PAYMENT MUST BE MADE THROUGH THE ONLINE PAYMENT SYSTEM AT THE TIME OF THE REQUEST. A CAPS CHECK WILL NOT BE COMPLETED WITHOUT PAYMENT.
 - b. IF THE EMPLOYER, OR THE PERSON OR ENTITY CONDUCTING **THE EMPLOYEE CAPS CHECK** ON BEHALF OF THE EMPLOYER, CHOOSES TO REQUEST THE CAPS CHECK VIA FIRST CLASS MAIL, PAYMENT IN THE FORM OF AN AGENCY WARRANT OR BANK CHECK MUST BE ATTACHED TO THE FORM. A CAPS CHECK WILL NOT BE COMPLETED WITHOUT PAYMENT.
 - c. EMPLOYERS, OR A PERSON OR ENTITY CONDUCTING **THE EMPLOYEE CAPS CHECK** ON BEHALF OF THE EMPLOYER, MAY CHOOSE TO REQUEST THAT THE APPLICANT REIMBURSE THE EMPLOYER, OR THE PERSON OR ENTITY CONDUCTING **THE EMPLOYEE CAPS CHECK** ON BEHALF OF THE EMPLOYER, FOR THE COST OF THE CHECK.
- H. THE STATE DEPARTMENT SHALL COMPLETE THE CAPS CHECK AND RESPOND TO THE REQUEST **AS SOON AS POSSIBLE, BUT NO LATER THAN FIVE (5) BUSINESS** DAYS **FROM THE RECEIPT OF THE REQUEST.**
1. THE STATE DEPARTMENT SHALL PROVIDE THE CAPS CHECK RESULTS TO THE EMPLOYER, OR THE PERSON OR ENTITY CONDUCTING **THE EMPLOYEE CAPS CHECK** ON

BEHALF OF THE EMPLOYER, VIA EMAIL, UNLESS RECEIPT OF THE RESULTS VIA FIRST CLASS MAIL IS REQUESTED BY THE EMPLOYER, OR THE PERSON OR ENTITY CONDUCTING **THE EMPLOYEE CAPS CHECK** ON BEHALF OF THE EMPLOYER.

2. A PERSON OR ENTITY CONDUCTING **THE EMPLOYEE CAPS CHECK** ON BEHALF OF THE EMPLOYER SHALL PROVIDE THE RESULTS OF THE CAPS CHECK TO THE EMPLOYER.

I. THE CAPS CHECK RESULTS SHALL INDICATE:

1. WHETHER THERE IS OR IS NOT A SUBSTANTIATED FINDING FOR THE NEW OR EXISTING EMPLOYEE;
2. THE PURPOSES FOR WHICH THE INFORMATION IN CAPS MAY BE MADE AVAILABLE;
3. THE CONSEQUENCES OF IMPROPER RELEASE OF THE INFORMATION IN CAPS; AND,
4. FOR CAPS CHECKS IN WHICH THERE IS A SUBSTANTIATED FINDING, THE CAPS CHECK RESULTS WILL INCLUDE THE DATE(S) OF THE REPORT, COUNTY DEPARTMENT(S) THAT COMPLETED THE INVESTIGATION(S), AND THE TYPE(S) AND SEVERITY LEVEL(S) OF THE MISTREATMENT.

J. NOTIFICATION OF ANY SUBSTANTIATED MISTREATMENT FINDING MADE AFTER THE INITIAL CAPS CHECK SHALL BE PROVIDED TO THE EMPLOYER, OR THE PERSON OR ENTITY CONDUCTING **THE EMPLOYEE CAPS CHECK** ON BEHALF OF THE EMPLOYER, AT THE TIME THE NEW FINDING IS COMPLETED IN CAPS.

K. FINDINGS SHALL NOT BE INCLUDED IN CAPS CHECK RESULTS WHEN:

1. THE FINDING WAS MADE PRIOR TO JULY 1, 2018 WHEN DUE PROCESS FOR SUBSTANTIATED PERPETRATORS BEGAN, AS OUTLINED IN SECTION 30.910; AND/OR,
2. THE FINDING WAS EXPUNGED **OR OVERTURNED THROUGH THE APPEALS PROCESS IN SECTION 30.920**; AND/OR,
3. THE SUBSTANTIATED PERPETRATOR WAS **UNDER 16 YEARS OLD** AT THE TIME THE MISTREATMENT OCCURRED; AND/OR,
4. A POSITIVE MATCH OF AT LEAST TWO DATA POINTS BETWEEN THE EMPLOYEE AND A SUBSTANTIATED PERPETRATOR IN CAPS, SUCH AS NAME, DATE OF BIRTH, OR ADDRESS, CANNOT BE DETERMINED WITH CERTAINTY.