

Title of Proposed Rule: Adult Protective Services Program Oversight Rule Changes

CDHS Tracking #: 20-12-22-02

Office, Division, & Program: Rule Author: Peggy Rogers
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RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

- a. Board Executive Director
b. Regular Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

- AG Initial Review Initial Board Reading AG 2nd Review Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

- Number
1 Amended Rules
_____ New Rules
_____ Repealed Rules
_____ Reviewed Rules

What month is being requested for this rule to first go before the State Board?	April 2, 2021
What date is being requested for this rule to be effective?	June 30, 2021
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates: 1st Board _____ 2nd Board _____ Effective Date _____

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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. **1500 Char max***

The purpose of this rule is to modify the performance improvement and corrective action rule requirements. The rule updates the statute and rule citations and changes the language from “shall” to “may” to provide the State Department flexibility in when and how to apply performance improvement and corrective actions.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- to comply with state/federal law and/or
- to preserve public health, safety and welfare

Justification for emergency:

State Board Authority for Rule:

Code	Description
26-1-107(5)-(6), C.R.S. (2019)	State Board to promulgate rules

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(1), C.R.S. (2019)	State Board to promulgate rules for the APS program.

Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

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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?

This rule impacts only the county departments of social/human services.

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?

This rule does not change the impact for the county departments. The current rule provides oversight activities to include performance improvement plans and corrective action. The rule change simply updates the statutory and rule authority citations and changes the language regarding performance improvement and corrective actions from "shall" to "may" to provide flexibility in when these actions may be taken.

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. **Answer should NEVER be just "no impact" answer should include "no impact because..."***

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)

None. The change is limited to the authority of reference and changing from a requirement to an option.

County Fiscal Impact

None. The change is limited to the authority of reference and changing from a requirement to an option.

Federal Fiscal Impact

None. APS does not have federal funding, regulations, or oversight.

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

None. The change is limited to the authority of reference and changing from a requirement to an option.

4. Data Description

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

In 2020, the Office of the State Auditor completed an audit of the Adult Protective Services program. One of the recommendations was to develop a process to ensure that counties address problems identified

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through quality assurance activities, to include a performance improvement process. This rule change is being proposed so that the Department can fully implement the audit finding.

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...”

None at this time. The audit recommendation must be completed by the Department.

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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
30.220.A	Update statutory citation	Refers to 26-1-111, C.R.S.	Refers to 26-1-101, et seq	Technical correction	No
30.220.D	Update performance plan rule	Requires a performance improvement plan.	New language provides that a performance improvement plan may be implemented.	To comply with an audit recommendation from the 2020 Adult Protective Services audit by the Office of the State Auditor. Provides flexibility to approach performance concerns with a range of options.	No
30.220.E	Update legal authority for oversight activities.	Requires corrective action and/or sanctions if performance improvement is not successful.	New language provides that corrective action and/or sanctions may be implemented and updates the statutory citations and rule citation.	To comply with an audit recommendation from the 2020 Adult Protective Services audit by the Office of the State Auditor. Provides flexibility to approach performance concerns with a range of options.	No

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):

--

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:

--

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?

--

Sub-PAC

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

Yes No

Name of Sub-PAC	Aging and Adult		
Date presented	Initial presentation 1.7.21.		
What issues were raised?	No concerns at initial presentation.		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

Yes No

Date presented			
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
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.

DEPARTMENT OF HUMAN SERVICES

Adult Protective Services

ADULT PROTECTIVE SERVICES

12 CCR 2518-1

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

30.220 APS PROGRAM REVIEW AND OVERSIGHT

- A. The county department shall be subject to the provisions outlined in Section 26-1-444~~101~~, C.R.S., ET SEQ, requiring the State Department to ensure that the county department complies with requirements provided by statute, State Board of Human Services and Executive Director rules, federal laws and regulations, and contract and grant terms.
- B. The county department shall be subject to routine quality control and program monitoring, to minimally include:
1. Targeted review of CAPS documentation;
 2. Review and analysis of data reports generated from CAPS;
 3. Case review;
 4. Targeted program review conducted via phone, email, or survey; and,
 5. Onsite program review.
- C. The focus of the monitoring shall be to identify:
1. Compliance with program statute and rules;
 2. Best practices that can be shared with other county departments; and,
 3. Training needs.
- D. The county department ~~shall~~ MAY be subject to a performance improvement plan to correct areas of identified non-compliance.
- E. IF THE COUNTY FAILS TO MAKE IMPROVEMENTS REQUIRED UNDER THE PERFORMANCE IMPROVEMENT PLAN, the county department ~~shall~~ MAY be subject to corrective action ~~and sanction~~, as outlined in ~~9 CCR 2501-1~~ AUTHORIZED BY SECTION 26-1-101, C.R.S., ET SEQ AND/OR SANCTIONS, AS AUTHORIZED BY SECTION 26-1-109(4), C.R.S. AND 9 CCR 2501-1. ~~if the county fails to make improvements required under the performance improvement plan..~~