

Title of Proposed Rule: Child Welfare Appeals Online Submission

CDHS Tracking #: 22-08-09-01

Office, Division, & Program:
Ad Sol, ARD, CAMDRS

Rule Author:
Sheannette Worden-O'Dell

Phone: 303.866.7035

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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____ Repealed Rules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?	March 2023
What date is being requested for this rule to be effective?	June 1, 2023
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 March 2023 2nd Board April 7, 2023 Effective Date June 1, 2023

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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***

Individuals who have been found responsible for an incident of child abuse or neglect, or the mistreatment of an at-risk adult, have the right to appeal the finding made by the County Department of Human/Social Services. The Child and Adult Mistreatment Dispute Review Section (CAMDRS), under the auspices of the Colorado Department of Human Social Services (CDHS), processes these appeals for both the child welfare and adult protective services systems. When a confirmed finding is made, the County Department is required to notify the individual of the finding using a State approved notice, which includes information on how to appeal and an appeal request form. Presently, Volume 7 (7.111(C)) requires an individual appealing a child welfare finding to submit their appeal in writing and the written appeal must be submitted on the appeal request form provided to them by the County Department.

Volume 30 (30.920(C)) provides the adult protective services system with the option to submit an appeal using a State approved online form. Therefore, individuals found responsible for an incident of mistreatment of an at-risk adult are able to submit an appeal request to CAMDRS using an online mechanism. Individuals have 90 calendar days from the date of the county notice to appeal the finding. The State approved online form has given individuals access to a more efficient, timely, and cost effective method to submit an appeal request. In addition, CAMDRS has transitioned to an electronic business model and the online submission form reduces the work time needed to scan documents to create an electronic file.

CDHS currently utilizes a platform called Jotform for online appeal submissions for the adult protective services system. There would be no additional cost to implement this process for the child welfare system using the Jotform platform.

The rule change would allow for online submissions of appeals of child abuse and neglect, thereby enhancing the child welfare appeal process and creating equity between the two systems.

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, 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.

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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
19-3-313.5(3)	"On or before January 1, 2004, the state board, in consideration of input and recommendations from the county departments, shall promulgate rules to establish a process at the state level by which a person who is found to be responsible in a confirmed report of child abuse or neglect filed with the state department pursuant to section 19-3-307 may appeal the finding of a confirmed report of child abuse or neglect to the state department."

Does the rule incorporate material by reference?
Does this rule repeat language found in statute?

Yes No
 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?

CAMDRS will bear the burden of working to create the online appeal submission process. The Division of Child Welfare (DCW), will be impacted through the need to update the Notification Form in Trails to include information that online submissions are available. There is no change to the process county departments of human/social services are required to complete.

Individuals with founded allegations of child maltreatment will benefit, as the online submission process will allow for more timely submissions of appeal requests. For citizens without access to the internet, submissions may still be made by mailing a hard copy form.

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 will allow CAMDRS to offer a more efficient mechanism for citizens with substantiated findings for child abuse or neglect to submit appeal requests.

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)

No additional cost.

County Fiscal Impact

None.

Federal Fiscal Impact

None.

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

N/A

4. Data Description

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

N/A

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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..."

No alternative because individuals already have the option to appeal the confirmed finding using a hard copy form. Creating an online mechanism for the child welfare appeals system is the more effective alternative.

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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
7.000	<i>Incorrect Statutory Reference</i>	<i>Section 26.5.103 C.R.S.</i>	<i>Section 26.5-101(3) C.R.S.</i>		
7.111	Does not clearly support the option to submit an appeal request using an online form.	7.111(C) The person found to be responsible for child abuse or neglect shall have (90) calendar days from the date of the notice of founded finding to appeal the finding in writing to the State Department. The written appeal shall be submitted on the State approved form provided by the county and shall include: <ol style="list-style-type: none"> 1. The contact information for the Appellant; 2. A statement detailing the basis for the appeal; and, 3. The county department notice of finding of responsibility for child abuse or neglect. 	7.111(C) The person found to be responsible for child abuse or neglect shall have ninety (90) calendar days from the date of the notice of founded finding to appeal the finding in writing to the State Department. The written appeal shall be submitted VIA the State approved ONLINE form OR USING THE HARD COPY APPEAL FORM provided TO THE PERSON FOUND RESPONSIBLE FOR CHILD ABUSE OR NEGLECT by the county DEPARMENT and shall include: <ol style="list-style-type: none"> 1. The contact information for the Appellant; 2. A statement detailing the basis for the appeal; and, 3. The county department notice of finding of responsibility for child abuse or neglect. 	To clearly support the option to submit a child welfare appeal request using an online mechanism and create equity between the two appeal systems managed by CAMDRS.	

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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):

- DCW
- Child Welfare Sub-PAC
- Policy Advisory Committee (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:

- DCW
- Child Welfare Sub-PAC: Rule packet approved unanimously at the December, 2022 CW Sub-PAC
- PAC

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	Child Welfare Sub-PAC		
Date presented	December 8, 2022		
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	Unanimous		

If not presented, explain why.

PAC

Have these rules been approved by PAC?

Yes No

Date presented	January 5, 2023		
What issues were raised?	None		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	Unanimous		

If not presented, explain why.

Other Comments

Comments were received from stakeholders on the proposed rules:

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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

Social Services Rules

REFERRAL AND ASSESSMENT

12 CCR 2509-2

7.111 STATE LEVEL APPEAL PROCESS [Eff. 1/1/15]

- A. Persons found responsible for an incident of child abuse or neglect by the county department shall have the right to a state level appeal to contest the finding. The request for appeal of the decision shall first be submitted to the State Department unit designated to handle such appeals. If the State Department and the Appellant are unable or unwilling to resolve the appeal in accordance with the provisions set forth below in this section, the State Department shall forward the appeal to the Office of Administrative Courts (OAC) to proceed to a fair hearing before an Administrative Law Judge (ALJ).
- B. The grounds for appeal shall consist of the following:
 - 1. The findings are not supported by a preponderance of credible evidence; or,
 - 2. The actions ultimately found to be abusive or neglectful do not meet the statutory or regulatory definitions of child abuse or neglect.
- C. The person found to be responsible for child abuse or neglect shall have ninety (90) calendar days from the date of the notice of founded finding to appeal the finding in writing to the State Department. The written appeal shall be submitted ~~on~~ VIA the State approved ONLINE form OR USING THE HARD COPY APPEAL FORM provided TO THE PERSON FOUND RESPONSIBLE FOR CHILD ABUSE OR NEGLECT by the county DEPARTMENT and shall include:
 - 1. The contact information for the Appellant;
 - 2. A statement detailing the basis for the appeal; and,
 - 3. The county department notice of finding of responsibility for child abuse or neglect.
- D. The state level appeal process must be initiated by the person responsible for child abuse or neglect or his/her legal representative. The Appellant need not hire an attorney to appeal the county determination. If the individual is a minor child, the appeal may be initiated by his/her parents, legal custodian, or legal representative.
- E. The appeal must be submitted to the State Department within ninety (90) calendar days of the date of the notice of founded finding. If the appeal is filed more than ninety (90) calendar days from the date of the notice of founded finding, the Appellant must show good cause for not appealing within the prescribed period as set forth in Section 7.000.2, A. Failure to request State review within this ninety-day (90) period without good cause shall be grounds for the State Department to not accept the appeal.
- F. The founded finding shall be utilized for safety and risk assessment, employment, and background screening by the State Department while the administrative appeal process is pending.
- G. The Appellant shall have the right to appeal even if a dependency and neglect action or a criminal prosecution for child abuse is pending arising out of the same report. The State Department shall hold in abeyance the administrative process pending the outcome of the dependency and neglect

or criminal action if requested by the Appellant or if the State Department determines that awaiting the outcome of the court case is in the best interest of the parties. If the Appellant objects to the continuance, the continuance shall not exceed one hundred eighty (180) days without the Appellant having the opportunity to seek review of the extended continuance by an Administrative Law Judge. The pendency of other court proceeding(s) shall be considered to be good cause to continue the appeal past the one hundred eighty (180) day timeframe.

- H. The following circumstances shall be considered to be admissions to the factual basis of the finding of responsibility for child abuse or neglect entered into the state automated case management system and shall be considered to be conclusive evidence of the person's responsibility for child abuse or neglect to support a motion for summary judgment submitted to the Office of Administrative Courts:
1. When a Dependency and Neglect Petition has been adjudicated against or a deferred adjudication entered against the Appellant on the basis of Sections 19-3-103 or 19-3-102 (1)(a), (b), or (c), C.R.S., arising out of the same factual basis as the founded finding in the state automated case management system;
 2. The Appellant has been found guilty of child abuse, or has pled guilty or nolo contendere to child abuse as part of any plea agreement including, but not limited to, a deferred judgment agreement, arising out of the same factual basis as the founded finding in the state automated case management system; or,
 3. The Appellant has been found guilty or has pled guilty or nolo contendere to a domestic violence related or alcohol traffic related offense arising out of the same factual basis as the founded report in the state automated case management system.
- I. When an Appellant requests an appeal, the State Department shall request the records relied upon in making the finding from the county department responsible for entering the finding, which has been appealed. The county department shall submit the record to the State Department as soon as practicable within the time frame requested by the Department.
- J. After the Appellant requests an appeal, the State Department shall inform the Appellant regarding the details of the appeal process, including timeframes and contact information.
1. The Appellant, as the party in interest, shall have access to the county record in order to proceed with the appeal. Appellant's use of the county file for any other purpose is prohibited unless otherwise authorized by law.
 2. Prior to providing access to the Appellant, the State Department shall redact identifying information contained in the county file to comply with state and federal law regarding the confidentiality of child abuse or neglect records or other protected information including, but not limited to, reporting party name(s) and addresses, Social Security Number, foster parent identifying information, and information pertaining to other parties in the case that the appellant does not have a legal right to access.
- K. The State Department is authorized to enter into settlement negotiations with the Appellant as part of the litigation process. The State Department is authorized to enter into settlement agreements that modify, overturn or expunge the reports as reflected in the state portion of the state automated case management system. The State Department is not authorized to make any changes in the county portion of the state automated case management system. In exercising its discretion, the State Department shall take into consideration the best interests of children, the weight of the evidence, the severity of the abuse or neglect, any pattern of abuse or neglect reflected in the record, the results of any local court processes, the rehabilitation of the Appellant, and any other pertinent information.

- L. The State Department and the Appellant shall have one hundred twenty (120) days from the date that the State Department receives the appeal to resolve the issue(s) on appeal. The 120 day time limit may be extended by agreement of both the Appellant and the State Department if it is likely that the additional time will result in a fully executed settlement agreement or resolution of the appeal.
- M. As soon as it is evident within the 120 days that the Appellant and the State Department will not resolve the issue(s) on appeal, the State Department shall forward a copy of the Appellant's original appeal document(s) to the Office of Administrative Courts in order to initiate the Office of Administrative Courts fair hearing process.
- N. If, by the end of the 120 day period, the State Department has been unable to contact the Appellant using the information submitted by the Appellant, including by first class mail, and the Appellant has not contacted the State Department, the appeal shall be deemed abandoned. The finding entered by the county department shall be upheld in the state automated case management system without further right of appeal. The State Department shall notify the Appellant of this result by first class mail to the address submitted by the Appellant.