

TITLE 8 SOCIAL SERVICES
CHAPTER 11 ADULT PROTECTIVE SERVICES
PART 6 EMPLOYEE ABUSE REGISTRY

8.11.6.1 ISSUING AGENCY: Aging and Long-Term Services Department.
[8.11.6.1 NMAC - N, 4/28/2006]

8.11.6.2 SCOPE: This rule applies to a broad range of New Mexico providers of health care and services and employees of these providers who are not licensed health care professionals or certified nurse aides. This rule requires that providers check with the registry and avoid employing any individual on the registry. This rule further requires listing employees with substantiated registry-referred abuse, neglect or exploitation on the registry, following an opportunity for a hearing. This rule supplements other pre-employment screening requirements currently applicable to health care providers, such as the requirement for criminal history screening of caregivers employed by care providers subject to the Caregiver Criminal History Screening Act, Sections 29-17-1 through 29-17-5 NMSA 1978 and that act's implementing rule, 7.1.9 NMAC. It also supplements requirements for pre-employment screening of certified nurse aides applicable to nursing facilities pursuant to 42 CFR Sections 483.75(e) and 488.335 and 16.12.20 NMAC. This rule does not address the consequences of abuse, neglect, or exploitation for which a provider, as distinguished from an employee, is responsible. This rule is meant to compliment department of health rule 7.1.12 NMAC.
[8.11.6.2 NMAC - N, 4/28/2006]

8.11.6.3 STATUTORY AUTHORITY: This rule is adopted pursuant to the terms of Sections 9-23-6(E) and 28-4-6(B) NMSA 1978, the Adult Protective Services Act, Sections 27-7-1 through 27-7-31 NMSA 1978 and the Employee Abuse Registry Act, Sections 27-7A-1 through 27-7A-8 NMSA 1978.
[8.11.6.3 NMAC - N, 4/28/2006]

8.11.6.4 DURATION: Permanent.
[8.11.6.4 NMAC - N, 4/28/2006]

8.11.6.5 EFFECTIVE DATE: April 28, 2006, unless a later date is cited at the end of a section.
[8.11.6.5 NMAC - N, 4/28/2006]

8.11.6.6 OBJECTIVE: The objective of this rule is to implement the Employee Abuse Registry Act. The rule is intended to provide guidance as to the rights and responsibilities under the Employee Abuse Registry Act of providers, employees of providers, the department of health and the adult protective services division of the aging and long-term services department, and the public including recipients of care and services from providers.
[8.11.6.6 NMAC - N, 4/28/2006]

8.11.6.7 DEFINITIONS:

- A. "Abuse"** means:
- (1) knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish, and includes sexual abuse and verbal abuse; or
 - (2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person.
- B. "Adjudicated"** means with respect to a substantiated registry-referred complaint, a final determination by the secretary following a hearing, or by a court, that the employee committed abuse, neglect, or exploitation requiring the listing of the employee on the registry.
- C. "APS"** means the adult protective services division of the aging and long-term services department.
- D. "Behavioral change"** means an observable manifestation of psychological, emotional or mental harm, injury, suffering or damage, and includes, but is not limited to, crying, hysterical speech, or disruptions to sleeping, working, eating, speech, nonverbal communications, socially interacting, or other activities which were performed routinely before the harm, injury, suffering, or damage.
- E. "Complaint"** means a report of adult abuse, neglect or exploitation received by APS that falls within APS's mandate to investigate.

F. “**Custodian**” means the person assigned by the secretary of the department of health to maintain the registry in accordance with the Employee Abuse Registry Act.

G. “**Department**” means the aging and long-term services department.

H. “**Direct care**” means face-to-face services provided or routine and unsupervised physical or financial access to a recipient of care or services.

I. “**Employee**” means a person employed by or on contract with a provider, either directly or through a third party arrangement to provide direct care. “Employee” does not include a New Mexico licensed health care professional practicing within the scope of the professional’s license or a certified nurse aide practicing as a certified nurse aide.

J. “**Exploitation**” means an unjust or improper use of a person’s money or property for another person’s profit or advantage, pecuniary or otherwise.

K. “**Investigation**” means a systematic fact finding process that has as its goal the gathering of all information relevant to making a determination whether an incident of abuse, neglect or exploitation occurred.

L. “**Licensed health care professional**” means a person who is required to be licensed, and is licensed, by a New Mexico health care professional licensing board or authority, and the issuance of whose professional license is conditioned upon the successful completion of a post secondary academic course of study resulting in a degree or diploma, including physicians and physician assistants, audiologists, acupuncture practitioners, dentists, registered nurses, licensed practical nurses, chiropractors, pharmacists, podiatrists, certified nurse-midwife, nurse practitioners, occupational therapists, optometrists, respiratory therapists, speech language pathologists, pharmacists, physical therapists, psychologists and psychologist associates, dietitians, nutritionists and social workers.

M. “**Manager**” means the person designated by the secretary of the department of health to manage the employee abuse registry program pursuant to the Employee Abuse Registry Act.

N. “**Mental anguish**” means a relatively high degree of mental pain and distress that is more than mere disappointment, anger, resentment or embarrassment, although it may include all of these and includes a mental sensation of extreme or excruciating pain.

O. “**Neglect**” means, subject to a person’s right to refuse treatment and subject to a provider’s right to exercise sound medical discretion, the failure of an employee to provide basic needs such as clothing, food, shelter, supervision, protection and care for the physical and mental health of a person or failure by a person that may cause physical or psychological harm. Neglect includes the knowing and intentional failure of an employee to reasonably protect a recipient of care or services from nonconsensual, inappropriate or harmful sexual contact, including such contact with another recipient of care or services.

P. “**Provider**” means an intermediate care facility for the mentally retarded; a rehabilitation facility; a home health agency; a homemaker agency; a home for the aged or disabled; a group home; an adult foster care home; a case management entity that provides services to elderly people or people with developmental disabilities; a corporate guardian; a private residence that provides personal care, adult residential care or natural and surrogate family services provided to persons with developmental disabilities; an adult daycare center; a boarding home; an adult residential care home; a residential service or habilitation service authorized to be reimbursed by medicaid; any licensed or medicaid-certified entity or any program funded by the aging and long-term services department that provides respite, companion or personal care services; programs funded by the children, youth and families department that provide homemaker or adult daycare services; and any other individual, agency or organization that provides respite care or delivers home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly, but excluding a managed care organization unless the employees of the managed care organization provide respite care, deliver home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly.

Q. “**Registry**” means the Employee Abuse Registry, an electronic database operated by the department of health that maintains current information on substantiated registry-referred employee abuse, neglect or exploitation, including the names and identifying information of all employees who, during employment with a provider, engaged in a substantiated registry-referred or an adjudicated incident of abuse, neglect or exploitation involving a recipient of care or services from a provider as established by department of health rule 7.1.12 NMAC.

R. “**Reporter**” means a person who or an entity that reports possible abuse, neglect or exploitation to APS.

S. “**Secretary**” means the secretary of the department.

T. “**Sexual abuse**” means the inappropriate touching of a recipient of care or services by an employee for sexual purpose or in a sexual manner, and includes kissing, touching the genitals, buttocks, or breasts,

causing the recipient of care or services to touch the employee for sexual purpose, or promoting or observing for sexual purpose any activity or performance involving play, photography, filming or depiction of acts considered pornographic.

U. “Substantiated” means the verification of a complaint based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

V. “Substantiated registry-referred” means a substantiated complaint that satisfies the severity standard for referral of the employee to the registry.

W. “Unsubstantiated” means that that the complaint’s alleged abuse, neglect or exploitation did not or could not have occurred, or there is not a preponderance of reliable evidence to substantiate the complaint, or that there is conflicting evidence that is inconclusive.

X. “Verbal abuse” means profane, threatening, derogatory, or demeaning language, spoken or conveyed by an employee with the intent to cause pain, distress or injury, and which does cause pain, distress or injury as objectively manifested by the recipient of care or services.

[8.11.6.7 NMAC - N, 4/28/2006]

8.11.6.8 REGISTRY ESTABLISHED; PROVIDER INQUIRY REQUIRED: The department of health has established and maintains an accurate and complete electronic registry that contains the name, date of birth, address, social security number, and other appropriate identifying information of all persons who, while employed by a provider, have been determined to have engaged in a substantiated registry-referred incident of abuse, neglect or exploitation of a person receiving care or services from a provider.

A. Provider requirement to inquire of registry. A provider, prior to employing or contracting with an employee, shall inquire of the registry whether the individual under consideration for employment or contracting is listed on the registry.

B. Prohibited employment. A provider may not employ or contract with an individual to be an employee if the individual is listed on the registry as having a substantiated registry-referred incident of abuse, neglect or exploitation of a person receiving care or services from a provider.

C. Applicant’s identifying information required. In making the inquiry to the registry prior to employing or contracting with an employee, the provider shall use identifying information concerning the individual under consideration for employment or contracting sufficient to reasonably and completely search the registry, including the name, address, date of birth, social security number, and other appropriate identifying information required by the registry.

D. Documentation of inquiry to registry. The provider shall maintain documentation in the employee’s personnel or employment records that evidences the fact that the provider made an inquiry to the registry concerning that employee prior to employment. Such documentation must include evidence, based on the response to such inquiry received from the custodian by the provider, that the employee was not listed on the registry as having a substantiated registry-referred incident of abuse, neglect or exploitation.

E. Documentation for other staff. With respect to all employed or contracted individuals providing direct care who are licensed health care professionals or certified nurse aides, the provider shall maintain documentation reflecting the individual’s current licensure as a health care professional or current certification as a nurse aide.

F. Consequences of noncompliance. The department of health or other governmental agency having regulatory enforcement authority over a provider may sanction a provider in accordance with applicable law if the provider fails to make an appropriate and timely inquiry of the registry, or fails to maintain evidence of such inquiry, in connection with the hiring or contracting of an employee; or for employing or contracting any person to work as an employee who is listed on the registry. Such sanctions may include a directed plan of correction, civil monetary penalty not to exceed five thousand dollars (\$5000) per instance, or termination or non-renewal of any contract with the department or other governmental agency.

[8.11.6.8 NMAC - N, 4/28/2006]

8.11.6.9 COMPLAINTS: Section 27-7-30 NMSA 1978 requires anyone reasonably suspecting adult abuse, neglect or exploitation to immediately file a complaint with APS. APS has established a centralized intake system for receiving such complaints. A complaint may be made orally or in writing. To the extent possible, a complaint shall include the following information: the name, age and address of the adult; the name and address of any other person responsible for the adult’s care; the nature and extent of the adult’s condition; the basis of the reporter’s knowledge; and other relevant information.

[8.11.6.9 NMAC - N, 4/28/2006]

8.11.6.10 COMPLAINT PROCESSING: APS will investigate all complaints in accordance with its policies and procedures and render an investigative decision.

A. If a complaint relates to an employee of a provider that is not licensed by or covered under contract by the department of health, APS's investigative decision shall indicate whether the allegations against the employee are:

- (1) unsubstantiated;
- (2) substantiated; or
- (3) substantiated registry-referred.

B. If a complaint relates to an employee of a provider that is licensed by or covered under contract by the department of health, APS shall not make a registry referral determination. APS's investigative decision shall simply indicate whether the allegations against the employee are:

- (1) unsubstantiated; or
- (2) substantiated.

C. Nothing in this section shall be interpreted as precluding APS from contacting any other government agency about a complaint, including but not limited to contacting the department of health and initiating a report, or contacting law enforcement or the attorney general or a district attorney's office for criminal prosecution.

[8.11.6.10 NMAC - N, 4/28/2006]

8.11.6.11 SEVERITY STANDARD: If a complaint relates to an employee of a provider that is not licensed by or covered under contract by the department of health, APS shall make a determination of the severity of substantiated complaints of abuse, neglect or exploitation for the purpose of deciding if the employee is to be referred for placement on the registry. The determination of the severity of the substantiated complaint of abuse, neglect or exploitation is based upon application of the severity standards in this section. A substantiated complaint that satisfies the severity standard in this section is a substantiated registry-referred complaint. A substantiated complaint that does not satisfy the severity standard in this section will not be referred to the registry. Severity is determined by assessing the impact of the substantiated abuse, neglect, or exploitation on the recipient of care or services, and by assessing the employee for aggravating factors.

A. Abuse. A substantiated complaint of abuse meets the severity standard if:

- (1) the abuse results in, or is a contributing factor to, death;
- (2) the abuse results in the infliction of a significant, identifiable physical injury that reasonably requires or results in medical or behavioral intervention or treatment;
- (3) the abuse results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;
- (4) the abuse results in the infliction of excruciating pain or pain that endures over a significant time period;
- (5) the abuse causes significant mental anguish as evidenced by the victim's descriptions, or significant behavioral changes;
- (6) the abuse is sexual abuse; or
- (7) the abuse is verbal abuse that causes significant mental anguish, including psychological or emotional damage, and which is evidenced by significant behavioral changes or physical symptoms.

B. Neglect. A substantiated complaint of neglect meets the severity standard if:

- (1) the neglect results in, or is a contributing factor to, death;
- (2) the neglect results in the infliction of a significant, identifiable physical injury that reasonably requires or results in medical or behavioral intervention or treatment;
- (3) the neglect results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;
- (4) the neglect results in the infliction of excruciating pain or pain that endures over a significant time period; or,
- (5) the neglect causes significant mental anguish as evidenced by the victim's descriptions, or significant behavioral changes.

C. Exploitation. A substantiated complaint of exploitation meets the severity standard where unjust or improper use of the money or property belonging to the recipient of care or services results in:

(1) a single instance of an objectively quantifiable loss, the value of which exceeds the lesser of either:

(a) twenty five dollars (\$25); or,
(b) twenty five percent (25%) of the monthly income available to the recipient of care or services for purchasing personal items or discretionary spending; or

(2) a subjectively substantial loss to the recipient of care or services due to a special attachment to the property, as demonstrated by anger, fear, frustration, depression or behavioral changes caused by the loss.

D. Aggravating factors. A substantiated complaint of abuse, neglect or exploitation meets the severity standard requiring referral of the employee for placement on the registry where:

(1) the employee used alcohol or a controlled substance at or near the time of the substantiated abuse, neglect or exploitation; or

(2) the employee used, brandished or threatened to use, a weapon in connection with the substantiated abuse, neglect or exploitation.

[8.11.6.11 NMAC - N, 4/28/2006]

8.11.6.12 PROVIDER COOPERATION: In accordance with Section 27-7-19 NMSA 1978 and as allowed by law or contract:

A. Access to provider. The provider shall provide APS investigators with immediate physical access to the provider's entire facility or its service delivery sites. The investigators may require such access during any or all shifts.

B. Access to provider records. The provider shall provide APS investigators with immediate access to all information obtained as a result of the provider's own internal investigation of the matters that form the basis of the complaint, including but not limited to written statements, interviews, affidavits, physical items, medical information, electronic and computer data, and photographic information.

C. Interviews. APS investigators shall have a reasonable opportunity to conduct confidential interviews with any person who may have relevant information relating to the complaint, including employees and other staff including licensed health care professionals and certified nurse aides, other licensed health care professionals and other provider staff, recipients of care or services from the provider and their family members, guardians, health care decision makers and friends.

D. Physical access to recipients of care and services. The provider shall allow APS investigators reasonable access to individuals receiving care or services from the provider when such investigators announce that they are investigating a complaint. Such access may be telephonic or face-to-face.

E. Access to the provider's records, patient trust accounts and patient property. The provider shall provide APS investigators with immediate access to the provider's billing records, patient trust accounts, representative payee records, patient care and medical records, and patient property. In addition the provider must assure access to employee and personnel records, including documentation showing provider inquiry to the registry.

F. Copying. The access required to be provided to APS investigators includes copying paper documents and printing and copying electronic and computer records or data. Copied documents shall be retained in accordance with applicable state retention policies.

G. Consequences of provider's denial of cooperation. The department of health shall administer sanctions for a provider's failure to comply with the Employee Abuse Registry Act, including failure to provide access as required herein to conduct investigations of complaints, and such sanctions include a directed plan of correction, a civil monetary penalty not to exceed five thousand dollars (\$5,000), or such sanctions as are available under applicable contract or licensing provisions. Pursuant to Section 27-7-30 NMSA 1978, any person interfering with an APS investigation is guilty of a misdemeanor.

[8.11.6.12 NMAC - N, 4/28/2006]

8.11.6.13 NOTIFICATION FOLLOWING INVESTIGATION:

A. Notification to provider and employee. If APS determines, following an investigation, that an instance of either substantiated or substantiated registry-referred employee abuse, neglect, or exploitation has occurred, then APS shall promptly notify the employee and the provider.

B. Required information for substantiated registry-referred complaints. The notice to the provider and employee for substantiated registry-referred complaints shall be by certified mail and shall include the following information:

(1) the nature of the abuse, neglect, or exploitation;

(2) the date and time of the occurrence;
(3) whether the abuse, neglect or exploitation was the result of conduct by the employee, the provider or both;

(4) the right to request a hearing, and the time and manner for requesting a hearing;
(5) the fact that the substantiated registry-referred findings will be reported to the registry, once the employee has had an opportunity for a hearing; and

(6) the failure by the employee to request a hearing in writing within thirty (30) calendar days from the date of the notice shall result in the reporting of the substantiated findings to the registry and the provider.

C. Required information for substantiated complaints. The notice to the provider and employee for substantiated complaints may be by mail or by email and shall include the following information:

(1) the nature of the abuse, neglect, or exploitation;

(2) the date and time of the occurrence;

(3) whether the abuse, neglect or exploitation was the result of conduct by the employee, the provider or both;

(4) the fact that the substantiated complaint was not sufficiently severe to warrant reporting the employee to the registry; and

(5) the fact that the employee may not request a hearing.

D. Unsubstantiated complaints. Notice of a determination that an investigated complaint is unsubstantiated shall be mailed or emailed to the provider and employee following such determination.

E. APS notification to the department of health. APS shall notify the department of health of substantiated complaints of abuse, neglect and exploitation. APS shall also specifically notify the manager of substantiated registry-referred complaints of abuse, neglect and exploitation.

[8.11.6.13 NMAC - N, 4/28/2006]

8.11.6.14 HEARINGS: Hearings are provided to employees by the department or the department of health, depending upon whether APS or the department of health made the registry referral determination. This section provides rules applicable to hearings held by the department.

A. Request for hearing. An employee may request an evidentiary hearing if the employee is notified that as a result of substantiated registry-referred findings of abuse, neglect, or exploitation the employee will be reported to the registry. The request for hearing shall be made to the department. A provider may not request a hearing pursuant to the Employee Abuse Registry Act. The following applies to hearings properly requested of the department.

(1) The request for a hearing shall be in writing and mailed or delivered to the Aging and Long-Term Services Department, Adult Protective Services Division, 625 Silver SW, Suite 400, Albuquerque, New Mexico 87102; or to an alternative address if set forth in the notice.

(2) The request for hearing shall include a copy of the notice.

(3) The request for hearing must be mailed or hand-delivered no later than thirty (30) calendar days after the date of the notice.

B. Scheduling order. The department, or the hearing officer, shall issue a scheduling order that sets the hearing at a location reasonably convenient for the employee and at a date and time reasonably convenient to the parties. The scheduling order shall establish deadlines for completion of discovery and provide for the filing of a confidentiality order. The hearing shall be scheduled within thirty (30) calendar days following the department's receipt of the request for hearing. Either party may request a continuance of the hearing for good cause. If a hearing is continued it shall be rescheduled at the earliest date and time available to the parties.

C. Hearing officer. The hearing will be conducted before an impartial and independent hearing officer of the department. The hearing officer is not required to be an attorney. Upon appointment, the hearing officer shall establish an official file of the case. The hearing officer shall resolve all prehearing matters, including amendment of the scheduling order, schedule and conduct prehearing conferences, rule on prehearing motions, and resolve discovery disputes. The hearing officer will preside over the hearing and allow each party an opportunity to present its case, and shall resolve all motions, evidentiary issues and other matters as may be necessary. Within thirty (30) calendar days of the conclusion of the hearing the hearing officer will issue a report and recommended decision to the secretary.

D. Parties. The parties to the hearing are APS and the employee. Each party may be represented by an attorney.

E. Confidentiality. The hearing officer shall require the filing of an appropriate signed confidentiality order in which each party agrees to maintain and protect the confidentiality of all individually identifiable health information that is, or may be, used or disclosed at any time during the course of the entire proceeding in accordance with applicable state and federal law and regulations. Refusal or failure to sign an appropriate confidentiality order constitute grounds for denying discovery to the non-signing party, limiting the number and testimony of the non-signing party's witnesses, limiting the admission of evidence that discloses individually identifiable health information, and the imposition of other appropriate measures to limit the scope of disclosure of individually identifiable health information to the non-signing party.

F. Discovery.

(1) Exhibit and witness lists will be exchanged between the parties and provided to the hearing officer prior to the hearing by the parties in accordance with the scheduling order, any prehearing order, or by agreement of the parties. The witness list shall include a summary of the subject matter of the anticipated testimony of each witness listed.

(2) No depositions are allowed except by order of the hearing officer upon a showing that the deposition is necessary to preserve the testimony of persons who are sick or elderly, or persons who will not be able to attend the hearing. Pursuant to provisions in the scheduling order or upon agreement of the parties, and with the consent of the witness if the witness is not employed by the department or another governmental entity, a party may interview witnesses identified by the other party at a reasonable time and in a reasonable manner.

(3) Production of documents. Upon request by the employee, APS shall provide a copy of the investigation to the employee. The parties may request the production of other relevant documents in accordance with the scheduling order or other discovery order.

G. Hearing procedures. The hearing shall be closed to the public. The hearing officer shall conduct the hearing in an efficient and orderly manner that respects the rights of the parties to present their cases. The hearing officer shall maintain proper decorum and shall assure that all participants in the hearing are courteous to one another. The hearing officer is authorized to resolve motions and other disputes before and during the hearing.

(1) Recording. The hearing officer will cause a record to be made of the hearing and retained in the official file. Generally such record is made by use of commonly available audio recording technology. A log of the recording shall be maintained.

(2) Order of presentation at hearing. APS shall present its case, the employee shall present the employee's case, and APS may present its rebuttal case.

(3) Public. The hearing is a closed, nonpublic hearing.

(4) Evidence. The New Mexico Rules of Evidence do not apply, although they may be referred to for guidance as to type of evidence that may be admitted. Generally, evidence shall be admitted if is of a type relied upon by reasonable persons in the conduct of important affairs. Proffered evidence may be excluded if it is not relevant, or is repetitious or cumulative.

(5) Telephonic testimony. Upon timely notice to the opposing party and the hearing officer and with the approval of the hearing officer, the parties may present witnesses by telephone, or live video.

(6) Recommended decision. The hearing officer shall issue a recommended decision to the secretary within (30) days of the closing of the hearing.

(7) The department shall maintain the official record of the hearing, which shall include the recommendation of the hearing officer and the secretary's adjudicated decision.

(8) The department shall make available to the custodian a copy of the official record of the hearing upon request.

H. Secretary's decision. Within ten (10) business days of receipt of the hearing officer's recommendation, the secretary shall issue a final decision, and promptly provide the parties and the custodian with a copy. If the decision of the secretary finds that the employee was responsible for abuse, neglect or exploitation of sufficient severity for referral to the registry, it shall be the adjudicated decision of abuse, neglect or exploitation.

I. Judicial review. An employee may appeal the secretary's adjudicated decision of abuse, neglect or exploitation to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. The custodian will enter the employee's name into the registry within two (2) working days following receipt of the adjudicated decision. The custodian shall promptly remove the employee from the registry upon the receipt of an order issued by the district court granting a stay pending the outcome of the appeal, or upon the receipt of a district court order reversing the adjudicated decision.

J. Court of Appeals. If the employee seeks review in the court of appeals by writ of certiorari, the employee shall remain on the registry, unless a stay is granted or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses, notification shall be made to the custodian who shall promptly remove the employee from the registry.
[8.11.6.14 NMAC - N, 4/28/2006]

8.11.6.15 NOTIFICATION TO THE CUSTODIAN: APS shall promptly provide all required employee information to the custodian of the final disposition of complaints of substantiated registry-referred abuse, neglect or exploitation after the occurrence of each of the following.

A. No hearing requested. The employee has not requested an administrative hearing within thirty (30) calendar days after the date of the notice to the employee following an investigation resulting in the determination of substantiated registry-referred abuse, neglect, or exploitation.

B. Adjudication of abuse, neglect or exploitation. The employee has not filed for review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978 after thirty (30) calendar days following the date of the final administrative adjudication decision of employee abuse, neglect or exploitation of sufficient severity for registry referral.

C. Judicial decision. Upon the receipt by APS of a district court order or decision sustaining the administrative adjudication decision of abuse, neglect or exploitation of sufficient severity for registry referral, if an employee seeks judicial review in the district court.

D. Court of Appeals. If the employee seeks review in the court of appeals by writ of certiorari, the employee shall remain on the registry, unless a stay is granted or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses, then notification shall be made to the custodian who shall promptly remove the employee from the registry.
[8.11.6.15 NMAC - N, 4/28/2006]

8.11.6.16 ENTRY ON THE REGISTRY: The custodian shall provide the employee and the provider for whom the employee worked with notice of the employee's listing on the registry. The following employees will be listed on the registry by the custodian.

A. No hearing requested. Any employee determined to have committed substantiated registry-referred abuse, neglect or exploitation who does not request an administrative hearing within thirty (30) calendar days after the date of the notice to the employee.

B. Adjudicated decision. Any employee who, after thirty (30) calendar days following the date of an adjudicated decision of abuse, neglect or exploitation, has not filed for review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

C. Judicial decision. Any employee for whom a district court has entered an order or decision sustaining an administrative adjudication of abuse, neglect or exploitation.

D. Court of Appeals. Any employee who seeks review in the court of appeals by writ of certiorari shall remain listed on the registry, unless a stay is granted pending the outcome of the case, or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses the district court, then the custodian shall promptly remove the employee from the registry.
[8.11.6.16 NMAC - N, 4/28/2006]

8.11.6.17 REMOVAL FROM THE REGISTRY: After a period of three years from the effective date of placement on the registry, an individual on the registry may petition the department of health for removal from the registry in accordance with the terms of department of health rule 7.1.12 NMAC.
[8.11.6.17 NMAC - N, 4/28/2006]

8.11.6.18 CONFIDENTIALITY: The department complies with all state and federal confidentiality requirements regarding information obtained in connection with the operation of the Employee Abuse Registry program, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

A. Confidentiality of information. Information obtained by APS involving incidents or situations of suspected abuse, neglect or exploitation is confidential, and is not subject to public inspection until completion of all investigations and hearings, and then only to the extent specifically permitted by law and only such information that does not identify individuals who are receiving care or services from providers.

B. Unsubstantiated complaints. Complaints of suspected abuse, neglect or exploitation obtained by APS that are not substantiated following investigation are not public information, and are not subject to public inspection.

C. Substantiated complaints. Complaints of suspected abuse, neglect or exploitation obtained by APS that are substantiated following investigation are subject to public inspection only to the extent permitted by law and the disclosure may not include any identifying information about an individual who is receiving health care services from a provider.

D. Permitted disclosures. Nothing herein shall restrict an appropriate disclosure of information to the centers for medicare and medicaid services; nor shall any provision herein restrict disclosures to law enforcement officials, including the attorney general, district attorneys and courts, in accordance with the Adult Protective Services Act and the Resident Abuse and Neglect Act or other law.

[8.11.6.18 NMAC - N, 4/28/2006]

8.11.6.19 CONFLICTS WITH 7.1.12 NMAC: To the extent any provisions of this rule conflict with department of health rule 7.1.12 NMAC, department employees shall be governed by the terms of this rule.

[8.11.6.19 NMAC - N, 4/28/2006]

History of 8.11.6 NMAC: [Reserved]