

**DIVISION OF CHILDREN AND FAMILY SERVICES
PROTECTION AND SAFETY ADMINISTRATIVE MEMO #18-2012**

TO: Protection and Safety Services Staff

From: Thomas D. Pristow, MSW, ACSW, Director
Division of Children and Family Services

Date: September 14, 2012

RE: Adult Protective Services definitions and central registry

Effective Date: Immediately

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Legislative Bill ("LB") 1051 passed in the 2012 Legislative session, enacts changes to the definitions of the Adult Protective Services Act, changes relate to the central registry, and changes to the notification of the person who allegedly abused, neglected, or exploited a vulnerable adult.

CFS Specialists, Supervisors, and Administrators will implement the following:

A. UNREASONABLE CONFINEMENT

The definition of unreasonable confinement has been updated. Previously, adult protective services would only be able to respond if the confinement resulted in a physical injury. The updated definition allows adult protective services to respond when the allegation includes any form of false imprisonment.

See Neb. Rev. Stat. Section 28-314 and 28-315 for the entire description of false imprisonment.

Intake: To accept a report for investigation with the allegation of unreasonable confinement, one or more of the following must be alleged:

1. Confinement (physical, chemical, or mechanical) that caused a physical injury to a vulnerable adult;
2. Any restriction of a person's movement that interferes with the liberty of the vulnerable adult or abduction of a vulnerable adult under terrorizing circumstances or that create a risk of serious bodily injury;
3. Restraint of a vulnerable adult in a condition in which they are forced to complete some form of labor for another against their will;
4. Restraint of a vulnerable adult without legal authority to do so. Exceptions may be a form of restraint by someone who has special responsibility for the care, discipline, or safety of others as part of a care plan.

CFS Specialists will continue to use the allegation 'Unreasonable Confinement' on the Department's computer system to enter these reports. The CFS Specialist will set the response time priority using the current priority guidelines.

Finding: To substantiate an allegation of unreasonable confinement, the CFS Specialist must collect a preponderance of the available evidence to support the following:

1. The alleged victim is a vulnerable adult;
2. The vulnerable adult has a physical injury resulting from unreasonable confinement that was not accidental or was restrained/abducted/imprisoned; and
3. The confinement was due to the knowing, intentional act on the part of a caregiver or any other person.

B. SEXUAL EXPLOITATION

A definition of sexual exploitation was added to the APS statute.

The new definition of sexual exploitation includes the term "unlawful intrusion" which has a statutory definition, Neb. Rev. Stat. Section 28-311.08.

Intake: To accept a report for investigation with the allegation of sexual exploitation, one or more of the following must be alleged:

1. A person causing, allowing, permitting, inflicting, or encouraging a vulnerable adult to engage in voyeurism, in exhibitionism, in prostitution, or in the lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult; or
2. A person knowingly views or records another person in a state of undress without his or her consent or knowledge in a place of solitude or seclusion where a person would have a reasonable expectation of privacy, e.g. a restroom, dressing room, or locker room.

CFS Specialists will use the allegation 'Sexual Abuse' to enter reports involving sexual exploitation on the Department's computer system. The CFS Specialist will set the response time priority using the current priority guidelines.

Finding: Sexual Abuse/Exploitation

In order to substantiate an allegation of sexual abuse, the CFS Specialist will determine and document the following:

1. The alleged victim is a vulnerable adult;
2. No consent to the sexual act was given by the vulnerable adult/victim or the alleged perpetrator knew or should have known that the alleged vulnerable adult/victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct;
3. The sexual abuse/exploitation occurred due to the knowing, intentional act on the part of a caregiver or any other person; and
4. An identified method of sexual abuse/exploitation such as fondling, intercourse, allowing, encouraging, or forcing a vulnerable adult to solicit for or engage in prostitution, debauchery, public indecency, or pornographic photography, films, or depictions will be documented.

C. NEGLECT

The term "denial of essential services" was changed to the term "neglect". Rather than categorizing neglect as a sub-category of abuse, a category of neglect perpetrated by others was created in statute. The definition of neglect also describes the factors associated with self-neglect.

Intake: The CFS Specialist will continue to use the allegation of 'Denial of Essential Services' and the check box for allegations of self-neglect until the Department's computer system is updated.

Finding: Neglect

In order to substantiate an allegation of neglect, the CFS Specialist will identify and document the following:

1. The alleged victim is a vulnerable adult;
2. The neglect occurred due to the knowing or intentional act or omission on the part of a caregiver. The CFS Specialist will determine if the alleged perpetrator was in the role of the caregiver and had a duty to provide care or not; and
3. There is physical injury to a vulnerable adult or imminent danger of the vulnerable adult suffering physical injury or death.
4. In the case of self-neglect, the vulnerable adult, due to physical or mental impairments, has failed to provide self-care to such an extent that there is actual physical injury or imminent danger of suffering physical injury or death. The finding for self-neglect is not a part of the APS Central Registry.

D. EXPLOITATION

The new definition for exploitation clarifies that the taking of property is by any person. Rather than categorizing exploitation as a sub-category of abuse, the act creates the category of exploitation.

Finding: Exploitation

In order to substantiate an allegation of exploitation, the CFS Specialist will determine and document the following:

1. The alleged victim is a vulnerable adult;
2. There is evidence of an identified method such as undue influence, coercion, deception, extortion, or breach of fiduciary relationship, or other unlawful method. If there is a breach of fiduciary relationship, the CFS Specialist will identify the fiduciary and describe the relationship. It is not necessary to prove that the vulnerable adult was harmed or that basic needs were not met; and
3. The taking of property was completed without informed consent of the vulnerable adult. The case manager will document the circumstances of informed consent.

E. RELEASE OF ADULT PROTECTIVE SERVICES CENTRAL REGISTRY INFORMATION

The Children and Family Policy Section will release information contained in the Adult Protective Services Central Registry to the person who allegedly abused, neglected, or exploited a vulnerable adult upon receipt of a written request on the Department's approved form.