

PROGRAM POLICY MEMORANDUM - CPS #3-94

September 1, 1994

TO: Child Protective Service Supervisors
Local Office Administrators
District Administrators
FROM: Mary Dean Harvey, Director
RE: LB 1035

As you know, on April 18, 1994, Governor Nelson signed LB 1035 into law. This bill mandates the Department, upon completion of a child abuse/neglect investigation, to provide the subject of the report with written notice of the determination of the case and whether he or she will be entered into the Central Register. The notice must be sent by certified mail to the subjects last known address and must include:

1. The nature of the report;
2. The classification of the report; and
3. Notification of the subject's right to a hearing and appeal.

The purpose of this memorandum is to provide guidance on implementation of LB 1035. Policy changes are being made and will go to public hearing in the fall. In the interim, please refer to the information contained in this memorandum. in the implementation of this bill.

CENTRAL REGISTER

The Central Register shall be defined as: A computerized record Of reports of child abuse and neglect which result in a case status determination of inconclusive, court substantiated, or unable to locate.

Unfounded reports are not considered part of the Central Register. Therefore, information on unfounded reports should not be released in response to requests for Central Register information. For tracking purposes, unfounded reports will remain on the computer but will not be considered part of the Central Register.

INCONCLUSIVE CATEGORY

The following definition for "Inconclusive" should be used in making decisions about case status determinations: Maltreatment is validated based on information in the initial assessment or law enforcement investigative report which indicates by a preponderance of the evidence that maltreatment has occurred.

The definition of "preponderance of evidence*" is as follows: Preponderance of the evidence means that an event is more likely to have occurred than not by the greater weight of the evidence.

As the term "preponderance of the evidence" suggests, there must be credible evidence of maltreatment documented in the case record to support a finding of Inconclusive. Unsubstantiated concerns that are considered "red flags" or allegations for which there is not supportive documentation are generally not sufficient to maintain an entry of Inconclusive. It might be helpful to keep in mind what information from the case record could be submitted as evidence during an appeal hearing as you make decisions about classification of reports on the Central Register.

NOTIFICATION LETTERS

A notification letter should not be sent until the investigation is complete and the case has been finalized on the Central Register with a case status determination. An investigation is not considered complete while any criminal proceedings are pending prior to trial or juvenile proceedings are pending prior to adjudication. (In cases involving both criminal and juvenile court proceedings, the case should be finalized as court substantiated upon the issuance of a finding by either court. For example, a juvenile court issues an order that physical abuse occurred, but the criminal case remains pending.)

The draft notification letters have been revised based on feedback provided by you. Revised copies of the notification letters are attached and should be used immediately. Please discard copies of the draft letters you have been using.

EXPUNGEMENT PROCESS

It is anticipated that expungement requests will increase significantly with implementation of LB 1035. Expungement requests will continue to be processed through the Human Services Division in Central Office. The only change in the expungement process will be the institution of a preliminary review process in the local office prior to the central office review.

The local office(s) that conducted the investigation(s) will be notified by the Human Services Division upon receipt of an expungement request. An initial review of the case record should be conducted by staff in the local office(s). Procedures for the initial review should be established by each local office. Offices are encouraged to involve the investigating worker and his/her supervisor in the review process. The following factors should be considered in the review of cases for expungement:

- 1) Adequacy of documentation, including:
 - a) Interview of victim (when appropriate);
 - b) Interview of alleged subject;
 - c) Information from witnesses/collateral contacts;
 - d) Supporting evidence regarding injuries, such as description of injuries, police photos, medical reports.
- 2) Length of time since report;
- 3) Subjects willingness to accept responsibility for the incident;
- 4) Subjects follow-through with recommended services;
- 5) Evidence of changes made by the subject that would lower the risk of maltreatment in the future, e.g. completion of therapy, parenting classes, etc.
- 6) Extenuating circumstances that may have contributed to the incident.

Upon completion of the initial review, local offices should forward a brief written summary of their recommendations and the case record to Terri Segal in the Human Services Division. Further review of the case record will be conducted by staff in the Human Services and Legal Divisions. Final decisions regarding expungement requests will be made by the Human Services Division. Whenever possible, the investigating worker and supervisor will be consulted prior to expungement of reports.

QUESTIONS ABOUT IMPLEMENTATION OF LB 1035

Following are answers to questions that have been raised regarding the implementation of LB 1035.

1. Do both parents have to be notified separately if they live in the same household and are both subjects of the same report?

Yes. Every person whose name is being entered on the Central Register with a classification of inconclusive or Court Substantiated must be notified separately.

In regards to unfounded reports on two-parent households, one notice per household is sufficient

2. Should the certified letter be designated for receipt by the subject only or can any household member accept the letter?

Certified letters on cases entered on the Central Register should be designated for receipt by the subject only. A return receipt/restricted delivery should be requested. If the Post Office allows someone else in the household to sign for the certified letter, it is not necessary to send another notice.

No return receipt is required on unfounded cases.

3. What if there are multiple allegations in one report and some of them are substantiated and some are determined to be unfounded?

Notification in these situations should only pertain to the substantiated allegations.

4. What if the subject cannot be located, he/she refuses to accept the certified letter, or the letter is returned unclaimed?

Document such in the case record, including any notice that is received back from the Post Office as refused or unclaimed.

5. If the subject is under the age of majority, should the notice be sent to him/her or his/her parents?

The notice should always be sent to the subject regardless of his/her age. If the subject is under the age of majority, a notice should also be sent to his/her legal guardian.

6. Will local offices receive funds to cover the costs of sending notices by certified mail?

Yes. The A bill included \$20,031 to cover the mailing costs. Each District will receive an allocation based on the number of investigations conducted in 1993.

Questions regarding this memorandum should be directed to Mary JO Pankoke in the Human Services-Division. Mary Jo's telephone number is (402) 471-9320. Her Profs I.D. is OSSO090.