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Title 07 DEPARTMENT OF HUMAN RESOURCES Subtitle 02 SOCIAL SERVICES ADMINISTRATION

07.02.26 Child Abuse and Neglect Hearings

Authority: Family Law Article, §§5-701, 5-706, 5-706.1, 5-707, and 5-714; Human Services Article, Title 1; Annotated Code of Maryland

Notice of Proposed Action

[15-073-P]

The Secretary of the Department of Human Resources proposes to amend Regulations .01—.15 under **COMAR 07.02.26 Child Abuse and Neglect Hearings**.

Statement of Purpose

The purpose of this action is to clarify existing language and to add the definition of maltreater to this chapter. Additions were made as to who to notify when a minor has been named as a maltreater in an investigation. Clarification was given about what the Office of Administrative Hearings should do when there is an active CINA proceeding. The changes also include clarifying language as it pertains to a conference for unsubstantiated child abuse or neglect. Language was also deleted to update the types of recordings that would need to be expunged to include all recordings.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Andrea Shuck, Regulations Coordinator, Department of Human Resources, 301 W. Saratoga St., Rm. 265, Baltimore, MD 21201, or call 410-767-7193, or email to andrea.shuck@maryland.gov, or fax to 410-333-0637. Comments will be accepted through February 23, 2015. A public hearing has not been scheduled.

.01 Scope.

A. Except as set forth in §B of this regulation, an individual found responsible by a local department for indicated or unsubstantiated child abuse or neglect *or who was alleged to have abused or neglected a child in a case that resulted in a finding of indicated or unsubstantiated child abuse or neglect with no maltreater identified* is entitled to an opportunity to appeal in accordance with this chapter.

B. In those cases in which, before June 1, 1999, a local department [offered an individual an opportunity to appeal a finding of child abuse or neglect] *made a finding of indicated, unsubstantiated or the equivalent, and an individual has now requested a*

hearing, that appeal will be conducted in accordance with the procedures *in these regulations under the substantive law* applicable at the time [the local department notified the individual of the opportunity to request a hearing] *of the local department's finding.*

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) (text unchanged)

(2) *"Alleged" means reported to the local department.*

[(2)] (3) *"Appellant" means an individual who has requested an appeal under this chapter.*

[(3)] (4) *"Central registry" means any component of [the Department's confidential computerized database] CIS or MD CHESSIE that contains information regarding child abuse and neglect investigations and is available to all local departments.*

[(4)] (5)—[(6)] (7)(text unchanged)

(8) *"Client Information System (CIS)" means the Department's automated database that maintains data related to services provided by local departments.*

[(7)] (9)—[(11)] (13)(text unchanged)

[(12)] (14) *"Identify an individual as responsible for child abuse or neglect in a central registry" means entering a notation [marker, code, flag, or other symbol next to the name of an individual] listed in a central registry to make clear that the individual has been determined by a local department to be responsible for indicated child abuse or neglect under circumstances specified in Family Law Article, §5-714, Annotated Code of Maryland.*

[(13)] (15) *"Identifying information" means the name of:*

(a)—(c) (text unchanged)

(d) An individual [suspected of being] *alleged to be* responsible for child abuse or neglect.

[(14)] (16)—[(15)] (17)(text unchanged)

(18) *"Maltreater" means an individual who has been found responsible by a local department for indicated or unsubstantiated child abuse or neglect.*

(19) *"Maryland Children's Electronic Social Services Information Exchange (MD CHESSIE)" means Maryland's Statewide-automated case management system.*

[(16)] (20)—[(17)] (21)(text unchanged)

[(18)] (22) *"Record" means the original or a copy of any documentary material, in any form, including a report of alleged or suspected child abuse or neglect, concerning an incident of alleged child abuse or neglect, that is made or received by a local department.]*

Record.

(a) *"Record" means the original or a copy of documentary material, in any form, concerning an investigation of alleged child abuse or neglect.*

(b) *"Record" includes a report of alleged child abuse or neglect received by or from a state, county, or municipal corporation in a state, or any subdivision or agency.*

[(19)] (23) *"Redacted record" means a copy of the record from which the local department has removed certain information in compliance with State and federal laws governing confidentiality, including but not limited to:*

(a) Annotated Code of Maryland:

(i) Health-General Article, Title 4, Subtitle 3[.];

(ii) [State Government Article, §10-661,] *General Provisions Article, Title 3, Subtitle 4;*

(iii) [Article 88A, §6(a),] *Human Services Article, §§1-201 and 1-202; and*

(iv) Courts and Judicial Proceedings Article, §§[8-328] 3-827, 9-108, and 9-121;

(b) Code of Maryland Regulations (COMAR):

(i) 07.01.07[.]; and

(ii) 07.02.07[.];

[(iii)] 07.06.02.09,

(iv) 07.06.04.10, and

(v) 07.06.07.09; and]

(c) Code of Federal Regulations (CFR):

(i) 34 CFR 99[, and];

(ii) 42 CFR §2.1 et seq.; and

[(ii)] (iii) 45 CFR 1340.

[(20)] (24)—[(23)] (27)(text unchanged)

.03 Procedures.

A. An appeal of a finding of indicated child abuse or neglect under this chapter [at the request of an individual found responsible by a local department for indicated child abuse or neglect] shall consist of a contested case hearing pursuant to State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

B. An appeal of a finding of unsubstantiated child abuse or neglect under this chapter [at the request of an individual found responsible by a local department for unsubstantiated child abuse or neglect] shall consist of:

(1)—(2) (text unchanged)

C.—F. (text unchanged)

.04 Notice of Opportunity for a Hearing.

A. Within 30 days after a local department has completed an investigation of child abuse or neglect, the local department shall send [all individuals found responsible for indicated or unsubstantiated child abuse or neglect] a notice of action[.] to:

(1) All maltreators; and

(2) All individuals alleged to have abused or neglected a child in a case that resulted in a finding of indicated or unsubstantiated child abuse or neglect with no maltreator identified.

B. The notice shall include:

(1) (text unchanged)

(2) An explanation of how to appeal in accordance with this chapter, including the obligation to pay a filing fee or request a waiver of the fee;

(3) A statement that the local department may identify [an individual as responsible for child abuse or neglect] a maltreator in [a] the central registry if the individual:

(a) Is found guilty of any criminal charge arising out of the alleged abuse or neglect; or

(b) [Has been found responsible for indicated child abuse or neglect and has:

(i)] Unsuccessfully appealed the finding in accordance with this chapter[.]; or

[(ii)] (c) (text unchanged)

(4) (text unchanged)

C.—D. (text unchanged)

[E. When child abuse is alleged in an out-of-home setting where more than one child has allegedly been abused or neglected, the local department shall send notice not later than 30 days after the investigation of the out-of-home setting is complete.]

[F.] E. Minor [Found Responsible for Child Abuse or Neglect] Appellants. If the individual [found responsible for child abuse or neglect] to whom notice would be sent under §A of this regulation, is younger than 18 years old and not emancipated, the local department shall send notice to the individual's:

(1) (text unchanged)

(2) [Attorney if] If the individual is a foster child [and is represented.]:

(a) To the attorney, if the child is represented; and

(b) To the local department worker assigned to the child's foster care case.

.05 Request for Appeal.

A. Indicated Child Abuse or Neglect. [An individual found responsible for indicated child abuse or neglect] A maltreator or any individual who was alleged to have abused or neglected a child in a case that resulted in a finding of indicated child abuse or neglect with no maltreator identified may appeal the finding by, not later than 60 days after receipt of the local department's notice of action, filing with OAH:

(1) The required filing fee[.] or appropriately documented request for a fee waiver; and

(2) (text unchanged)

B. Unsubstantiated Child Abuse or Neglect. [An individual found responsible for] A maltreator in a case of unsubstantiated child abuse or neglect or any individual who was alleged to have abused or neglected a child in a case that resulted in a finding of unsubstantiated child abuse or neglect with no maltreator identified may appeal the finding by forwarding to the local department, not later than 60 days after receipt of the local department's notice of action, a written request for a conference.

C.—D. (text unchanged)

E. If a local department receives a request for a hearing with a proper fee enclosed or an appropriately documented request for a fee waiver, it shall forward the request to OAH not later than [10] 7 days after receipt.

F. If a local department receives a request for a hearing without the proper fee or appropriately documented request for a fee waiver, it shall return the request to the appellant not later than 7 days after receipt.

[F.] G.—[G.] H. (text unchanged)

.06 Stay Pending Disposition of Criminal Charges.

A. An appellant shall notify OAH of:

(1) (text unchanged)

(2) The final resolution of any criminal proceedings arising out of the alleged child abuse or neglect that [is] were pending or brought against the appellant.

B. (text unchanged)

C. If, after final disposition of the criminal proceeding, the appellant is:

(1) Found guilty of any criminal charges arising out of the alleged child abuse or neglect, *including being found guilty and receiving probation before judgment*, OAH shall dismiss the appeal; or

(2) (text unchanged)

.07 Stay Pending Disposition of CINA Proceeding.

A. (text unchanged)

B. If a CINA proceeding is pending, OAH shall stay the hearing until the *child is adjudicated to be a CINA or the CINA proceeding is otherwise concluded*.

C. (text unchanged)

.08 Unsubstantiated Child Abuse or Neglect—Conference.

A.—E. (text unchanged)

F. Summary. Within 10 days of the conference, the local department shall send to the appellant a written summary of the conference including:

(1)—(2) (text unchanged)

(3) *Procedures and a contested case hearing request form* for appealing the outcome of the conference in accordance with this chapter.

G. (text unchanged)

.09 Appeal of Outcome of Conference.

A. If, as a result of the conference, the local department does not agree to modify its *unsubstantiated* finding [that the appellant is responsible for unsubstantiated child abuse or neglect], the appellant may appeal the outcome of the conference.

B. [After receiving the written summary of the conference, an] *An* appellant may appeal by, *not later than 60 days after receipt of the local department's summary of conference, filing with OAH:*

(1) [Requesting in writing an appeal form from the local department; and] *The contested case hearing request form;*

[(2) Sending to OAH not later than 60 days after the date of the summary of the conference:

(a) The appeal form,]

[(b)] (2) The summary of the conference[.]; and

[(c)] (3) The required filing fee *or appropriately documented request for a fee waiver*.

C. If an appellant does not receive a written summary of the conference within 20 days of the conference, the appellant may appeal by:

(1) Requesting [in writing] an appeal form from the local department; and

(2) Sending to OAH not later than 80 days after the date of the conference:

(a) The appeal form[.]; and

(b) The required filing fee *or appropriately documented request for a fee waiver*.

D. OAH shall dismiss the appeal of an individual who has been [found responsible for unsubstantiated child abuse or neglect] *offered a conference pursuant to Regulation .05B of this chapter* and who has not had a conference, unless the individual can establish that:

(1) The individual requested a conference in accordance with this chapter; and

(2) The local department failed to schedule a conference in accordance with this chapter[.]; or

(3) *The individual had good cause for failing to attend a scheduled conference*.

.10 Appeal of Unexpunged Finding Made Before June 1, 1999.

Upon written request, a local department shall offer an individual found responsible for an unexpunged finding of indicated or unsubstantiated child abuse or neglect made before June 1, 1999, an opportunity to appeal in accordance with this chapter, if the individual has not:

A.—B. (text unchanged)

C. Previously been given notice of the opportunity to request a contested case *hearing*.

.11 Discovery.

A.—B. (text unchanged)

C. By written request made at least 10 days before the hearing, the appellant and the local department have the right to receive, *not later than 5 days before the hearing*, copies of documents and a list of witnesses to be presented by the other party at the hearing.

D.—E. (text unchanged)

.12 Conduct of Hearing.

A.—D. (text unchanged)

E. *An appellant's case may be presented by:*

- (1) *The appellant; or*
- (2) *An attorney representing the appellant.*

.13 Dismissal or Voluntary Withdrawal.

A.—B. (text unchanged)

C. *If the local department notifies OAH in writing of its modification of the finding to ruled out, OAH shall cancel the hearing and notify the appellant.*

[C.] D. Dismissal or voluntary withdrawal of an appeal or request for an appeal automatically affirms the local department's finding and, in the case of a finding of indicated abuse or neglect, the local department's right to identify [the] *any* individual [as] *found* responsible for child abuse or neglect in a central registry.

.14 Decision and Order.

A. Not later than 45 days after the hearing, OAH shall issue a decision and order to the:

- (1) (text unchanged)
- (2) *Appellant's attorney;*
- [(2)] (3) *Local department's appeal representative or attorney; and*
- [(3)] (4) (text unchanged)

B. The decision and order shall:

- (1) (text unchanged)
- (2) Contain a determination as to whether the local department [has] established by a preponderance of the evidence that its finding [of the appellant as responsible for child abuse or neglect were] *was* consistent with the law and supported by credible evidence.

C. (text unchanged)

D. If the ALJ determines that the local department's finding *or the identification of a maltreater* [the appellant as responsible for child abuse or neglect] was not consistent with the law or not supported by credible evidence, the ALJ shall order the local department to do [any] *one or more* of the following:

- (1) (text unchanged)
- (2) Expunge all references to the appellant as responsible for child abuse or neglect; [or]
- (3) *In the case of a finding in which the local department did not identify a maltreater, find the appellant responsible for child abuse or neglect; or*
- [(3)] (4) Maintain the finding and change the type of maltreatment from:
 - (a) Abuse to neglect[,]; or
 - (b) (text unchanged)

E.—F. (text unchanged)

G. If the ALJ orders the local department to modify or expunge the finding, or expunge reference to the [appellant as responsible for child abuse or neglect] *maltreater*, the local department shall take the action within 20 days and promptly notify the appellant and OAH that it has completed all required action.

.15 [Tape] Recordings—Expungement.

OAH may destroy the [tape] recording of a contested case 1 year after the date of the decision unless either party has specifically requested that the [tape] recording not be destroyed.

TED DALLAS
Secretary of Human Resources