**SUMMARY**: This chapter sets forth the policy of the Maine Department of Health and Human Services (Department) regarding reporting of known or suspected abuse, neglect, or exploitation of incapacitated or dependent adults, Adult Protective Services investigations, and substantiations and coordination with other agencies. As required by 22 M.R.S. ch. 958-A and 34-B M.R.S. §5604-A, Adult Protective Services investigates reports of abuse, neglect, or exploitation, or the substantial risk of abuse, neglect, or exploitation for incapacitated and dependent adults, including individuals with intellectual disabilities or autism. This rule is in conformance with the May 31, 2005, amended consent decree in *Bouyea v. Nicholas*, U.S. Dist. Ct., D. Me., No. 1:04-cv-28. The Department will preserve the confidentiality and limit the disclosure of Adult Protective Services records in conformance with the Adult Protective Services Act, 22 M.R.S. §§ 3470, *et seq.*

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**Section 1. DEFINITIONS**

1. **Abuse:** the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; financial exploitation; or the intentional, knowing or reckless deprivation of essential needs, through acts or omissions.
2. **Adult Protective Services (APS):** the unit within the Department responsible for carrying out the requirements of 22 M.R.S. §3473(2) and the Adult Protective Services requirements under 34-B M.R.S. §5604-A(2), including receiving, promptly investigating, and determining the validity of reports of alleged Abuse, Neglect, or Exploitation of incapacitated and dependent adults and reports of the substantial risk of Abuse, Neglect, or Exploitation of incapacitated and dependent adults.
3. **APS Caseworker:** APS unit staff involved in investigating reports of Abuse, Neglect, or Exploitation of Incapacitated or Dependent Adults or the substantial risk thereof, conducting guardianship and conservatorship studies, and arranging for services and supports for APS clients, as appropriate.
4. **APS Central Intake:** the APS unit’s 24/7 telephone line through which Mandated Reports shall (and any individual may) report allegations of Abuse, Neglect, and Exploitation of an Incapacitated or Dependent Adult or the substantial risk thereof.
5. **APS Investigation:** the formal process of determining whether evidence supports a reported allegation of Abuse, Neglect, or Exploitation of a Dependent or Incapacitated Adult or the substantial risk thereof, which may involve reporting a matter to a licensing body or law enforcement, as appropriate.
6. **Casework:** any action taken by an APS Caseworker in conjunction with or following an APS Investigation or guardianship or conservatorship study to protect an Incapacitated or Dependent adult, including providing or arranging for the provision of appropriate services.
7. **Dependent Adult:** as defined in 22 M.R.S. §3472, an adult who has a physical or mental condition that substantially impairs the adult’s ability to adequately provide for that adult’s daily needs.
8. **Exploitation:** the illegal or improper use of an incapacitated or dependent adult or that adult’s resources for another’s profit or advantage.
9. **Incapacitated Adult:** as defined in 22 M.R.S. §3472, any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that that individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual’s person, or to the extent the adult cannot effectively manage or apply that individual’s estate to necessary ends.
10. **Mandated Reporter:** pursuant to 22 M.R.S. §3477, a person required to report to the Department when the person knows or has reasonable cause to suspect that an Incapacitated or Dependent Adult has been or is likely to be Abused, Neglected, or Exploited.
11. **Neglect:** a threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these.
12. **Provider:** an agency licensed, funded, or regulated in whole or in part by the Department that provides support services to a Dependent or Incapacitated Adults) including adults with Intellectual Disabilities or Autism, except those presently servicing sentences for crime.
13. **Report:** information shared with APS Central Intake by a Reporter related to a concern about the health and welfare of an Incapacitated or Dependent Adult or an allegation of Abuse, Neglect, or Exploitation of an Incapacitated or Dependent Adult or the substantial risk thereof.
14. **Reportable Event:** any incident that falls into any of the categories listed in 14-197 C.M.R. ch. 12, §2(2)(A)(1)-(16).
15. **Reporter:** any person who reports to the Department known or reasonably suspected abuse, neglect, or exploitation of an Incapacitated or Dependent Adult or the substantial risk thereof whether or not the person is required to report as a Mandated Reporter.
16. **Serious Harm:** serious physical injury or impairment; serious mental injury or impairment that now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including, but not limited to, severe anxiety, depression or withdrawal, untoward aggressive behavior or similar serious dysfunctional behavior; sexual abuse or sexual exploitation; or serious waste or dissipation of resources.

**Section 2. REPORTING TO ADULT PROTECTIVE SERVICES CENTRAL INTAKE**

1. **Who Reports**
	1. Mandated Reporters must report to the Department known or suspected Abuse, Neglect, or Exploitation or the substantial risk thereof.
	2. In addition to Mandated Reporters, any other individual may report known or suspected Abuse, Neglect, or Exploitation or the substantial risk thereof to the Department.
	3. No individual may impede or inhibit a Mandated Reporter’s reporting of known or suspected Abuse, Neglect, or Exploitation or the substantial risk thereof to the Department. No employer, supervisor, manager, or associate of a Mandated Reporter may require a Mandated Reporter to seek or receive permission to report known or suspected Abuse, Neglect, or Exploitation or the substantial risk thereof prior to reporting. A person making a report may not be subject to any sanction for making a report.
2. **What Must Be Reported**
	1. A Report to APS is warranted where an individual knows or has reasonable cause to suspect that an Incapacitated or Dependent Adult has been Abused, Neglected, or Exploited or there exists a substantial risk of same.
	2. The Reporter shall provide, at a minimum, the following information to APS Central Intake, to the greatest extent possible:

i. The name and address of the Incapacitated or Dependent Adult involved;

ii. The nature and extent of the known or suspected Abuse, Neglect, or Exploitation or the substantial risk thereof;

iii. The source of the Report;

iv. The Reporter’s name, occupation, and contact information;

v. Any other information the Reporter believes may be relevant.

* 1. A Reporter need not have witnessed the incident in order to report known or suspected Abuse, Neglect, or Exploitation. Second-hand information can be the basis for reporting to the Department.
	2. All Reports of known or suspected Abuse, Neglect, or Exploitation or the substantial risk thereof made to APS must be made in good faith.
	3. Reporting known or suspected Abuse, Neglect, or Exploitation of an Incapacitated or Dependent Adult or the substantial risk thereof through APS Central Intake does not relieve any Reporter of any other duties under Federal or State statute or regulation, including duties to report Reportable Events through the Department’s Reportable Events System under 14‑197 C.M.R. ch. 12 and the duty to report alleged violations of the rights of an individual with intellectual disability or autism to the advocacy agency designated under 5 M.R.S. §19502.
1. **When Must a Report Be Made**
	1. A Report of known or suspected Abuse, Neglect, or Exploitation of an Incapacitated or Dependent Adult or the substantial risk thereof must be made immediately when the Mandated Reporter becomes aware of the incident or allegation.
	2. Individuals who are not Mandated Reporters should make Reports of known or suspected Abuse, Neglect, or Exploitation of an Incapacitated or Dependent Adult or the substantial risk thereof to APS immediately, if possible, or otherwise as soon as possible.
2. **How to Report**
	1. Mandated Reporters must report to the Department known or suspected Abuse, Neglect, or Exploitation or the substantial risk thereof via the APS Central Intake telephone line.
	2. Individuals who are not mandated reporters may report known or suspected Abuse, Neglect, or Exploitation of an Incapacitated or Dependent Adult or the substantial risk thereof to APS Central Intake via telephone or through the online form available on the Maine DHHS – Adult Protective Services website.

**Section 3. APS CENTRAL INTAKE**

1. **Central Intake**
2. APS Central Intake shall document in the electronic APS system all Reports received through APS Central Intake, including the information provided by the Reporter in accordance with Section 2(4)(b) of this Rule.
3. On the day that a Report is received, APS Central Intake shall review the documented Report to determine whether APS has jurisdiction to investigate the allegation(s) and make a determination in accordance with Section 3(1)(c).
4. Based on the information obtained from the Reporter and otherwise available or known to the Intake worker, APS Central Intake shall determine whether the Report is to be assigned for APS Investigation or closed without an APS Investigation.
5. A Report shall be closed without an APS Investigation when APS Central Intake determines that one or more of the following circumstances exists based on the information provided by the Reporter:
	* + 1. The Report alleges Abuse, Neglect, or Exploitation or the substantial risk thereof, but the alleged victim is not an Incapacitated or Dependent Adult in Maine;
			2. The Report alleges Abuse, Neglect, or Exploitation or the substantial risk thereof, but the alleged actions as described by the Reporter could not reasonably meet the definition of Abuse, Neglect, or Exploitation or the substantial risk thereof;
			3. An APS Investigation has already been assigned relative to the incident reported;
			4. No action can be taken by APS under the circumstances.
6. The determination as to whether a Report will be assigned for APS Investigation or closed shall be made on a case-by-case basis and APS Central Intake’s reasoning shall be documented.
7. All APS Reports that are not closed by Central Intake shall be assigned for APS Investigation.

**Section 4. APS INVESTIGATIONS**

1. **Prioritization**
2. Any Report that is assigned for APS Investigation shall be prioritized in accordance with the potential risk or danger faced by the APS client based on the information provided by the Reporter and information otherwise available or known to the Office of Aging and Disability Services.
3. Based on prioritization, an APS Investigation may begin on the date the Report is received through APS Central Intake and will begin no later than five (5) business days from the date the Report is received.
4. **Investigation**
5. Investigation of allegations of Abuse, Neglect, or Exploitation is the responsibility of APS and State APS Caseworkers pursuant to the Adult Protective Services Act, 22 M.R.S. §§ 3471, 3473 and 34-B M.R.S. §5604-A(2).
6. APS shall document all steps taken to collect facts to reach a finding, including dates of phone calls, interviews, site visits, and document reviews.
7. APS shall perform the following tasks during the APS Investigation, as appropriate:
8. Conduct face-to-face interview(s) with the Incapacitated or Dependent Adult who is the subject of the Report. All interviews shall be in a private setting, to the greatest extent possible, and shall not be conducted in the presence of an alleged perpetrator of Abuse, Neglect, or Exploitation.
9. Assess the level of risk based on the allegations reported and access the level of incapacity or dependency of the allegedly Incapacitated or Dependent Adult.
10. Conduct face-to-face interview(s) with the alleged perpetrator(s) of Abuse, Neglect, or Exploitation. Where multiple alleged perpetrators are involved, interviews shall be conducted separately outside of the presence of any other witnesses or alleged perpetrators.
11. Conduct interviews with witnesses to alleged Abuse, Neglect, or Exploitation or other individuals who are likely to have relevant information related to the Report.
12. Request from the appropriate parties and review any documents, criminal history record information, recordings, photographs, and other records relevant to the Report.
13. Compare statements of the Incapacitated or Dependent Adult, alleged perpetrator(s) of Abuse, Neglect, or Exploitation (if applicable), and witnesses, physical evidence, and documentary evidence to identify any significant discrepancies or contradictions and draw fact-based conclusions.
14. The Commissioner or his or her delegate may issue subpoenas requiring persons to disclose or provide to the Department information or records in their possession that are necessary and relevant to an investigation of a report of suspected Abuse, Neglect, or Exploitation or to a subsequent adult protective proceeding, including, but not limited to, health care information that is confidential under 22 M.R.S. §1711-C. The Department may apply to the District Court and Probate Court to enforce a subpoena.
15. Providers shall cooperate with APS during APS Investigations, which includes but is not limited to the following:
16. Providing documentation related to a reported incident or situation;
17. Preserving documentation or evidence related to a reported incident under investigation;
18. Providing access to facilities, staff, residents or individual clients as requested by APS.
19. A Provider is permitted to conduct an internal review of an incident involving an Incapacitated or Dependent Adult that is the subject of an APS Investigation. The Provider shall not actively interfere with, delay, or obstruct an APS Investigation in conducting an internal review of an incident.
20. Any written documentation related to an incident, which a Provider knows or has reason to believe is the subject of an APS Investigation, must be kept on file with the Provider and be made available to the Department for review and copying upon request.
21. **Reporting to District Attorney or Law Enforcement**
22. Immediate Report: Subject to the confidentiality provisions of 22 M.R.S. §3474(2)(A), when APS receives a report that a person is suspected of Abusing, Neglecting, or Exploiting an Incapacitated or Dependent Adult, APS shall immediately report the suspected Abuse, Neglect, or Exploitation to the appropriate district attorney’s office, whether or not APS investigates the report.
23. **After investigation**: upon finding evidence indicating that a person has Abused, Neglected, or Exploited an Incapacitated or Dependent Adult resulting in serious harm, APS shall notify the appropriate District Attorney or law enforcement agency of that finding.
24. Where a Report or ongoing APS Investigation has been referred to law enforcement, APS shall coordinate with law enforcement to complete the APS Investigation.

**Section 5. CASEWORK**

1. APS shall take appropriate action, including providing or arranging for the provision of appropriate services through existing programs available to the Incapacitated or Dependent Adult and for which such Adult is medically and financially eligible, to ensure his or her health and safety, throughout the course of an APS Investigation and at the time the APS Investigation is concluded.
2. Where APS has determined that a guardianship/conservatorship study must be conducted as a result of an APS Investigation, APS shall determine the type of guardianship (or conservatorship) to be sought and proceed accordingly as soon as possible.
3. A guardianship/conservatorship study shall include analysis of relevant history and assessment information to determine necessity of guardianship, which may include but is not limited to:
4. Criminal history, living (habitation) history, medical history and present condition, financial history, social interactions in Incapacitated Adult’s environment, and family (relatives who support the member) information.

**Section 6. APS FINDINGS**

1. **Final Written Findings**
2. APS shall determine whether or not the facts support the allegation(s) in the Report, based on the available fact-based evidence, and document the determination in writing.
3. The standard of proof to reach a finding on an allegation of Abuse, Neglect, or Exploitation is by “a preponderance of the evidence” (i.e., the greater weight of the evidence supports a finding that an individual or individuals Abuse, Neglect, or Exploitation of an Incapacitated or Dependent Adult did occur).
4. Final written findings shall include the following, as appropriate:
5. A summary of the facts on which APS relied to reach a determination;
6. A clear statement indicating whether or not the reported allegation(s) of Abuse, Neglect, or Exploitation or the substantial risk thereof are supported by a preponderance of the evidence;
7. What, if any, services were arranged for the protection of the Incapacitated or Dependent Adult;
8. What, if any, actions will be taken as a result of the findings, including, but not limited to, whether the findings will result in a Substantiation, whether the findings will result in a referral to law enforcement, and whether additional written recommendations should be made to a Provider as a result of the investigation.
9. **Timing**
10. Final written findings shall be entered into the electronic APS system by the assigned APS Caseworker no later than thirty (30) days from the date of assignment to the APS Caseworker.
11. In the event that an APS Investigation cannot be completed within thirty (30) days of assignment, the APS Caseworker shall document the reasons and estimate the number of days needed to complete the investigation in writing. An APS supervisor shall review and approve the APS Investigation extension and document same.
12. Any necessary subsequent extensions shall be reviewed and documented through the same process.
13. **Additional Written Recommendations**
14. APS may issue written recommendations to a Provider where an allegation(s) of Abuse, Neglect, or Exploitation or the substantial risk thereof has not been substantiated but where, during the course of an investigation, APS has identified deficiencies related to a Provider’s practices or facilities that may impact the health and welfare of Individuals Receiving Services.
15. The Department will work with a Provider that receives written recommendations to put in place an appropriate corrective action plan and follow up on the action plan steps.

**Section 7. SUBSTANTIATION**

1. **Applicability**: Any individual who cares for, supports, or provides services to an individual with intellectual disability or autism and is found by APS to have Abused, Neglected, or Exploited an individual with intellectual disability or autism is subject to the substantiation process described herein.
2. **Substantiation Categories**
3. **Level I Substantiation**
4. A Level I Substantiation reflects a finding by a preponderance of the evidence (based on an APS Investigation and final written findings) that an individual Abused, Neglected, or Exploited an individual with intellectual disability or autism by engaging one or more of the following:
5. Sexual abuse or sexual exploitation, which means contact or interaction of a sexual nature involving an individual with intellectual disability or autism without the individual’s consent or where consent cannot be given by the individual (i.e., incapacity);
6. Exploitation involving the illegal or improper use of an individual with intellectual disability or autism’s resources for another’s profit or advantage;
7. Intentionally, knowingly, or recklessly causing physical harm or pain or mental anguish through the infliction of injury, unreasonable confinement, intimidation, or cruel punishment;
8. Intentionally, knowingly, or recklessly causing a threat to the health or welfare of an individual with intellectual disability or autism by physical or mental injury or impairment, deprivation of essential needs, or failure to protect from these;
9. Intentionally, knowingly, recklessly, or negligently engaging in abuse or neglect that results in serious harm to an individual with intellectual disability or autism;
10. The terms “intentionally”, “knowingly”, and “recklessly” have the meanings set forth in 17-A M.R.S. §35. The conduct shall not be substantiated if the individual can establish by a preponderance of the evidence that the conduct at issue was the product of an objectively reasonable good faith belief that he or she was acting in the best interests of the individual with intellectual disabilities or autism under all the facts and circumstances.
11. Multiple Level II Substantiations against an individual within a nine (9) month period may result in a Level I Substantiation.
12. A Level I Substantiation triggers an individual’s right to due process.
13. **Level II Substantiation**
14. A Level II Substantiation reflects a finding by a preponderance of the evidence (based on an APS Investigation and final written findings) that an individual Abused, Neglected, or Exploited an individual with intellectual disability or autism but the acts or omissions do not rise to the level of the categories described in Section 6(2)(a.)(i.)(1)-(5) of this rule.
15. A Level II Substantiation is not reported out to any State or national registry and does not trigger an individual’s right to due process.
16. Where an individual receives two (2) Level II Substantiations in a nine (9) month period, APS may issue a Level I Substantiation.
17. **Notice and Appeal Rights**
18. **Written Notice**
19. When APS issues a Level I Substantiation finding against an individual, the individual shall be notified in writing of the Level I Substantiation and the potential consequences of a Level I Substantiation.
20. A Level I Substantiation notice shall be accompanied by a written notice to the individual of the right to appeal the Substantiation finding to the Department’s Administrative Hearings Unit. The written notice shall include a summary of the substantiation findings, information on the appeal process, and information on the right to request an expedited hearing.
21. **Due Process and Appeal Rights**
22. An individual who is found Substantiated – Level 1 by APS may exercise his or her right to appeal by submitting a request to appeal via letter, fax, or email in accordance with the instructions provided in the written notice from the Department.
23. An individual who is found Substantiated – Level 1 by APS may exercise the right of appeal within thirty (30) days after written notice is received. In calculating this 30-day period, the day it is received by the person is not counted. The Department may presume that the notice is received within three (3) days of mailing (not counting the day of mailing), a presumption which may be rebutted by the individual upon credible evidence of actual receipt. An appeal postmarked on day 30 is considered a timely appeal.
24. When an individual who is found Substantiated – Level 1 by APS exercises the right of appeal, the hearing on the appeal shall be scheduled as soon as possible but no later than sixty (60) days after the appeal request is made, unless he or she requests an extension. Where the individual can demonstrate to the Administrative Hearings Unit an immediate and ongoing harm to his or her employment status, the hearing must be given priority and take place as soon as practicable.
25. Appeal hearings shall be conducted in accordance with the Administrative Hearings Regulations, 10-144 C.M.R. ch. 1.
26. The individual who was Abused, Neglected, or Exploited, his or her guardian if applicable, and Disability Rights Maine shall receive notice of the hearing and may request the status of an intervenor at the hearing.
27. A Level 1 Substantiation will not be reported out to any State or national registry until the individual found Substantiated – Level 1 has received the due process rights outlined herein and no report will be made to any provider, state agency, or national organization or any other person or entity, that there has been a substantiation, except to the Provider who employs the individual or to any person by court order or as permitted or mandated under the Adult Protective Services Act or provided in this Rule.
28. The mandated and optional disclosure provisions of 22 M.R.S. §§ 3474, 3478, 3485 are not limited by the exercise of due process described herein.
29. **Discovery**
	1. If an individual exercises the right to appeal, the Department shall promptly provide such individual with the report of the Substantiation, and give sufficient notice of the facts and circumstances upon which the Substantiation is based and upon which the hearing will be limited to allow the individual to prepare a defense.
	2. The Department retains the right to review the report and remove information that is otherwise confidential under state law so long as the report meets the standard set forth in Section 7(3)(c)(i).
	3. The Department shall not present any evidence in an appeal hearing without first disclosing the above-referenced information to the person prior to the hearing.
30. **Issues on Appeal**
31. A Substantiation Appeal hearing is limited to review of the Level I Substantiation of the individual. If the Level 1 Substantiation is not upheld, the Administrative Hearing Officer may make a subsidiary finding on whether the alleged conduct constitutes a Level II Substantiation.
	1. A finding that the alleged conduct did not constitute a Level II Substantiation is final and the facts underlying the conduct may not be used in determining “repeated” Level II findings.
32. A finding on appeal that the individual’s conduct warrants a Level II Substantiation is not final agency action and is not appealable under M..R. Civ. P. 80C, unless the finding is made in an appeal of a Substantiation of repeated Level II findings resulting in a Level I Substantiation.
33. **Final Agency Action**
	1. The Department may withdraw a Substantiation prior to hearing if it finds, upon review, that the facts alleged, even if true, do not meet the legal standards for Level I Substantiation. A decision to withdraw the Substantiation does not alter or affect any protective measures recommended in the investigative report (other than those recommending disciplinary action);
	2. The decision on appeal may affirm, modify or reverse the Substantiation. The appeal or the subsequent decision does not alter or affect any protective measures recommended in the investigative report (other than those recommending disciplinary action) and no protective measures will be stayed pending an appeal;
	3. The decision of the hearing officer in a fair hearing shall be issued within forty-five (45) days of the completion of the hearing process. The Commissioner reserves final decision-making authority unless the Commissioner indicates otherwise in writing. The parties shall have twenty (20) days to submit any exceptions or objections to any Recommended Decision by the hearing officer, and then the Commissioner will have thirty (30) days to issue a final decision; and
	4. A final decision from this process, including subsidiary findings as to Level II findings as provided in this Section, shall be final agency action for purposes of 5 M.R.S.A. §8002(4), and may be appealed to the Superior Court in accordance with 5 M.R.S.A. §11001, *et seq*. and Rule 80C of the Maine Civil Rules of Procedure.
	5. All persons who received notice of the Substantiation shall be promptly contacted by the Department if the Substantiation is reversed by the Commissioner or by Court order. The contact may be oral or in writing. Persons contacted shall be informed of the reversal of the Substantiation and be directed to remove any record of the substantiation from their files.
34. **Remedies**
	1. An individual who is successful in reversing a Substantiation shall be treated by the Department for all purposes as if no Substantiation or protective recommendation had occurred, except as noted in f(ii) below.
	2. In cases where an individual prevails because his or her conduct did not meet the conduct definition of a Level I Substantiation but there is a finding that the conduct meets the definition of a Level II Substantiation, the findings of the Department may be considered for purposes of substantiating for conduct that constitutes repeated Level II Substantiations in Section 7(2)(b)(3).
	3. If an individual is successful in reversing a Level I Substantiation, the record of Substantiation of such a person shall be immediately removed by the Department from any state or national registry and the Substantiation that was reversed shall not be disclosed outside the Department to any person or entity without a court order. A record of the reversed Substantiation may be maintained by the Department for internal purposes only, provided that the individual is not in any manner prejudiced by the retention of such records.
	4. The individual will be notified in writing of the remedy if successful in reversing a Level I Substantiation.
	5. The remedies provided for in this subsection shall also apply to the individual who exercises a right to appeal when the Department chooses not to challenge the appeal.
35. **Provider Response**
	1. The fact that a Substantiation has been issued by the Department, is pending appeal, or has sustained on appeal shall not serve as the basis for any adverse employment decisions made by a Provider. Adverse employment decisions must be made independent of the Substantiation process.

ii. The existence of a Report of Abuse, Neglect, or Exploitation, which does not result in a Level I Substantiation, shall not serve as the basis of an adverse employment action.

STATUTORY AUTHORITY:

 22 M.R.S. §3493; 34-B M.R.S. §5604-A.

EFFECTIVE DATE:

 July 11, 1979 – filing 79-349 as “Senior Community Service Employment Program”

REPEALED:

 March 24, 1993 – filing 93-85

NEW RULE FILED:

 May 28, 2018 – filing 2018-085 as “Adult Protective Services System”