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**1.01 INTRODUCTION**

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, the Adult Protective Services unit in the Office of Aging and Disability Services (OADS) 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 Spectrum Disorder. 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.

* 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. Abuse may include a continuing pattern of behavior that cumulatively causes Abuse, Neglect, or Exploitation to the Incapacitated or Dependent Adult. An Act or Omission is “likely” to cause physical harm, pain, or mental anguish if physical harm, pain, or mental anguish are the probable result of the Act or Omission.

A. For the purposes of this definition of Abuse, the following terms mean:

* 1. Act: an intentional bodily movement;
  2. Cause: to prompt an outcome that would not have occurred but for the action or omission;
  3. Intimidation: the intentional act of coercing, with or without physical force, an Incapacitated or Dependent Adult to do something against such incapacitated or dependent person’s wishes or best interests;
  4. Omission: a purposeful failure to do something that one has a legal obligation to do;
  5. Unreasonable Confinement: the solitary, involuntary confinement for any period of time of an Incapacitated or Dependent Adult in a room or specific area from which egress is denied by a locking mechanism or barrier.

1. 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.
2. 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.
3. APS Central Intake:the 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.
4. 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.
5. APS Substantiation Registry:a registry maintained by the Department of persons for whom APS has substantiated reports of Abuse, Neglect, or Exploitation of Incapacitated or Dependent Adults.
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. Dependent Adult includes, but is not limited to, any of the following:
8. A resident of a nursing home that is licensed or required to be licensed under

section 1817;

1. A resident of a facility providing assisted living licensed or required to be licensed pursuant to section 7801;
2. A person considered a dependent under Title 17-A, section 555; or
3. A person, regardless of where that person resides, who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, because the person suffers from a significant limitation in mobility, vision, hearing or emotional or mental functioning.
4. Exploitation: the illegal or improper use of an Incapacitated or Dependent Adult or that adult’s resources for another’s profit or advantage.
5. Incapacitated Adult: as defined in 22 M.R.S. § 3472, an adult who is unable to receive and evaluate information or make or communicate informed decisions to such an extent that the adult lacks the ability to meet essential requirements for physical health, safety or self-care, even with reasonable available appropriate technological assistance.

11. 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.

12.Neglect: a Threat to an Incapacitated or Dependent Adult’s health or Welfare of physical or mental injury or impairment, by deprivation of Essential Needs or lack of protection from these.

1. For the purposes of this definition of Neglect, the following terms mean:
   * 1. Essential Needs: food, clothing, adequate shelter, and medical and mental health care and medications;
     2. Threat: an Act or Omission that is likely to cause harm;
     3. Welfare: the basic physical and material well-being of an Incapacitated or Dependent Adult.

13. Protection and Advocacy Agency: the agency that provides legal representation and other

advocacy services to Incapacitated and Dependent Adults designated pursuant to 5 M.R.S. § 19505.

14.Provider: an agency licensed, funded, or regulated in whole or in part by the Department that provides support services to Dependent or Incapacitated Adults including adults with Intellectual Disabilities or Autism Spectrum Disorder, except those presently serving sentences for crime.

15. 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.

16.Reportable Event: any incident that falls into any of the categories listed in 14-197 C.M.R. Ch. 12, § 2(2)(A).

17. 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.

18. 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; or sexual abuse or sexual exploitation.

19. Substantiation: a finding by a preponderance of the evidence that an individual Abused, Neglected, or Exploited an Incapacitated or Dependent Adult.

**1.03 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.

* + - 1. 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.

No individual may impede or inhibit a Mandated Reporter’s report 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 supervisor or

administrator of a person making a report may not impede or inhibit the reporting, and a person making a report may not be subject to any sanction for making a report.

1. 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 Abuse, Neglect, or Exploitation.

* + - 1. The Reporter shall provide, at a minimum, the following information to APS Central Intake, to the greatest extent possible:
    1. The name and address of the Incapacitated or Dependent Adult involved;
    2. The nature and extent of the known or suspected Abuse, Neglect, or Exploitation or the substantial risk thereof;

* + 1. The source of the Report;
    2. If the Reporter is a Mandated Reporter, the Reporter’s name, occupation, and contact information;
    3. 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, but not limited to, duties to report Reportable Events through the Department’s Reportable Events System pursuant to 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 Spectrum Disorder to the Protection and Advocacy Agency designated pursuant to 5 M.R.S. § 19502.

1. When Must a Report Be Made
   * 1. Mandated Reporters must immediately report known or suspected Abuse, Neglect, or Exploitation 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.

1. How to Report
2. 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.

1. 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. APS will also accept such reports via other methods, including letter and fax.

**1.04 APS CENTRAL INTAKE**

1. Documentation

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 1.03(2)(B) of this Rule.

1. Review

APS Central Intake shall review the documented Report to determine whether APS has

jurisdiction to investigate the allegation(s) and to make a determination.

1. Determination

APS Central Intake shall determine whether the Report is to be assigned for APS

Investigation or closed without an APS Investigation on a case-by-case basis. Intake staff shall use the information obtained from the Reporter and information otherwise available or known to Intake staff to make such a determination. APS Central Intake’s reasoning shall be documented.

All APS Reports that are not closed by Central Intake shall be assigned for APS Investigation or, referred to DLC for investigation, in accordance with 22 M.R.S. §§ 1812-G, 1812-J.

1. Report Closure

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 lacks information outlining allegations that could reasonably meet the definition of Abuse, Neglect, or Exploitation or the substantial risk thereof,
2. The Report lacks information indicating the client involved meets the definition of Incapacitated or Dependent Adult in Maine
3. No action can be taken by APS under the circumstances.

**1.05 APS INVESTIGATIONS**

1. Prioritization

Any Report that is assigned for APS Investigation shall be prioritized according to the potential risk or danger faced by the Incapacitated or Dependent Adult based on the information provided by the Reporter and information otherwise available or known to OADS.

* 1. 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.

1. Investigation
   * + 1. 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). APS may refer Reports to DLC for investigation, in accordance with 22 M.R.S. §§ 1812-G, 1812-J.

* + - 1. APS shall document all steps taken to collect facts to reach a finding, including dates of phone calls, interviews, site visits, and document reviews.

1. APS shall perform the following tasks during the APS Investigation, as appropriate, and to the greatest extent possible:
2. 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.

1. Assess the level of risk based on the allegations reported and assess the level of incapacity or dependency of the allegedly Incapacitated or Dependent Adult.
2. 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.
3. Conduct interviews with witnesses to alleged Abuse, Neglect, or Exploitation or other individuals who are likely to have relevant information related to the Report.
4. Request from the appropriate parties and review any documents, criminal history record information, recordings, photographs, and other records relevant to the Report.
5. 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.

1. Pursuant to 22 M.R.S. § 3480,the Commissioner or their 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 pursuant to 22 M.R.S. § 1711-C. The Department may apply to the District Court and Probate Court to enforce a subpoena.

D. Providers shall cooperate with APS during APS Investigations, which includes but is not limited to the following:

1. Providing documentation related to a reported incident or situation;
2. Preserving documentation or evidence related to a reported incident under investigation; or
3. Providing access to facilities, staff, residents or individual clients as requested by APS pursuant to 22 M.R.S. § 3480(3).

F.When a Provider conducts an internal review of an incident involving an Incapacitated or Dependent Adult that is also the subject of an APS Investigation, the Provider may not permit such internal review to interfere with, delay, or obstruct the APS investigation. Providers must retain and make available to the Department, upon request, all documentation relating to an incident that the Provider knows or has reason to believe is or may become the subject of an APS Investigation.

1. Reporting to District Attorney, Law Enforcement, Protection and Advocacy Agency

* + 1. 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.
    2. 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, if law enforcement is not already aware or involved.
    3. Where a Report or open APS Investigation has been referred to law enforcement, APS shall coordinate with law enforcement to complete the APS Investigation.
    4. The Department shall provide the Protection and Advocacy Agency with adult protective services records upon request pursuant to 22 M.R.S. § 3474(2)(B).

**1.06 CASEWORK**

1. APS shall take appropriate action, including, if appropriate, 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 support 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 because of an APS Investigation, APS shall determine the type of guardianship (or conservatorship) to be sought and proceed accordingly as soon as possible.
   1. 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 criminal history, living (habitation) history, medical history and present condition, financial history, social interactions in the Incapacitated Adult’s environment, and family (relatives who support the member) information.

**1.07 APS FINDINGS AND RECOMMENDATIONS**

1. Final Written Findings
2. APS shall determine whether the facts support the allegation(s) in the Report, based on the available fact-based evidence and document the determination in writing.
3. APS may make one or more of the following findings on an allegation of Abuse, Neglect, or Exploitation:

1. Substantiated;
2. Substantiated – Other (e.g., substantiated self-neglect);
3. Not Substantiated; or
4. Unable to determine.
5. 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 Abused, Neglected, or Exploited an Incapacitated or Dependent Adult).
6. A 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 Incapacitated or Dependent Adult by engaging in one or more of the following:

1. Sexual abuse or sexual exploitation, which means contact or interaction of a sexual nature involving a Dependent Adult without the adult’s consent or with an Incapacitated Adult where consent cannot be given by the adult. Examples of sexual abuse include, but are not limited to, the following:
2. Forced exposure to sexually explicit content;
3. Nonconsensual sexual conduct including:

1. Unwanted touching, rubbing, grabbing, exposure, fondling, or lewd or lascivious acts,
2. Unwanted sexually explicit photographing,
3. Forcing the Incapacitated or Dependent Adult to take off clothes, or
4. Any sexual contact with an Incapacitated or Dependent Adult who is without the capacity to consent, as determined by a licensed medical professional or court of law;
5. Sexual assault or battery including:
   1. Sexual battery,
   2. Rape or attempted rape, including spousal rape or unwanted sexual contact with a spouse or partner, significant other, or anyone else, or

* 1. Incest;

1. Sexual contact with paid staff; or
2. Sexual exploitation;
3. Exploitation involving the illegal or improper use of an Incapacitated or Dependent Adult or that adult’s resources for another’s profit or advantage. Examples include, but are not limited to, the following:
4. Fraud or scam;
5. Wrongfully used property or resources including:

* 1. Cashing the adult’s check or using the adult’s debit card without authorization,

1. Forging the adult’s signature,
2. Misusing or stealing the adult’s money or possessions, or

1. Not executing the duties of conservatorship, fiduciary, power of attorney, or trustee; or doing so improperly;
2. Medication theft; or
3. Misinformed/uninformed consent;
4. Intentionally, knowingly, or recklessly engaging in physical abuse or emotional abuse of an Incapacitated or Dependent Adult (i.e., causing physical harm or pain or mental anguish through the infliction of injury,

unreasonable confinement, intimidation, or cruel punishment). Examples include, but are not limited to, the following:

Confinement or restraint. Use of physical or chemical restraint or

psychotropic medication for any of the following reasons:

1. Punishment, sedation or control,

1. Strapping or holding down,
2. Confining to a room bed, or specific area, including through deprivation of adaptive equipment, or
3. Unauthorized use of a behavior plan pursuant to 14-197 C.M.R. ch. 5;
4. Serious injury. Serious injury includes but is not limited to assault, battery, or force likely to produce serious harm. Indicators of serious injury may include the following:

1. Bruises, welts, abrasions, lacerations, or burns,
2. Fractures or sprains,
3. Internal injuries,
4. Injuries at various stages of healing,
5. Unreasonable or unknown reason for injury, or
6. Pushing, shoving, slapping, hitting, shaking, pulling hair, spitting, pinching, scratching, strangulation, or grabbing;
7. Suspicious death;
8. Harassment, threats, and intimidation including, without limitation:
9. Threats of bodily harm, including threats that the alleged

perpetrator may harm themselves, threats of domestic violence among any members of the household, or display of weapons;

1. Threats to lifestyle, such as threatening placement or change in caregiver; threatening pets, preventing client from sleeping at night; threatening isolation from family, friends, or community; or
2. Threats or damage to property;
3. Verbal abuse including, without limitation:
4. Name calling, vulgarities, belittling, or attacking integrity, ability or beliefs, or
5. Misleading statements made with malicious intent against the client;
   * 1. Intentionally, knowingly, or recklessly engaging in caregiver Neglect (i.e., causing a threat to the health or welfare of an Incapacitated or Dependent Adult by physical or mental injury or impairment, deprivation of essential needs, or failure to protect from these);
     2. Intentionally, knowingly, or recklessly engaging in abuse or neglect that results in Serious Harm to an Incapacitated or Dependent Adult.

E. 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 they were acting in the best interests of the Incapacitated or Dependent Adult under all the facts and circumstances.

F. A Substantiation triggers an individual’s rights to due process and may result in placement on a state or national registry.

1. Final written findings shall include the following, as appropriate:
   * + 1. A summary of the facts on which APS relied to reach a determination;
2. A clear statement indicating whether the reported allegation(s) of Abuse, Neglect, or Exploitation or the substantial risk thereof are supported by a preponderance of the evidence;
3. What, if any, services were arranged for the protection of the Incapacitated or Dependent Adult;
4. What, if any, actions will be taken as a result of the findings, including, but not limited to, whether the findings result in a Substantiation and whether the findings result in a referral to law enforcement.
5. Timeliness
6. 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 the report was received by APS unless an extension is applied as outlined below.
7. When an APS Investigation cannot be completed within thirty (30) days from the date the report was received by APS, 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.
8. Any necessary subsequent extensions shall be reviewed and documented through the same process.
   1. **SUBSTANTIATION REGISTRY**
      * 1. Applicability

Any individual who cares for, supports or provides services to an Incapacitated or Dependent Adult (whether on a full, intermittent, or occasional basis) and is found Substantiated by APS and knew of the adult’s dependence or incapacity is subject to the substantiation process described herein. An individual who cares for, supports, or provides services to an Incapacitated or Dependent Adult is deemed to have knowledge of the adult’s dependency or incapacity; proof of actual knowledge of the individual’s Incapacitated or Dependent status shall not be required.

* + - 1. Notice and Appeal Rights
  1. Written Notice

1. When APS issues a Substantiation against an individual applicable to this section the individual shall be notified in writing of the Substantiation

and the potential consequences of a Substantiation.

1. A Substantiation notice shall be accompanied by a written notice to the individual of the right to appeal the Substantiation finding to the Division of Administrative Hearings. 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.
   1. Due Process and Appeal Rights
2. An individual who is found Substantiated 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.
3. An individual who is found Substantiated 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.
4. When an individual who is found Substantiated by APS exercises the right of appeal, the hearing on the appeal shall be scheduled as soon as possible in accordance with 10-144 C.M.R. ch. 1. 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.
5. Appeal hearings shall be conducted in accordance with the Administrative Hearings Regulations, 10-144 C.M.R. ch. 1.
6. The individual who was Abused, Neglected, or Exploited, his or her

guardian if applicable, and the Protection and Advocacy Agency, if the individual who was Abused, Neglected, or Exploited has a developmental disability, acquired brain injury, or behavior health diagnosis or a physical disability, shall receive notice of the hearing and may request the status of an intervenor at the hearing.

1. A Substantiation will not be reported out to any State or national registry until the individual found Substantiated 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 a Provider who employs the individual, a Provider who has stated to APS it is considering employing 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.
2. 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.

C. 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 standards set forth in Section 1.08(2)(C)(1).
3. The Department shall not present any documentary evidence in an appeal hearing without first disclosing such evidence to the appellant prior to the hearing.
4. Issues on Appeal

1. A Substantiation Appeal hearing is limited to review of the Substantiation of the individual. If the Substantiation for Abuse relates to a continuing pattern of behavior that cumulatively causes Abuse, Neglect, or Exploitation to the Incapacitated or Dependent Adult, the

hearing may include a review of all relevant investigation reports and findings.

1. Final Agency Action
2. 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 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);
3. 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 and no protective measures will be stayed pending an appeal;
4. 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
5. A final decision on the administrative appeal constitutes final agency action for purposes of 5 M.R.S. § 8002(4) and may be appealed to the Superior Court in accordance with 5 M.R.S. § 11001, *et seq*. and Rule 80C of the Maine Civil Rules of Procedure.
6. Process Following Appeal or Appeal Timeframe
7. Substantiation Upheld or No Appeal Filed
8. An individual who is unsuccessful in reversing a Substantiation will be listed on the APS Substantiation Registry.
9. An individual who does not exercise the right of appeal within thirty (30) days after written notice will be listed on the APS Substantiation Registry.
10. The APS Substantiation Registry contains the following information for each individual listed:
11. Identity verification documentation, including full name; maiden name and previously held names, if known; date of birth; and last known mailing address.
12. Substantiation findings, including type of maltreatment found, date of substantiation, and appeal date and final decision date, if applicable.
13. Remedies Upon Substantiation Reversal
14. 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.
15. In cases where an individual prevails because his or her conduct did not meet the conduct definition of a Substantiation but there is a finding that the conduct meets the definition of minor conduct, the findings of the Department may be considered for purposes of substantiating for a continuing pattern of behavior that cumulatively causes Abuse.
16. If an individual is successful in reversing a 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.
17. The individual will be notified in writing of the remedy if successful in reversing a Substantiation.
18. 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.

1. 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.
2. Provider Response
3. The fact that a Substantiation has been issued by the Department, is pending appeal, or has sustained on appeal shall not serve as the sole basis for any adverse employment decisions made by a Provider. Adverse employment decisions must be made independent of the Substantiation process and in accordance with any applicable provisions of the MaineCare Benefits Manual or other State law.

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

1. Determinations Based on Findings from Other Proceedings
   1. If a court of competent jurisdiction specifically finds that an individual subject to this section has Abused, Neglected, or Exploited an Incapacitated or Dependent Adult, or a court of another state or United States territory makes a similar finding, the Department may record and report the individual as Substantiated for Abuse, Neglect, or Exploitation of an Incapacitated or Dependent Adult.
   2. If the DHHS Division of Licensing and Certification determines that an individual subject to this section has Abused, Neglected, or Exploited an Incapacitated or Dependent Adult (in accordance with 22 M.R.S. § 1812-G, 1812-J), the Department may also record and report the individual as Substantiated on the APS Substantiation Registry.
   3. If an agency of another state (including political subdivisions of other states) determines that an individual subject to this section has Abused, Neglected, or Exploited an Incapacitated or Dependent Adult, or makes a

similar finding, the Department may record and report the individual as Substantiated, depending on the severity found by the other agency if the person had the opportunity for an administrative hearing on the finding by the other state’s agency.

* 1. If an individual is convicted of a crime where the charges arose out of the same conduct or pattern of conduct as that upon which the Department based its finding, then the Department may record and report the individual as having Abused, Neglected, or Exploited an Incapacitated or Dependent Adult.