

CHAPTER 2-000 PROGRAM UNIVERSALS: This chapter contains policies that are common to all benefit and services programs administered by the Nebraska Department of Social Services. These policies also have general application to other Department functions such as licensing, certification, and provider authorization.

Form DA-100, "Application for Assistance," which is used as the application form for most programs of the Department, includes a listing of the rights and responsibilities of applicants and clients.

2-001 Client Rights: Each applicant for, or client of any program(s) administered by the Nebraska Department of Social Services has the following rights:

1. To receive action on his/her application for benefits within 45 days (for expedited food stamps see 475 NAC 2-004.01);
2. To have his/her information treated confidentially (see 465 NAC 2-005);
3. To receive adequate notice of any action affecting his/her application or case;
4. To receive equal protection under the law. No person may be discriminated against on the basis of race, color, national origin, sex, age, handicap, religion, or political belief;
5. To have program requirements and benefits fully explained;
6. To receive assistance in the application process from a person of his/her choice;
7. To be referred to other human service agencies;
8. To apply for assistance or services (see 465 NAC 2-001.01); and
9. To appeal to the Director for a fair hearing (see 465 NAC 2-001.02).

2-001.01 Right to Apply: Anyone who wishes to request or apply for any Nebraska Department of Social Services program must be given the opportunity to do so without delay.

2-001.02 Right to Appeal: Every applicant for or recipient of assistance or services provided through the Nebraska Department of Social Services has the right to appeal any action, inaction, or failure to act with reasonable promptness with regard to the assistance or services. The individual may appeal because -

1. His/her application for financial or medical assistance or services is denied;
2. His/her application for financial or medical assistance or services is not acted upon with reasonable promptness;
3. His/her assistance is suspended;
4. His/her assistance or services are reduced;
5. His/her assistance or services are terminated;
6. His/her form of payment or services is changed to be more restrictive; or
7. S/he thinks the staff's action was erroneous.

Exception: The client is not entitled to a fair hearing when either state or federal law requires automatic case adjustments for classes of clients unless the reason for an individual appeal is incorrect eligibility determination.

2-001.02A Appeal Time Limits: The applicant or client must request a fair hearing within 90 days following the date the notice of adverse action is mailed. If an applicant wishes to appeal due to inaction, s/he must request a fair hearing within 90 days of the date the application was signed.

If the client submits a request for a hearing within ten days following the date the notice is mailed, the staff shall not take the adverse action until a fair hearing decision is rendered.

If the client submits a request for a hearing within ten days following the date the notice is mailed, the client must be allowed an opportunity to decline receipt of continued assistance pending the appeal decision.

2-001.02B Filing an Appeal: See 465 NAC 6-004.01.

2-001.02C Notice to the Petitioner: Upon receiving a request for an appeal, the Director acknowledges the appeal by sending a letter to the petitioner, stating that the appeal has been received and informing him/her -

1. Of the time and the place the hearing will be held on his/her appeal; or
2. That the basis of the appeal is inappropriate or that the appeal request has been received after the deadline for appealing an action. (See 465 NAC 2-001.02A regarding appeal time limits.)

The hearing must be scheduled not less than one week nor more than six weeks from the date of the request, unless the time is waived by the petitioner. (See 468 NAC 6-012.01 Emergency Assistance appeals.) The letter must include a detailed explanation of the petitioner's rights and duties at the hearing (see 465 NAC 6-000).

2-002 Client Responsibilities: Each applicant for, or client of, a Nebraska Department of Social Services program has the responsibility to -

1. Provide timely and accurate information. Failure to provide complete and accurate information may result in criminal penalties under applicable state or federal laws;
2. Report a change in circumstances no later than ten days following the change. This includes information regarding -
  - a. Income and expenses;
  - b. Resources or other financial matters;
  - c. The purchase or trade of a car or other licensed vehicle;
  - d. Employment status;
  - e. Household composition such as the addition or loss of a household member;
  - f. Living arrangement;
  - g. Address; or
  - h. Incapacity or disability status;
3. Ask questions if s/he does not understand the programs;
4. Comply with the requirements specific to the program for which s/he is applying or receiving benefits; and
5. Cooperate with state and federal quality control and audit processes.

2-003 Department Responsibilities: The DSS staff shall -

1. Allow anyone who requests assistance to complete an application;
2. Give an explanation of the program requirements;
3. Collect and review the information entered on the application form;
4. Explain fully the eligibility and benefit factors and how changes will affect eligibility and benefits;
5. Explain the eligibility and benefit factors that require verification;
6. Obtain the client's written consent for the needed verification;
7. Explore income that may be currently or potentially available;
8. Give information about other programs and services available through the agency for which the client may be eligible;
9. Inform the client about his/her rights and responsibilities (see 465 NAC 2-001 and 2-002);
10. Complete necessary reports and forms;
11. Act within 30 days on the client's application (for food stamp households entitled to expedited processing of the application, see 475 NAC 2-004.01);
12. Provide adequate notice to the client of any case action;
13. Maintain case records;
14. Inform the client of legal services available in the community if the client requests a fair hearing;
15. Uphold the client's civil rights. No person may be subjected to discrimination on the grounds of his/her race, color, national origin, sex, age, handicap, religion, or political belief;
16. Treat the client's information confidentially (see 465 NAC 2-005); and
17. Exercise the prudent person principle (see 465 NAC 2-003.01).

2-003.01 Prudent Person Principle: The prudent person principle is defined as the practice of assessing all circumstances regarding a case and using good judgment in requiring further verification, information, or clarification.

2-004 Other Responsibilities: The Director and designated staff must ensure that all Department programs are administered in accordance with the rules and regulations of the Department, State Statutes, and Federal laws and regulations.

2-005 Confidentiality: Confidential information which identifies individuals who apply for or receive assistance, benefits, or services from the Department must be safeguarded. The following information is considered confidential:

1. All information contained in the files or available to staff members concerning applicants, clients, or other persons, under any program administered by the Nebraska Department of Social Services; and
2. All records and information including nursing facility cost reports for report periods ending on or before September 30, 1990, in the files of the Nebraska Department of Social Services pertaining to providers and vendors, other than aggregate statistical information which does not disclose services to individual recipients. Nursing facility cost reports filed for report periods ending October 1, 1990 or thereafter are public information and are available for inspection at the Central Office of the Department of Social Services. The Department may charge for copies of the cost reports.

#### 2-005.01 General Information

2-005.01A Authority: Authority is given to the Nebraska Department of Social Services by Sections 68-312 through 68-314, et seq. of the Nebraska Revised Statutes, to establish and enforce reasonable rules and regulations covering the custody, use, and preservation of records, files, and communications of the Department.

2-005.01B Limitations: Section 68-313, et seq. of the Nebraska Revised Statutes states that all records, files, papers, and communications must be limited to purposes directly connected with the administration of -

1. Assistance to the Aged, Blind, or Disabled;
2. Aid to Dependent Children;
3. Medical Assistance;
4. Social Services;
5. Medically Handicapped Children's Program;
6. Food Stamp Program;
7. Food Distribution Program;
8. Energy Assistance Programs;
9. Matters concerned with proposed legislation or in relation to administration of state or county government; or
10. Rules and regulations of the Department.

Other programs of the Department are covered by these limitations.

2-005.01C Penalties: Any person who knowingly misuses any public assistance information may be found guilty of a misdemeanor.

As a condition of employment, each employee is required to complete Form PT-40, "Confidential Information Agreement". By signing this form, the employee certifies that s/he has read and understands the disclosure of information policies of the Department (see 465-000-40).

2-005.01D Specific Program Requirements: Information regarding disclosure requirements for the Department's programs is found within specific titles of the Program Manual.

2-005.02 Disclosure

2-005.02A By Staff: Staff members of the Nebraska Department of Social Services shall discuss cases and clients only in case conferences and never through informal exchange of information with other staff or persons, whether with employees in the same agency or staff from another state agency.

2-005.02B Situation Allowing Disclosure: In the administration of any of the Department's programs, situations may arise which justify the disclosure of information about applicants, recipients, or beneficiaries of aid or services to other agencies or individuals. Administrative purposes of the Department include -

1. The determination of need and amount of financial assistance, medical care, social services, and food stamps or food distribution; and
2. Providing assistance or benefits under any of the Department's programs.

The Director holds exclusive control over the release of all records, files, papers, correspondence, and documents containing information about individuals requesting or receiving aid and/or services.

Before releasing information about a client, staff shall obtain the client's written permission. Authorized personnel having charge of the Department's records may release information which is public record, or which the public is legally entitled to receive. According to Section 68-313.01, et seq. of the Nebraska Revised Statutes, "The public shall have free access to all information concerning lists of names and amounts of payments, which appear on any financial records except that no list shall be used for commercial or political purposes."

Staff may confirm a client's receipt and amount of payment if an inquiry is received from the public. Staff shall not release any information regarding clients who do not receive cash payments.

Staff may confirm the names of social services or medical providers. Questions regarding amounts of payments to providers must be referred to the appropriate program division or unit of the Department.

2-005.02C Other Agencies: The Director may delegate to administrators authority to disclose case information to other agencies that administer federal or federally assisted programs which provide assistance, in cash or in kind, or services, directly to the individual on the basis of need. These designated staff are also responsible to see that staff under their supervision observe rules and regulations regarding the safeguard of confidential information. Staff may release information to other agencies when the applicant or client has requested services of the agency, or when the agency's objective in obtaining the information is to provide services to the applicant or client. An applicant's or client's request for services includes permission for a release of information. Whenever possible, the staff shall inform the client of a request for information from an outside agency before releasing the information. In emergency situations, the staff may release information to an outside agency without first notifying the client. In these instances, the staff shall inform the client as soon as possible after the information has been released.

2-005.02D Client's Case Record: If a client requests a fair hearing or furnishes a written request, staff must make the client's application and case record available. The information may be furnished to the client and/or his/her representative.

If the client has requested a fair hearing, staff must make available confidential information which will be presented by the agency at the fair hearing. Confidential information which will not be presented at the fair hearing is not released.

If the client has not requested a fair hearing, confidential information is not released.

The client or his/her representative must not remove case records from the agency. If the client's representative requests to review the file, s/he must furnish a written release from the client authorizing the review. The staff will retain the release in the case file.

2-005.02E Law Enforcement Officials: Unless directly connected with the administration of Department programs, staff may not disclose confidential information to law enforcement officials, except upon authorization by the applicant/client or by a court order. For ADC cases, see 468 NAC 1-005.02A for disclosure of information regarding fugitive felons. Information regarding abandonment, desertion, or nonsupport in connection with the Child Support Enforcement Program or information concerning program fraud may be disclosed to the appropriate law enforcement officials.

2-005.02F Persons Having Legal Access to Records: State and county officials and members of the Nebraska Legislature are by law given access to assistance records. These officials may use information from assistance records only for matters directly connected with the administration of public assistance, state or county government, or proposed legislation.

Note: County officials may not have access to food stamp only files unless the client is applying for general assistance or other program which involves county funds. Federal requirements prohibit the release of food stamp records to county officials. Other federally funded programs may have the same restrictions.

2-005.02G Utility Companies: Because utility companies provide essential services to clients, staff shall answer promptly inquiries from utility companies regarding a client's receipt of assistance. Utility companies to which information may be released are those which provide water, natural gas, or electricity.

2-005.03 Staff Investigations: Most of the application forms used to apply to the Department for benefits or services authorize the staff to investigate any information provided on the application. By signing the application, the client authorizes investigations or verifications. However, some organizations will not release information without a specific release form. In these situations and when the program application does not provide authorization for investigation, the staff shall use Form ASD-46, "Authorization for Release of Information."

2-005.04 Storage Requirements for Confidential Material: In order to protect confidential information about persons requesting or receiving aid and/or services, the Department shall -

1. Store and process confidential information including computer records, in secured areas so that such information can be acquired or retrieved only by authorized personnel;
2. Provide adequate supervision of secured areas to ensure proper use and prevent unauthorized removal or loss of confidential data; and
3. Safeguard information obtained from Internal Revenue (IRS) and other government or public agencies, in accordance with special procedures set forth by these agencies.

2-006 Fair Hearings: See 465 NAC 6-000.

2-007 Fraud and Abuse and Intentional Program Violations: This section establishes policy and procedure for reporting suspected fraud and abuse cases and intentional program violations to the Special Investigation Unit for follow-up which includes investigation and possible prosecution.

Fraud is defined by Section 68-1017, Reissue Revised Statutes of Nebraska, 1943. Federal regulations regarding fraud and abuse are 45 CFR 235.110 and 42 CFR Part 455. Intentional program violations are addressed in 7 CFR 273.16.

2-007.01 Definitions: The following definitions apply to fraud and abuse and intentional program violations:

Abuse (Medicaid): Provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the Nebraska Medical Assistance Program (NMAP) or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. Abuse also includes recipient practices that result in unnecessary cost to NMAP.

Complainant: Any individual, including a Department employee, who initiates a referral for investigation of a suspected fraud case using Form ASD-63, "Referral for Investigation," or any other method.

Fraud: As defined by state law, fraud includes, but is not limited to, the willful false statement or representation, or impersonation or other device, made by a recipient or applicant, provider, Departmental employee, or any other person, for the purpose of obtaining or attempting to obtain, or aiding or abetting any person to obtain -

1. Any commodity, food stuff, food coupons, or payment to which the individual is not entitled;
2. A larger amount of payment than that to which the individual is entitled;
3. Any other benefit administered by the Nebraska Department of Social Services to which the individual is not entitled; or
4. Assistance in violation of any statutory provision relating to programs administered by the Nebraska Department of Social Services.

As defined by federal Medicaid regulation, fraud is an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself/herself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

Intentional Program Violation (Food Stamp Program): Intentional program violation consists of any action by an individual to purposely:

1. Make a false statement, either verbally or in writing, or conceal information to obtain benefits to which the household is not entitled;
2. Use or receive food stamp benefits in a transaction involving the sale of a controlled substance;
3. Use or receive food stamp benefits in a transaction involving the sale of firearms, ammunition, or explosives;
4. Traffic food stamp benefits for an aggregate amount of \$500 or more;
5. Commit and be convicted of a drug-related felony with the following exceptions:
  - a. Remain eligible after first conviction when participating in or have completed a national-licensed or state-approved substance abuse treatment program;
  - b. Remain eligible after second conviction when participating in or have completed a national-licensed or state-approved substance abuse treatment program after the conviction;
6. Fleeing to avoid prosecution or custody for a crime or an attempt to commit a crime that would be classified as a felony or violating a condition of probation or parole; or
7. Make a fraudulent statement or representation with respect to his/her identity or place of residence to receive multiple food stamp benefits simultaneously.

Special Investigation Unit (SIU): A unit within the Division of Enforcement Services whose purpose is to investigate and prepare for prosecution all cases of fraud, except Medicaid provider fraud.

Surveillance and Utilization Review Unit (SURS): A unit within the Medicaid Division of Health and Human Services, Finance and Support, responsible for investigation and appropriate disposition of all cases of Medicaid provider fraud and program abuse.

2-007.02 Policies: Staff of the Nebraska Department of Health and Human Services must report suspected fraud and abuse or intentional program violation by completing Form-ASD-63 and submitting the completed form to the Special Investigation Unit or the Surveillance and Utilization Unit, as appropriate.

Staff outside the Lincoln telephone exchange may call Medicaid Inquiry at (877) 255-3092 to obtain assistance when reviewing Medicaid services which are being considered for submittal as suspected fraud and abuse cases. Staff within the Lincoln telephone exchange may call 471-9128 and ask for Medicaid Inquiry. Medicaid Inquiry refers policy questions to the appropriate health care representative or program and planning specialist.

Each Department office must designate a position to coordinate referrals to the State Investigation Unit.

All referrals are considered confidential and must be safeguarded as described in 465 NAC 2-005.

Methods used for investigation of referrals must not infringe on the legal rights of the persons involved and must afford due process of law.

2-007.03 Procedure for Reporting Suspected Fraud and Abuse or Intentional Program Violations: Suspected fraud and abuse or intentional program violations are reported and investigated as follows:

1. Departmental staff must complete Form ASD-63, "Referral for Investigation," and must submit the completed form in a sealed envelope marked "confidential" to the Special Investigation Unit (referral for investigations initiated within the Omaha Office will be submitted to the Omaha Special Investigation Unit). Departmental staff retain one copy of Form ASD-63. Persons not employed by the Department may report suspected fraud and abuse or intentional program violation to the SIU by letter, phone call, or any other means;

2. When a report of suspected fraud and abuse or intentional program violation is received, the Special Investigation Unit shall conduct a preliminary investigation to determine if there is sufficient merit to warrant a full investigation;
3. Once a report has been referred to the SIU, the Department shall take no further action with regard to the suspected fraud and abuse or intentional program violation except in accordance with instructions or approval by the Special Investigation Unit. This does not preclude normal case action or recoupment of any overpayment through grant reduction or issuance reduction. Normal case actions include closing a case that is found to be ineligible and recovering overpayments;
4. If the results of the preliminary investigation show sufficient merit to conduct a full investigation, the SIU shall conduct a full investigation of the suspected fraud and abuse or intentional program violation;
5. If the results of the preliminary investigation do not show sufficient merit to conduct a full investigation, the SIU shall inform the appropriate staff in writing. The case may be referred to a program division for administrative action; and
6. The SIU shall inform the appropriate administrator from whose office the complaint originated of the status of each case referred.

2-007.04 Penalties: Individuals who make false claims, statements, or documents, or conceal material facts may be prosecuted under applicable state and federal laws.

An individual convicted under Section 68-1017, R.R.S., 1943, may incur imprisonment for not more than five years, or a fine of not more than \$10,000, or both. An individual convicted under Federal law, 42 United States Code 1396h, also known as the Medicare-Medicaid Anti-Fraud and Abuse Amendments, may incur imprisonment for not more than five years, or a fine of not more than \$25,000, or both.

An individual convicted of intentional program violation in the Food Stamp Program may be disqualified from the Food Stamp Program as required by 7 CFR 273.16 for 6 months for the first violation, 12 months for the second violation, and permanently for the third violation. Only the individual found to have committed the intentional program violation, not the entire household, is disqualified. Any remaining household members may be certified for the Food Stamp Program if otherwise eligible. The individual shall also repay the fraudulent claim, either by cash payments or by a reduction in the monthly food stamp allotment. If repayment is not made, the individual is disqualified from the Food Stamp Program until the payments begin (see 475 NAC 1-008).

2-007.05 Records and Reports: The Special Investigation Unit shall maintain records and prepare reports as required by federal regulation.

The Special Investigation Unit shall maintain records of all investigations.

2-007.06 Disqualification Hearings for Intentional Program Violations (IPV) for ADC and Child Care Subsidy

2-007.06A Initiating the Disqualification Hearing:

2-007.06A1 Reporting Requirements: The worker must report cases of suspected IPV to the Special Investigations Unit (SIU), Central Office.

2-007.06A1a Central Office Guidelines: The Central Office uses the following guidelines in determining the need for a disqualification hearing:

1. A disqualification hearing must be initiated regardless of the current eligibility status of the individual;
2. The burden of proving IPV is on the Department;
3. The Central Office will not initiate a disqualification hearing against an accused individual whose case is currently being referred for prosecution or after any action taken against the accused individual by a court, if the factual issues of the case arise out of the same, or related, circumstances.

2-007.06B Disqualification Hearing Procedures: The Nebraska Department of Health and Human Services Director must designate either an employee of the state agency or an individual under contract to the Department to conduct disqualification hearings.

2-007.06B1 Timeliness Standards: The following timeliness standards must be followed in the disqualification hearing process:

1. The individual suspected of IPV must be given at least 30 days' written advance notice of the hearing unless the household requests a waiver of the advance notice in situations when the disqualification and fair hearings are combined (see 465 NAC 2-007.06B2).
2. The Central Office has 90 days from the date the accused individual is notified of the hearing to:
  - a. Conduct the hearing;
  - b. Arrive at a decision; and
  - c. Initiate administrative action to make the decision effective.
3. If the hearing is postponed (see 465 NAC 2-007.06B2), the time limits of item 2 are extended for as many days as the hearing is postponed.

2-007.06B2 Scheduling of Hearings: The time and place of the hearing must be arranged so that the hearing is accessible to the individual suspected of IPV. The following guidelines must be observed in scheduling disqualification hearings:

1. The individual or representative is entitled to one postponement of a maximum of 30 days of the scheduled hearing if the request for postponement is made at least ten days before the scheduled hearing.

2. If the individual or his/her representative cannot be located or fails to appear at a hearing without good cause, the hearing will be conducted without representation for the individual. Even though the individual is not represented, the Nebraska Department of Health and Human Services Director will carefully consider the evidence and determine if IPV was committed based on clear and convincing evidence.
3. If the individual is found to have committed IPV, but it is later determined by the Director that the individual had good cause for not appearing, the previous decision is no longer valid and the Central Office will conduct a new hearing.
4. The individual has ten days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. The Director must enter the good cause decision into the record.

2-007.06B3 Consolidated Hearings: A disqualification hearing may be combined with a fair hearing when:

1. The factual issues of both hearings arise out of the same (or related) circumstances; and
2. The individual is notified in advance that the hearings will be combined in a single hearing.

If a disqualification hearing and a fair hearing are combined, the Central Office must follow the timeliness standards for disqualification hearings (see 465 NAC 2-007.06B1).

If the hearings are combined for the purpose of settling the overpayment amount and determining if IPV has occurred, the household loses its right to a later fair hearing on the claim amount. However, upon the household's request, the local office must allow the household to waive the 30-day advance period required by 465 NAC 2-007.06B2 when the disqualification hearing and fair hearing are combined.

2-007.06C Advance Notice of Hearing: The Central Office must send an Advance Notice of Disqualification Hearing to the individual suspected of IPV at least 30 days in advance of the date of the disqualification hearing.

2-007.06D Waived Hearing: If the individual wishes to waive a hearing, the Central Office will send a waiver of hearing consent form to the household.

If the waiver form is returned by the deadline specified on the waiver form, the household must be disqualified according to disqualification penalties listed at 468 NAC 3-005.05C for ADC or 392 NAC 3-012.02D for Child Care Subsidy.

The Advance Notice of Disqualification Hearing contains information advising the household of its right to waive a disqualification hearing.

2-007.06E Participation While Awaiting a Hearing: A pending disqualification hearing does not affect the right of the individual or the household to continue to receive assistance. The local office must determine the eligibility in the same manner it would be determined for any other household, until there is a determination that the individual has committed IPV.

If the pending disqualification action does not affect the individual's current circumstances, the individual would continue to receive assistance based on the latest program action or be redetermined based on a new application and the current circumstances.

The worker must also reduce or terminate the household's benefits if there is documentation which substantiates ineligibility or eligibility for reduced benefits and the household fails to request a fair hearing and continuation of benefits pending the hearing. These actions occur even if the documented facts led to the suspicion of IPV and the resulting disqualification hearing.

#### 2-007.06F The Hearing Official

2-007.06F1 Duties of the Hearing Official: The hearing official must ensure that:

1. All relevant issues are considered;
2. All persons who testify at the hearing present their evidence as completely and accurately as possible; and
3. The hearing record contains enough evidence to enable the Director to make a decision.

2-007.06F2 Powers of the Hearing Official: The hearing official has the power to:

1. Administer oaths;
2. Ask for additional witnesses and question witnesses;
3. Ask that additional documents be brought in;
4. Dismiss witnesses from the room for good and sufficient reason;
5. Recess, continue, or close the hearing at any time there is good and sufficient reason for so doing; and
6. Regulate the conduct and course of the hearing in accordance with due process and keep the hearing orderly and to the point by excluding and discouraging evidence which is not relevant.

2-007.06F3 Hearing Decision Authority: The power to make the final disqualification hearing decision is vested in the Director.

2-007.06G Conduct of the Hearing: Disqualification hearings are conducted by the hearing official as informal hearings, but witnesses must be placed under oath.

2-007.06G1 Attendance at the Hearing: The hearing is attended by a representative of the Department. The suspected household member and/or his/her representative are encouraged to attend, but their presence is not required.

The hearing is not open to the public, but friends or relatives of the household may attend if the household so chooses. However, the hearing official has the authority to limit the number of persons in attendance at the hearing if space is limited or if persons in attendance must be limited to ensure an orderly hearing.

2-007.06G2 Recording the Hearing: Disqualification hearings are recorded by either mechanical equipment and/or a stenographer.

2-007.06G3 Order of the Hearing: The hearing will begin with introductions by the hearing official. At this time the hearing official must advise the suspected household member or his/her representative that s/he may refuse to answer questions during the hearing. The Department's representative will present the state's case first. The household member or the representative will then present his/her case.

2-007.06H Recessing the Hearing: The hearing official may order a recess if s/he considers it necessary to request, receive, or obtain additional testimony or evidence in order for the Director to decide the issues being raised. The hearing official must advise the household member or his/her representative of the reason for the recess and the nature of the additional information that is required. The hearing must be reconvened when the witness, document, or other evidence is available so that the household member will have an opportunity to question or refute any testimony or other evidence received. When reconvened, the hearing is conducted as any other disqualification hearing.

2-007.06J Admission of Evidence After Hearing Is Closed: Evidence may be submitted after a hearing is closed. However, copies of any new evidence must be sent to interested parties, together with an explanation of the right to explain or refute new evidence.

#### 2-007.07 Hearing Decision

2-007.07A Criteria for Determining Intentional Program Violation: The Director must base the determination of IPV on clear and convincing evidence which demonstrates that the individual knowingly, willfully and with deceitful intent committed IPV.

2-007.07B Decision Format: On the basis of the evidence presented, the Director must enter a final decision which:

1. Specifies the reasons for the decision;
2. Identifies the supporting evidence;
3. Identifies the pertinent program regulation; and
4. Responds to reasoned arguments made by the individual or representative.

2-007.07C IPV Sanctions: For sanctions following a decision of IPV, see 468 NAC 3-005.05C for ADC and 392 NAC 3-012.02D for Child Care Subsidy.

2-007.08 Appeal Rights of the Household: No further administrative appeal procedure exists after a hearing decision is made which is adverse to the individual. A determination of IPV cannot be reversed by a subsequent fair hearing decision on the same level. However, the household member is entitled to seek relief in a court having appropriate jurisdiction under Neb. Rev. Stat. Section 84-917. The period of disqualification may be subject to stay or other injunctive remedy.

## 2-008 Protective Payee, Guardian, Conservator, and Power of Attorney

### 2-008.01 Definitions

Conservator: A person or corporation appointed by a county court to control and manage the estate, property, and/or other business affairs of a person who, the court has determined, is unable to do so.

Guardian: A person appointed by a court of competent jurisdiction to control and manage the financial and/or personal affairs of an individual who is found incapacitated and requires continuing care or supervision.

Power of Attorney: A written authorization for a person to legally act on behalf of another individual.

Protective Payee: A person assigned to receive the assistance grant for a client because the client has established a pattern of mismanaging his/her grant (see 468 NAC 3-008.04), or whose physical or mental impairment causes inability to manage AABD or SDP payments (see 469 NAC 3-007.02B).

2-008.02 Appointment and Discharge of Guardians and Conservators: A petition for guardianship may be filed by any competent person who is able to show cause as to why the individual named needs a guardian. If a conservator is being requested, the individual himself or herself or a person showing good cause files the petition. In either case, the court may -

1. Grant or dismiss the petition at its discretion;
2. Select the person who is to serve;
3. Issue letters of guardianship/conservatorship as evidence of the appointment; or
4. Establish a full or limited guardianship at its discretion.

A guardian or conservator may be removed only by court order.

2-008.02A Duties of Guardians and Conservators: The court may establish a full guardianship which will give the guardian full responsibility in all ten areas described in 473 NAC 5-015.11C or may establish a limited guardianship if it decides the client only needs assistance in some of these areas. A conservatorship gives the conservator responsibility for the estate, property, and/or other business affairs of the client.

2-008.02B Department Responsibility: If an Adult Protective Services (APS), AABD, or ADC client is unable to handle his/her finances or personal affairs, the appropriate staff, on its own initiative, in cooperation with the individual's relatives or friends, may arrange for the appointment of a guardian or conservator, power of attorney, or protective payee. See 473 NAC 5-015.11 for procedures to follow in Adult Protective Services.

If a guardian is needed and the client has no relatives or friends to act on his/her behalf and best interest, the appropriate staff person may file a petition requesting that a guardian be appointed.

If the court requests its services, the Department shall assist in locating a suitable person to act as guardian or conservator.

While the appointment of a guardian or conservator for a client who needs one is desirable, it is not an eligibility requirement. Assistance may not be suspended or terminated due to the absence of a guardian or conservator.

2-008.03 Assignment of Power of Attorney: A power of attorney may be limited to a single transaction or it may be general, covering several transactions. It is a written authorization entered into voluntarily by the individual giving the power of attorney; the individual must be competent in order to create a valid power of attorney.

A power of attorney may be revoked by the individual to whom it is granted. It may also be terminated by the request, death, disability, or incapacity of the client giving the power of attorney. The power of attorney may remain effective when the adult becomes disabled or incompetent if s/he specifies in the document that the power should continue if disability or incompetence occurs. Caution should be exercised when suggesting this course of action to a client. If a court finds the client was incapacitated at the time s/he gave the power of attorney, the power of attorney may be terminated and all actions transacted under that power of attorney declared null and void. The power of attorney must be notarized when real property is involved.

A Department employee may not have power of attorney for a client.

2-008.04 Assignment of Protective Payee, Guardian, or Conservator Status

2-008.04A Employee's Role: An employee of the Nebraska Department of Social Services may not serve as a guardian or conservator for a client for whom s/he -

1. Determines eligibility;
2. Authorizes services or assistance;
3. Provides direct service; or
4. Has any other professional relationship which may be considered a conflict of interest.

A request for an employee to act as a guardian or a conservator must be approved by the Director or his/her designee.

2-008.04B Worker as Protective Payee: A worker may act as protective payee for a client only if s/he does not determine eligibility for a categorical program for that client (see 468 NAC 3-008.04A and 469 NAC 3-007.02B2). All other community resources must be explored before a worker may accept the payee assignment.

2-008.04C Service Provider's Role: The worker shall obtain approval from the Human Services Division before a service provider who contracts with the Department may act as protective payee for a client s/he serves.

2-008.05 Payments to Guardians or Conservators: Letters of guardianship, or conservatorship are filed in the client's case record. After receipt of the guardianship or conservatorship papers, the worker shall make necessary changes to ensure that assistance payments are made to the guardian or conservator. For guardianship/conservatorship fees, see 469 NAC 3-004.03G.

2-008.05A Beatrice State Developmental Center and Regional Centers: The superintendent of the Beatrice State Developmental Center and other state regional centers may serve as payees for the patients and may receive assistance payments on behalf of the patients.

2-008.06 Court Costs and Attorneys' Fees: When the appointment of a guardian or conservator for an assistance recipient, payee, or APS client is initiated by Department of Social Services staff, administrative funds may be used to pay court costs involved. Court costs may include -

1. An attorney fee for appointment of a guardian or conservator;
2. An attorney fee for closing a guardianship or conservatorship;
3. The guardian's bond; and
4. The court-set fee for a guardian ad litem.

See 465-000-203 for the maximum amounts for attorney fees for appointing a guardian or conservator or closing a guardianship or conservatorship.

The worker shall, whenever possible, encourage relatives, friends, legal services staff, private attorneys as a "pro bono" service, and state and local lawyer referral programs to absorb the court costs and attorney fees.

In APS cases when the client possesses an estate, the worker shall encourage the court to order that the court costs and attorney fees be paid by the estate of the client.

2-008.07 Billing: Bills for attorney fees and bonds (along with a copy of letters of guardianship/conservatorship) must be submitted to Finance and Accounting using the appropriate disbursement document.

2-008.08 Use of Department Staff as Court Visitors: Department staff may accept appointment to serve in the capacity of a court appointed visitor when:

1. The adult for whom a guardianship/conservatorship is being petitioned receives no benefits or services from the Department;
2. Adult Protective Services have not been involved in the petitioning for the guardianship/conservatorship; and
3. The Department staff member would not be executing his/her court appointed duties while on agency time.

2-009 Provider Payment: Providers of all benefit and services programs shall accept electronic payment when required by the Department.

2-010 Client Payment: Payments to clients will be made by electronic means. The Department will notify individuals in advance of a change to electronic payment. The Department reserves the right to issue warrants when appropriate.