

**Title of Proposed Rule:** 7.106.14 State Review of an Incident of Egregious Abuse or Neglect, Near Fatality or Fatality of a Child

**CDHS Tracking #:** 17-01-27-01

Office, Division, & Program:  
OPSO- ARD, Child Fatality  
Review Team function

Rule Author:  
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## **STATEMENT OF BASIS AND PURPOSE**

### **Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.*

#### **Purpose/Basis:**

1) Throughout the review team process, it has been determined that having county departments who have assessed the egregious, near fatal or fatal incident, as well as county departments who have had prior history with the child and/or family within the last three years, present at the review is an integral piece in completing a thorough and effective State Child Fatality Review.

The State Child Fatality Review Team (CFRT) is a multidisciplinary team comprised of members from: Division of Child Welfare, Domestic Violence Program, Administrative Review Division, Colorado Department of Public Health and Environment, County Child Welfare Directors/Administrators, County Commissioners, the office of the Ombudsman, Law Enforcement, a Pediatrician, District Attorney, Attorney General Office, and the Colorado Department of Education. It is the statutorily defined duty of this team to create recommendations that are intended to mitigate incidents of egregious harm, near fatalities, and fatalities. This specific recommendation was made by the CFRT members as part of their analysis and discussion related to several incidents.

2) In order for rule to more accurately reflect the CFRT process and ensure compliance, the timeframe should be revised to reflect that the State Review shall occur within forty-five (45) business days of the State Department receiving all required and relevant reports and information critical to an effective fatality review.

#### **Goal:**

1) On occasion county personnel are not present at the State Review. Per statute, "the goal of the multidisciplinary review shall not be to affix blame, but rather to improve understanding of why the incidents of egregious abuse or neglect against a child, near fatalities, or fatalities of a child due to abuse or neglect occur, to identify and understand where improvements can be made in the delivery of child welfare services, and to develop recommendations for mitigation of future incidents of egregious abuse or neglect against a child, near fatalities, or fatalities of a child due to abuse or neglect." This goal is best accomplished when county personnel from counties who have involvement with the incident and/or prior involvement with the family within the past 3 years are in attendance at the multidisciplinary review.

2) The changes associated with the timeframe in which the State Review shall occur will not affect how the State Review has currently, or historically, been scheduled and held. The State Review is held the first Monday of every calendar month (with the exception of holidays). In order to ensure State Review information is sent to the team within a timeframe that allows team members to thoroughly prepare for the review, the deadline for county departments to provide all necessary and relevant information to the State Department is the fifteenth day of the month. For an incident where all necessary information is received by the fifteenth of the month, the State Review is scheduled to occur the following month. So, for example, if documentation is received on March 15th, the review would be scheduled for the first Monday in April. Any documentation from county departments pertaining to an incident of egregious abuse and/or neglect, near fatality or fatality of a child received after the fifteenth of the month is scheduled to be reviewed by the CFRT the month after the following month.

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**State Board Authority for Rule:**

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
C.R.S. 26-1-139	C.R.S. 26-1-139 mandates many components of the CFRT process (e.g., membership, timelines, incidents to be reviewed, etc.). Statute (26-1-139 (7)) also provides that "The state department shall promulgate additional rules, as necessary, for the implementation of this section, including but not limited to the confidentiality of information in incidents of egregious abuse or neglect against a child, near fatalities, or child fatalities."

Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

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## **REGULATORY ANALYSIS**

### **1. List of groups impacted by this rule.**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

The CFRT will be better informed with county participation. This information will lead to better identification of strengths and gaps in the child welfare system and better recommendations for improvements. The children and families served within Colorado will be the primary beneficiaries.

County departments will be impacted by needing to make staff available to participate in the review discussion. The impact can be minimized by participation through teleconference. Additionally, counties need not participate in the entire meeting, but only during the discussion of incidents involving families who the county had prior involvement within the previous three years. Generally, CFRT staff are able to provide specific times during the meeting that county staff would need to be available.

### **2. Describe the qualitative and quantitative impact.**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

1) The CFRT members will benefit through having the perspective and input of the county departments who had direct contact with the families. This allows for a more thorough understanding of the services provided and decisions made by the county departments, better understanding of any cross-agency involvement and how it informed or created barriers for the county department, etc.

County departments will have discretion to determine which staff members participate in the review. County departments will also have discretion to determine how they will participate (e.g., in-person, by phone, etc.). This rule will require county department staff to set aside time for their participation. Incident specific discussions take 1 -2 hours.

2) The scheduling of the State Review will remain the same; however, rule will more accurately reflect the process. It is expected that the process will continue to run appropriately, adequately, and effectively.

### **3. Fiscal Impact**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources.*

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

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County Fiscal Impact

Mandating county departments to participate in the State Review may have a fiscal impact on county department staff, but it is assumed this fiscal impact would be minimal, and it should be noted that while this is not currently a mandate in rule, most county departments participate in the review when necessary. The fiscal impact may be associated with additional travel and staff time associated with the review. It should be noted that the proposed rule change would allow for county department staff to participate by phone, thereby eliminating costs associated with travel.

Federal Fiscal Impact

Other Fiscal Impact (such as providers, local governments, etc.)

**4. Data Description**

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

The number of incidents in which a county department has not participated in the State Review is relatively minimal (approximately two to three times per calendar year with an average of about 30 reviews completed per calendar year.

The CFRT determined that county department participation is an essential component to being able to complete an effective and thorough review.

**5. Alternatives to this Rule-making**

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just “no alternative” answer should include “no alternative because...”**

The Administrative Review Division agrees with the CFRT that county participation in State Reviews leads to a more thorough review process and learning opportunity for all who are present at the State Review. It is preferable for county department participation to be a requirement outlined in Volume 7.

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**OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.106.14		When a county department becomes aware that an incident of egregious abuse and/or neglect, near fatality or fatality of a child has occurred, which is suspicious for a child abuse and/or neglect, the county department shall submit reports for review by the State Department in accordance with Section 7.106 of this rule, and cooperate with the State Department's review.	Change "becomes aware" to "DETERMINES"  Delete "has occurred, which is suspicious" and replace with "FOUNDED"  Delete "a"  Add "AND WHERE A COUNTY DEPARTMENT HAD PREVIOUS INVOLVEMENT WITHIN THREE YEARS PRIOR TO THE DATE OF THE INCIDENT"  Add "OUTLINED IN 7.106.13 C"	A county department is not required to submit documents to the State Department, unless the incident is "determined" to be the result of abuse or neglect. A determination is captured by the county department entering a "founded" finding of abuse or neglect at the egregious, near fatal, or fatal severity level.  The state review is required when there has been an incident of egregious, near fatal, or fatal abuse and neglect, AND the family has had previous DHS involvement within the last three years.  7.106.13 C outlines the specific documents the county department needs to submit to the State Department.	
7.106.14		The State Department shall conduct a multidisciplinary review of such cases, where the county was involved in the three years prior to the incident of egregious abuse and/or neglect, near fatality, or fatality. The State Department Child Fatality Review shall occur within thirty (30) days of the State Department receiving all	Change "the" to "A"  Add "DEPARTMENT" after "county"  Delete "was involved" and replace with "HAD PREVIOUS INVOLVEMENT"  Add the following: A COUNTY REPRESENTATIVE(S) FROM EACH COUNTY HAVING PREVIOUS	Change "the" to "a" as there can be multiple county departments who have had previous involvement with a family in the previous three years. Add "Department" after the word county, as this requirement pertains to the county department.  We are adding the requirement in	

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Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>required and relevant reports and information critical to an effective fatality review.</p>	<p>INVOLVEMENT IN THE THREE YEARS PRIOR TO THE INCIDENT SHALL PARTICIPATE IN THE MULTIDISCIPLINARY REVIEW <b>IN PERSON, BY TELEPHONE, OR THROUGH OTHER EMERGING TECHNOLOGY.</b></p> <p>Change “thirty (30) days” to “FORTY-FIVE (45) BUSINESS DAYS”</p> <p>Add at the end of the final sentence: AS SUCH, THE MULTIDISCIPLINARY REVIEWS ARE UNABLE TO BE RESCHEDULED.</p>	<p>rule that a county representative from each county having previous involvement three years prior to the incident be in attendance, as this is a critical component in completing an effective State Review.</p> <p>We are changing thirty (30) days to forty-five (45) days to align the rule with the current and historical process of scheduling the State Review. The process is not changing as a result of this technical clean-up.</p> <p>On average, State Reviews are scheduled six months to a year after the incident occurred. Due to the nature of this timeline, in order to keep the process moving efficiently, the State Department is unable to reschedule reviews, once all required and necessary information critical to holding an effective State Review is received.</p>	

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### **STAKEHOLDER COMMENT SUMMARY**

#### **Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

The Department created a workgroup and invited county department staff to participate. The workgroup was created to consider and draft the rule. The Department presented the proposed draft rules to Sub-PAC in December of 2016, and then to PAC in January of 2017.

#### **This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:*

#### **Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes  No

If yes, who was contacted and what was their input?

N/A

#### **Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

Yes  No

Name of Sub-PAC	Child Welfare Sub-PAC		
Date presented	December 8, 2016		
What issues were raised?	N/A		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	X		

If not presented, explain why.

#### **PAC**

Have these rules been approved by PAC?

Yes  No

Date presented	January 5, 2017
What issues were raised?	During the PAC rule presentation and discussion, members raised two different concerns. The first concern was the inability for the State Review to be rescheduled if a county department has a conflict the same day of the review. The second concern raised was not directly related to the rule change, but was in reference to information and record sharing when there are multiple counties involved in the review of an incident. At this point in time, county department staff only get or have access to information and records that pertain to their direct involvement with the incident or prior involvement within the last three years. However, CFRT

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members get access to and review all records in order to fulfill their role and duty in trying to improve understanding of why such incidents occur, identify strengths and deficiencies in service delivery of child welfare services and make recommendations for improvements to the child welfare system in an effort to mitigate future incidents of fatal, near fatal, and egregious incidents caused by abuse and/or neglect.

Vote Count

<i>For</i>	<i>Against</i>	<i>Abstain</i>
X		

If not presented, explain why.

**Other Comments**

Comments were received from stakeholders on the proposed rules:

Yes  No

*If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.*

During the PAC rule presentation and discussion, members raised two different concerns. The first concern was the inability for the State Review to be rescheduled if a county department has a conflict the same day of the review. The second concern raised was not directly related to the rule change, but was in reference to information and record sharing when there are multiple counties involved in the review of an incident. At this point in time, for the purposes of the State Review, county department staff only have access to information and records that pertain to their involvement with the incident and/or prior involvement within the last three years. However, CFRT members get access to and review all records in order to fulfill their role and duty in trying to improve understanding of why such incidents occur, identify strengths and deficiencies in service delivery of child welfare services and make recommendations for improvements to the child welfare system in an effort to mitigate future incidents of fatal, near fatal, and egregious incidents caused by abuse and/or neglect.

**7.106.14 State Review of an Incident of Egregious Abuse or Neglect, Near Fatality or Fatality of a Child [Eff. 1/1/15]**

When a county department ~~becomes aware~~ DETERMINES that an incident of egregious abuse and/or neglect, near fatality or fatality of a child ~~has occurred, which is suspicious~~ FOUNDED for a child abuse and/or neglect, AND WHERE A COUNTY DEPARTMENT HAD PREVIOUS INVOLVEMENT WITHIN 3 YEARS PRIOR TO THE DATE OF THE INCIDENT, the county department shall submit reports OUTLINED IN 7.106.13 C for review by the State Department in accordance with Section 7.106 of this rule, and cooperate with the State Department's review. The State Department shall conduct a multidisciplinary review of such cases, where ~~the~~ A county DEPARTMENT ~~was involved~~ HAD PREVIOUS INVOLVEMENT in the three years prior to the incident of egregious abuse and/or neglect, near fatality, or fatality. A COUNTY REPRESENTATIVE(S) FROM EACH COUNTY HAVING PREVIOUS INVOLVEMENT IN THE THREE YEARS PRIOR TO THE INCIDENT SHALL PARTICIPATE IN THE MULTIDICIPLINARY REVIEW **IN PERSON, BY TELEPHONE, OR THROUGH OTHER EMERGING TECHNOLOGY.** The State Department Child Fatality Review shall occur within ~~thirty (30)~~ FORTY-FIVE (45) BUSINESS days of the State Department receiving all required and relevant reports and information critical to an effective fatality review. These reviews shall include:

- A. The circumstances around the incident of egregious abuse or neglect against a child, near fatality, or child fatality;
- B. The services provided to the child, the child's family, and the perpetrator by the county department for any county with which the family has had previous involvement, as defined in paragraph (c) of subsection (2) of this section, within three years prior to the incident of egregious abuse or neglect against a child, near fatality, or fatality of a child due to abuse or neglect;
- C. The county department's compliance with statutes, regulations, and relevant policies and procedures that are directly related to the incident of egregious abuse or neglect against a child, near fatality, or fatality;
- D. Identification of strengths and best practices of service delivery to the child and the child's family;
- E. Consideration of factors that may have contributed to conditions leading to the incident of egregious abuse or neglect against a child, near fatality, or fatality, including, but not limited to, lack of or unsafe housing, family and social supports, educational life, physical health, emotional and psychological health, and other safety, crisis, and cultural or ethnic issues;
- F. The supports and services provided to siblings, family members, and agency staff after the incident of egregious abuse or neglect against a child, near fatality, or fatality; and,
- G. The quality and sufficiency of coordination between state and local agencies.