

## EXHIBIT H3



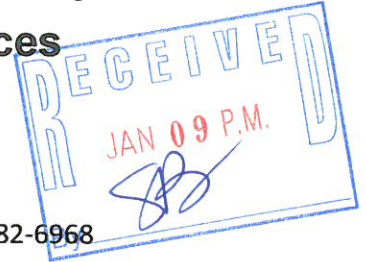
### Arkansas Department of Human Services Division of Children and Family Services

700 Main Street, Donaghey Plaza South, 5<sup>th</sup> Floor

P.O. Box 1437, Slot S560

Little Rock, Arkansas 72203-1437

Telephone (501) 682-8008 TDD (501) 682-1442 FAX (501) 682-6968



January 5, 2017

Varnaria Vickers-Smith, Legislative Analyst  
Senate Interim Children and Youth Committee and the  
House Aging, Children and Youth, Legislative and Military Affairs Committee  
Arkansas Bureau of Legislative Research  
One Capital Mall, 5<sup>th</sup> Floor, Room R-516  
Little Rock, AR 72201

RE: Initial Filing - Regular Promulgation

Dear Ms. Vickers-Smith:

Please place the Division of Children & Family Services on the Children & Youth Committee agenda for review of the Rules as listed on the Questionnaire. The public comment period is from January 8, 2017 to February 7, 2017, with a proposed effective date of May 1, 2017.

Enclosed are copies of the Questionnaire, Summary of Changes, Financial Impact Statement and Rule.

If you have any questions or comments, please contact Christin Harper, Assistant Director, Division of Children and Family Services, P.O. Box 1437, (Slot S570), Little Rock, Arkansas 72203-1437; phone 682-8541; email [christin.harper@dhs.arkansas.gov](mailto:christin.harper@dhs.arkansas.gov) or fax 682-6968.

Sincerely,

A handwritten signature in black ink that reads "Mischa Martin".

Mischa Martin

Director, Division of Children and Family Services

**BUREAU OF LEGISLATIVE RESEARCH**

DEPARTMENT OF HUMAN SERVICES  
Division of Children and Family Services  
AMENDING ADMINISTRATIVE REGULATIONS

TITLE: New Rule  
• **POLICY IX-A: Internal Review of Assessment Decisions**

PROPOSED EFFECTIVE DATE: May 1, 2017

STATUTORY AUTHORITY: A.C.A. 9-28-103

NECESSITY AND FUNCTION: new Rule  
• **POLICY IX-A: Internal Review of Assessment Decisions**  
○ To establish a new policy to allow certain DHS staff to have assessment decisions reviewed if a staff member believes a child in the custody of the Department of Human Services can be safely returned to his/her home or that a child needs to be taken into the custody of the Department due to unsafe conditions in his/her home.

PAGES FILED:

  
\_\_\_\_\_  
Signature

Name: Mischa Martin Title: Director

Section: Division of Children and Family Services

Department of Human Services

PROMULGATION DATES: January 8, 2017 to February 7, 2017

CONTACT PERSON: Christin Harper  
DHS-DCFS Policy Unit  
Phone: (501) 682-8541  
Fax: (501) 683-4854  
Email: christin.harper@dhs.arkansas.gov

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Department of Human Services  
DIVISION Division of Children and Family Services  
DIVISION DIRECTOR Mischa Martin  
CONTACT PERSON Christin Harper, Assistant Director  
ADDRESS P. O. Box 1437, Slot S570, Little Rock, AR 72203-1437  
PHONE NO. (501)682-8541 FAX NO. (501) 683-4854 E-MAIL christin.harper@dhs.arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Christin Harper  
PRESENTER E-MAIL christin.harper@dhs.arkansas.gov

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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1. What is the short title of this rule? Internal Review of Assessment Decisions
2. What is the subject of the proposed rule? To establish a new policy to allow certain DHS staff to have assessment decisions reviewed if a staff member believes a child in the custody of the Department of Human Services can be safely returned to his/her home or that a child needs to be taken into the custody of the Department due to unsafe conditions in his/her home.
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes  No   
If yes, please provide the federal rule, regulation, and/or statute citation. \_\_\_\_\_
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes  No   
If yes, what is the effective date of the emergency rule? \_\_\_\_\_

When does the emergency rule \_\_\_\_\_

expire?

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes

No

5. Is this a new rule? Yes  No

If yes, please provide a brief summary explaining the regulation. \_\_\_\_\_

Does this repeal an existing rule? Yes  No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes  No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. A.C.A. § 9-28-103

7. What is the purpose of this proposed rule? Why is it necessary?

POLICY IX-A: Internal Review of Assessment Decisions

• To provide a mechanism for Department of Human Services (DHS) staff (specifically Division of Children and Family Services (DCFS) Family Service Workers (FSWs) and FSW Supervisors as well as DHS Office of Chief Counsel attorneys) to request an internal review of assessment decisions if he/she believes a child in the custody of the Department can be returned safely to his/her home or a child has not been taken into the Department's custody even though the child cannot remain safely in his/her home.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

AR Secretary of State Website

DHS/DCFS CHRIS public:

<https://ardhs.sharepoint.com/CW/Notice%20of%20Rule%20Making/Forms/AllItems.aspx>

9. Will a public hearing be held on this proposed rule? Yes  No

If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

February 7, 2017

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

May 1, 2017

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12. Do you expect this rule to be controversial? Yes  No

If yes, please  
explain. \_\_\_\_\_

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

We do not know of any specific groups of persons who would comment.

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**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Department of Human Services  
**DIVISION** Division of Children and Family Services  
**PERSON COMPLETING THIS STATEMENT** Christin Harper  
**TELEPHONE NO.** (501)682-8541 **FAX NO.** (501) 683-4854 **EMAIL:** christin.harper@dhs.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** Internal Review of Assessment Decisions

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes  No
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes  No
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes  No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;  
\_\_\_\_\_
- (b) The reason for adoption of the more costly rule;  
\_\_\_\_\_
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;  
\_\_\_\_\_
- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.  
\_\_\_\_\_

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

<u>Current Fiscal Year</u>		<u>Next Fiscal Year</u>	
General Revenue	0	General Revenue	0
Federal Funds	0	Federal Funds	0
Cash Funds	0	Cash Funds	0

Special Revenue 0  
Other (Identify) 0

Special Revenue 0  
Other (Identify) 0

Total 0.00

Total 0.00

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total 0.00

Total 0.00

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

\$ 0.00

**Next Fiscal Year**

\$ 0.00

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ 0.00

**Next Fiscal Year**

\$ 0.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes  No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and



- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
  - (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
  - (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
  - (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
    - (a) the rule is achieving the statutory objectives;
    - (b) the benefits of the rule continue to justify its costs; and
    - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

# DCFS SUMMARY OF CHANGES FOR JANUARY 2017 PROMULGATION

## **SUMMARY OF DCFS REGULAR PROMULGATION**

The purpose of this regular promulgation is to establish a new policy to allow certain DHS staff to have assessment decisions reviewed if a staff member believes a child in the custody of the Department of Human Services can be safely returned to his/her home or that a child needs to be taken into the custody of the Department due to unsafe conditions in his/her home.

## POLICY IX-A: INTERNAL REVIEW OF ASSESSMENT DECISIONS

05/2017

Child welfare is a complex field due to the multitude of individual, family, and community dynamics that not only affect how families raise their children, but how child welfare staff who also come from varied backgrounds and experiences assess child and family functioning. As such, the Division of Children and Family Services (DCFS) has an internal review process for assessment decisions given that one individual may perceive an allegation of maltreatment or risks differently from another individual despite consistent training.

A DCFS Family Service Worker (FSW), supervisor, or an Office of Chief Counsel (OCC) attorney may request the Division Director or designee to allow an internal review of assessment decisions if he or she believes:

- A. A child in the custody of the Department can be returned safely to his or her home; or,
- B. A child has not been taken into the Department's custody even though the child cannot remain safely in his or her home.

No adverse action will be taken against an employee for requesting an internal review of assessment decisions as outlined in this policy and related procedures. However, employees who request an internal review of assessment decisions are not absolved from discipline for other actions, as appropriate, that fall outside of a request for an internal review of assessment decisions.

Requests for an internal review of assessment decisions will be made in writing via email to the Division Director or designee. The Division Director or designee will approve the request for an internal review of assessment decisions, as appropriate, within one business day. The Division Director or designee may ask the requestor for additional information regarding the need for an internal review of assessment decisions as needed.

When the Division Director or designee grants approval for an internal review of an assessment decision, the Division Director or designee will immediately select and notify in writing via email the following staff to review the assessment decision and determine the course of action to be taken:

- A. Two Area Directors who have no previous involvement with the case; and,
- B. A County Supervisor who has no previous involvement with case and who does not report to either of the selected Area Directors.

The Division Director or designee will also provide the information submitted by the requestor of an internal review of an assessment decision to the selected internal review committee.

If any of the selected Area Directors and County Supervisor cannot serve on the assessment decision internal review committee due to a conflict of interest or any other extenuating circumstance, he or she will notify the Division Director of the conflict in writing via email within twenty-four hours of the receipt of notification to serve on the internal review committee. If the Division Director or designee agrees that the selected staff member cannot serve on the assessment decision internal review committee, then the Division Director or designee will immediately, but no later than 24 hours, select and notify another staff member of an equal position in writing via email.

The selected Area Directors and County Supervisor are responsible for coordinating with each other to schedule the internal review committee meeting. Within two business days of receiving notification from the Division Director or designee to serve on the internal review committee, the selected Area Directors and County Supervisor will hold the assessment decision internal review. This committee will participate in the internal review in person at an agreed upon location or via conference call.

The committee will provide written notice via email of the date, time, location, and conference call information, if applicable, of the internal review to the:

- A. DCFS FSW, DCFS Supervisor, or OCC attorney who submitted the request for an internal review of assessment decisions;
- B. Primary FSW involved in the investigation and/or case, if different from the requestor;
- C. Direct supervisor of the primary FSW involved in the investigation and/or case, if different from the requestor;
- D. Local OCC attorney involved in the investigation or case, if different from the requestor;
- E. Area Director of the primary FSW and his/her direct supervisor (for information purposes only);
- F. DCFS Assistant Director of Community Services or designee (for information purposes only); and,
- G. Division Director or designee (for information purposes only).

The individual who submitted the request for an internal review of assessment decisions as well as the other field staff involved (primary FSW and direct supervisor) will attend the internal review in person or by conference call to present their positions regarding the investigation and/or case and to answer any questions the internal review committee may pose. If any of these individuals are unable to participate in the internal review, they may submit any information requested by the committee in writing prior to the internal review.

After listening to all presentations and responses to any questions, and/or reviewing any additional written information submitted regarding the assessment decision, the internal review committee will determine, as applicable, if:

- A. A child in the custody of the Department may be returned to his or her home (with court approval);
- B. The Department will take a 72-hour hold on a child determined by the internal review committee as not able to remain safely in his or her home; or,
- C. No action will be taken.

The internal review committee will select a member of that committee to notify all appropriate individuals of their decision in writing within two hours of adjournment of the internal review committee. The internal review committee will determine the timeframe in which any necessary action resulting from its decision will take place, not to exceed twenty-four hours. For situations in which the committee determines a child in the custody of the Department may be returned home, this will include notifying with the local OCC attorney to request a hearing to ask for court approval to return the child home.

## PROCEDURE IX-A1: Request for an Internal Review of an Assessment Decision

05/2017

The DCFS FSW, DCFS Supervisor, or OCC attorney requesting an internal review of an assessment decision will:

- A. Email the Division Director and copy the Assistant Director of Community Services requesting an internal review of an assessment decision as soon as the individual has reasonable cause to believe:
  - 1) A child in the custody of the Department can be returned safely to his or her home; or,
  - 2) A child has not been taken into the Department's custody even though the child cannot remain safely in his or her home.
- B. Ensure the email requesting an internal review of an assessment decision:
  - 1) Has a subject line that reads, "SENSITIVE: Request for Internal Review of an Assessment Decision – Immediate Attention Required" and also includes the applicable county;
  - 2) Is marked as "high importance;"
  - 3) Includes the following information in the body of the email:

- a) Last name of the client involved
- b) CHRIS referral number or client ID, as applicable
- c) Brief summary of the reason for the request.

## **PROCEDURE IX-A2: Approval or Denial of an Internal Review of an Assessment Decision and Selection of the Internal Review Committee**

05/2017

The Division Director or designee will:

- A. Review the email and request additional information from the requestor, if needed.
- B. Within one business day, approve the request and select and notify in writing via email the following staff to review the assessment decision and determine the course of action to be taken:
  - 1) Two Area Directors who have no previous involvement with the case; and,
  - 2) County Supervisor who has no previous involvement with case and who does not report to either of the selected Area Directors.
- C. Select an alternate internal review committee member, if necessary, upon receipt of notification that a previously selected member cannot participate due to a conflict of interest or other extenuating circumstance and immediately, but no later than 24 hours, notify the alternate selection.
- D. Forward the written email request for the internal review of an assessment decision to the selected internal review committee members.

The internal review committee members will:

- A. Confirm participation on the internal review committee of an assessment decision upon receipt of the notification from the Division Director or designee.
- B. Immediately notify the Division Director or designee if he or she will not be able to participate due to a conflict of interest or other extenuating circumstance.

## **Procedure IX-A3: Assessment Decision Internal Review Committee Duties**

05/2017

The internal review committee members will:

- A. Review the following information prior to holding an internal review of assessment decisions:
  - 1) Applicable Child Abuse Hotline report;
  - 2) All CHRIS contacts related to the investigation and/or case; and,
  - 3) Written request for the internal review of assessment decisions previously submitted to the Division Director or designee.
- B. Determine a date, time, and location and/or conference call option for the internal review process (to be held within two business days of receiving notification from the Division Director or designee to serve on the internal review committee) and notify via email the following individuals:
  - 1) DCFS FSW, DCFS Supervisor, or OCC attorney who submitted the request for an internal review of assessment decisions;
  - 2) Primary FSW involved in the investigation and/or case, if different from the requestor;
  - 3) Direct supervisor of the primary FSW involved in the investigation and/or case, if different from the requestor;
  - 4) Local OCC attorney involved in the investigation or case, if different from the requestor;

- 5) Area Director of the primary FSW and his/her direct supervisor (for information purposes only);
  - 6) DCFS Assistant Director of Community Services or designee (for information purposes only); and,
  - 7) Division Director or designee (for information purposes only).
- C. Conduct the internal review of an assessment decision at the reviewed upon time.
- D. Determine, as applicable, if:
- 1) A child in the custody of the Department will be returned to his or her home;
  - 2) The Department will take a 72-hour hold on a child determined by the internal review committee as not able to remain safely in his or her home; or,
  - 3) No action will be taken.
- E. Select a member of internal review committee to notify the following individuals of their decision in writing within two hours of adjournment of the internal review committee:
- 1) DCFS FSW, DCFS Supervisor, or OCC attorney who submitted the request for an internal review of assessment decisions;
  - 2) Primary FSW involved in the investigation and/or case, if different from requestor;
  - 3) Direct DCFS Supervisor of the primary FSW involved in the investigation and/or case, if different from requestor;
  - 4) Local OCC attorney involved in the investigation or case, if different from the requestor;
  - 5) Area Director of the primary FSW and his/her direct supervisor;
  - 6) DCFS Assistant Director of Community Services or designee; and,
  - 7) Division Director or designee.
- F. Determine the timeframe in which any necessary action resulting from the decision will take place, not to exceed twenty-four hours.
- G. Communicate immediately to the applicable individuals via email the tasks that will be completed as a result of the committee's decision to include completion of appropriate documentation in CHRIS.