

TO: The Colorado Bar Association – Elder Law Section and Executive Council, and
Local Bar Associations in Colorado

FROM: Kelley O’Leary and Connie Lind, State Court Administrator’s Office

DATE: February 17, 2022

RE: HB 21-1123 - Colorado Adult Protective Services (CAPS) – CAPS Checks for
Substantiated Mistreatment of an At-Risk Adult

We’d like to take this opportunity to provide a high-level overview of HB 21-1123 – CAPS Checks for Substantiated Mistreatment of an At-Risk Adult and highlight information regarding the new requirements and court processes surrounding this bill.

- Beginning January 1, 2022, the Colorado Department of Human Services (State Department), Colorado Adult Protective Services (CAPS) shall provide the courts the results of a CAPS Check, upon the court’s request, using forms approved by the State Department, to determine if a person who may be appointed (a nominee) as a conservator or guardian of an at-risk adult is substantiated in a case of mistreatment of an at-risk adult. This includes non-professionals as well as professionals (i.e., Public and Deputy Public Administrators, attorneys, professional fiduciaries, etc.) nominated to serve in these roles. It does not include Office of Public Guardianship or Adult Protective Services employees.
- With every petition for the appointment of a conservator and/or guardian filed with the court on or after January 1, 2022, including emergency and special appointments, permanent, and successor appointments, a CAPS Written Authorization Form must also be filed. A CAPS Check Written Authorization Form must be completed and signed by each nominee.
- The court will then process the CAPS Check by entering the information found on the completed CAPS Written Authorization Form into CAPS Community, the CAPS online system. The CAPS Check Results will be sent directly to the court processing the CAPS Check. Both, the CAPS Written Authorization Form and the CAPS Check Results will be **sealed** by the court. Anyone wishing to receive a copy of the completed Form or Results must petition the court, including parties and attorneys of record.
 - **NOTE:** Neither attorneys nor their clients should attempt to register an account with CAPS, nor should they attempt to submit a CAPS Check to CAPS directly. The courts are registered with CAPS and are responsible for processing these CAPS Checks.
 - **NOTE:** A CAPS Check is required for emergency guardianship and special conservatorship cases, however, the court is not required to wait for the CAPS Check process to be completed prior to holding the emergency appointment hearing.

- Within 7 calendar days after the date of the court’s request, CAPS will provide the court with the CAPS Check Results. Results include either:
 - Information concerning the mistreatment, which must include, at a minimum, the date of the substantiated finding, the type and severity of the mistreatment, and the county that investigated the report of mistreatment; or
 - That there are no substantiated findings for the nominee.
- Additionally, CAPS shall disclose to the court that the person substantiated in a case of mistreatment of an at-risk adult has the right to initiate an appeal of the substantiated finding within the timeframe set in the State Department Rules. If the appeal is active at the time CAPS notifies the court of the results of the CAPS Check, CAPS shall inform the court that such appeal is active. CAPS shall not provide the court the information noted above (also specified in Subsection (8.5)(b) of this Section) if the finding about the person was expunged through a successful appeal. (See § 26-3.1-111(8.5)(c), C.R.S.)
- **What does this mean for practitioners?**
 - Whether you are the one being nominated to serve as a conservator and/or guardian of an at-risk adult, or it is your client being nominated, a CAPS Check Written Authorization Form **must** be completed by **each nominee** and **filed with the court**. The court **cannot** accept this form from a business (i.e. Johnson’s Fiduciary Services, etc.). **Each nominee must** complete the form using **their personal information**, including agents for such businesses.
 - If there are multiple nominees in a case, each CAPS Check Written Authorization Form must be uploaded and filed separately, as they must be related to the nominee completing the form. Court staff will relate the CAPS Check Results to the appropriate nominee when received from CAPS.
 - Again, neither attorneys nor their clients should attempt to register an account with CAPS, nor should they attempt to submit a CAPS Check to CAPS directly. The courts are registered with CAPS and are responsible for processing these CAPS Checks
 - Currently, the CAPS Check fee is \$9.00. At this time, the Judicial Department is covering the fee for both non-professional and professional nominees.
 - Court staff have written guidance for processing CAPS Checks.
 - The CAPS Check Written Authorization Form must be filed with **every** petition for the appointment of an adult conservator and/or guardian filed on or after January 1, 2022, including petitions for successor appointments and petitions which name professional nominees. If the form is **not** filed, or is incomplete, court staff will reach out to the attorney of record, advising them of this requirement.
 - Practitioners should contact the court directly with questions regarding CAPS Checks.