

CF OPERATING PROCEDURE
NO. 180-2

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, July 27, 2021

Inspector General

POLICIES AND PROCEDURES OF THE OFFICE OF INSPECTOR GENERAL

This operating procedure describes uniform policies and procedures for the Sections within the Office of Inspector General.

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

KEITH R. PARKS
Inspector General

SUMMARY OF REVISED, DELETED, OR ADDED MATERIAL

Updated all Chapters and Appendix A.

This operating procedure supersedes CFOP 180-2 dated January 2, 2009, and CFOP 60-5, Chapter 6, dated April 10, 2018.

OPR: Inspector General

DISTRIBUTION: X: General Counsel; Regional Managing Directors; Region Legal Counsels; Circuit and Hospital Administrators.

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Appendix A – Receipt of Office of Inspector General Operating Procedure 180-2

Chapter 1

GENERAL

1-1. Purpose and Scope. This operating procedure establishes uniform policies and procedures for the Office of Inspector General (OIG).

1-2. Legal Authority. Section (§) 20.055, Florida Statutes (F.S.), authorizes the OIG to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government. The duties and responsibilities of the OIG include the following:

a. Advise in the development of performance measures, standards, and procedures for the evaluation of state agency programs.

b. Assess the reliability and validity of the information provided by the state agency on performance measures and standards, and make recommendations for improvement, if necessary, before submission of such information pursuant to § 216.1827.

c. Review the actions taken by the state agency to improve program performance and meet program standards and make recommendations for improvement, if necessary.

d. Provide direction for, supervise, and coordinate audits, investigations, and management reviews relating to the programs and operations of the state agency.

e. Conduct, supervise, or coordinate other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.

f. Keep the agency head and the Chief Inspector General (CIG) informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the state agency, recommend corrective action concerning fraud, abuses, and deficiencies, and report on the progress made in implementing corrective action.

g. Ensure effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies with a view toward avoiding duplication.

h. Review, as appropriate, rules relating to the programs and operations of such state agency and make recommendations concerning their impact.

i. Ensure that an appropriate balance is maintained between audit, investigative, and other accountability activities.

j. Comply with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.

1-3. Mission – Enhancing Public Trust in Government. In carrying out OIG investigative duties and responsibilities specified in § 20.055, F.S., the Investigations Section shall initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. The Investigations Section staff shall:

a. Receive complaints and coordinate all activities of the Department as required by the Whistle-blower's Act pursuant to § 112.3187 – § 112.31895, F.S.

b. Receive and consider complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as deemed appropriate. This includes complaints involving alleged violations of state or federal law or violation of rules, regulations, procedures, or contractual matters.

c. Report expeditiously to the Florida Department of Law Enforcement or other law enforcement agencies, as appropriate, when there are reasonable grounds to believe a violation of criminal law has occurred.

d. Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the OIG. This shall include freedom from any interference with investigations and timely access to records and other sources of information.

e. Submit final reports of investigation timely to the Department Secretary and delegated authorities, except for Whistle-blower's Act investigations, which shall be conducted and reported pursuant to § 112.3187 – § 112.31895, F.S.

1-4. Organizational Makeup. The OIG is divided into three sections: Investigations, Audit, and Appeal Hearings.

a. Investigations. The Chief of Investigations supervises the Investigations Section, which consists of an Operations Center (OC) at headquarters and five Regional Investigation offices (Tallahassee, Orlando, Tampa, Miami, and Ft. Lauderdale). A Regional Investigator Supervisor supervises each regional office and reports directly to the Chief of Investigations at the discretion of the Inspector General and the Chief of Investigations.

b. Audit. The Director of Auditing supervises the Internal Audit Section located at headquarters (Tallahassee).

c. Appeal Hearings. The Chief of Appeal Hearings supervises the Appeal Hearings Section at headquarters (Tallahassee) and regional offices.

1-5. Use of Badges and Credentials.

a. The Department shall issue credentials containing a photograph identification card to each individual who is officially employed in the Department's OIG. These credentials will be used to gain access to Department buildings, all restricted areas within the Department, and for identification purposes while individuals are performing the official duties of the position. The credentials will not be used for any other purpose. The credentials are not to be defaced, modified, or reproduced. Staff are individually responsible for safeguarding the credentials issued to them.

b. Badges are issued to investigators to facilitate investigative work by placing emphasis on the nature of the OIG and by adding a professional style to the initial contact between the investigator and the Department, other law enforcement and investigatory agencies, contract providers, and the public. If the badge and credentials are not properly used, these purposes will be defeated at the outset. The following procedures shall be strictly followed in the use of badges:

(1) Badges are to be displayed, **ONLY** upon request, for introduction to a person with whom he/she has OFFICIAL BUSINESS to transact. When displaying the badge, the investigator shall state his/her name, position as an investigator with the Department's OIG, and the purpose of the contact. In some cases, the success or failure of the investigator's endeavor will depend largely on the initial introduction. It should be accomplished in a quiet, polite, and professional manner.

(2) Abuse of the badge will be grounds for immediate disciplinary action. Stated briefly, “abuse” means the use of the badge for personal gain in a frivolous manner.

(3) If an investigator should lose his/her badge, a report of the loss and related circumstance is to be submitted immediately to the Inspector General through the Chief of Investigations.

1-6. Training. It is the responsibility of each supervisor to ensure that all subordinates attend mandatory training for Department employees as required by the Department.

1-7. Dress Code. All personnel are expected to maintain a standard of personal grooming and dress consistent with the prevailing policy or professional business norm. Dress-down days at a Department facility housing OIG personnel may be observed by compliance with the dress code in effect at that facility. If a business meeting is scheduled on a dress-down day, the dress-down day will not be observed.

1-8. News Media Inquiries. Unless the Inspector General delegates the authority, staff are not permitted to agree to an interview by the news media or otherwise release information or materials to the news media. If contacted by a news media representative, staff members must inform the representative that all releases are handled by the Office of Communications (Headquarters) and provide the telephone number to the representative.

1-9. Criminal Investigations. To the extent statutory guidelines permit, information will be shared with law enforcement during the course of the investigation.

1-10. Accreditation Management. Accreditation Management is a management system and orientation program that provides for the administration, maintenance, and follow-up of the investigation accreditation process. All members of the Investigations Section will be familiar with the accreditation process.

a. Responsibility. The Accreditation Manager is empowered with functional staff authority and has direct access to the Chief of Investigations, supervisors, managers, investigators, and all other members whose expertise or authority is needed for the successful operation of the accreditation process.

(1) Manual. Each staff member under the Investigations Section will be provided access to the Office of Inspector General Investigative Unit Directives Manual through PowerDMS. It will be the responsibility of the Chief of Investigations to periodically review the manual and submit recommended changes to the Accreditation Manager.

(2) Continued Compliance. It is the responsibility of the Chief of Investigations to ensure continued compliance with all standards.

(3) Proof of Compliance. Members of the Investigations Section will provide proofs of compliance when requested by the Accreditation Manager. The specific nature of the proof of compliance needed is defined by the Accreditation Manager in accordance with applicable accreditation standards.

b. Accreditation Familiarization. Orientation to the accreditation process is provided to all investigation members.

(1) New Members. Each new staff member will receive accreditation training during their introductory period. The Accreditation Manager or his/her designee will provide the training to include:

- (a) History and background of accreditation;
- (b) Goals and objectives;
- (c) Involvement of and impact upon the Department;
- (d) Advantages of attaining accreditation; and,
- (e) The accreditation process.

(2) Investigations Staff. All members will receive familiarization associated with reaccreditation through memoranda and updates during both the self-assessment and the onsite review.

Chapter 2

STANDARDS OF CONDUCT

2-1. Standards. The OIG staff shall maintain the highest standards of professional and ethical behavior at all times while representing the Department. The standards contained herein shall be supplemental to those specified in the Florida Administrative Code, CFOP 60-55, Chapter 1, "Standards of Conduct and Standards for Disciplinary Action for Department Employees," and pamphlet CFP 60-1, "Employee Handbook." The standards listed below shall be considered as examples and are not an inclusive listing. Violations may result in corrective or disciplinary action. Staff shall:

- a. Exercise honesty, integrity, objectivity, and diligence in the performance of their duties and responsibilities;
- b. Exhibit loyalty in all matters pertaining to the affairs of the State of Florida, the Department, and the OIG;
- c. Not knowingly be a party to any conflict of interest or illegal or improper activity;
- d. Not accept anything of value (as defined in CFOP 60-5, Chapter 5, "Code of Ethics for Public Officers and Employees") which would impair or be perceived as impairing professional judgment in the performance of assigned duties; and,
- e. Inform their supervisor within 24 hours if they are arrested, receive notification of any action that could result in criminal prosecution, or are identified as a subject in an abuse report (in accordance with CFOP 215-6, "Incident Reporting and Analysis System (IRAS);" and CFP 60-1, Employee Handbook, Chapter 3, "Department Employment Policies").

2-2. Code of Ethics. The Code of Ethics for public officers and employees serves to promote and protect the integrity of government by presenting restrictions against conflicts of interest, as well as establishing a means of disclosure for specified financial interest by public officials. It is incumbent upon OIG staff to become knowledgeable concerning their personal responsibility in these areas. Each

employee should become familiar with the contents of § 112.311 – § 112.326, F.S., entitled “Code of Ethics for Public Officers and Employees,” and CFOP 60-5, Chapter 5, “Code of Ethics for Public Officers and Employees.”

2-3. Equal Employment Opportunity Policy. The Department and OIG ensure that each applicant and employee is afforded equal employment opportunity without regard to age, race, color, sex, religion, national origin, genetic information, political opinions or affiliations, military status, marital status, or disability, except when such requirement constitutes a bona fide occupational qualification necessary to perform the tasks associated with the position.

2-4. Non-Discrimination Policy. No person shall, on the basis of race, color, religion, national origin, sex, age, handicap disability, political belief or affiliation, pregnancy, or marital status be excluded from participation in, be denied the benefits of, or be subjected to unlawful discrimination.

2-5. Non-Retaliation Policy. No person shall be retaliated against, harassed, intimidated, threatened, coerced, or discriminated against for making a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing, or for opposing alleged unlawful discriminatory practices prohibited by federal laws.

2-6. Harassment Policy. Harassment based on race, color, religion, national origin, sex, age, handicap disability, political belief or affiliation, pregnancy, or marital status will not be tolerated.

2-7. Americans with Disabilities Act (ADA). People with disabilities are afforded the same access to programs, services, and employment provided to all citizens. Staff are to ensure all meetings, conferences, hearings, training, interviews, eligibility determinations, programs, services, and activities are held in facilities that are accessible.

2-8. Requirements. All OIG staff shall:

a. Treat customers, the public, and staff with courtesy, respect, and dignity, and present a positive image.

b. Keep their supervisor fully informed of their whereabouts, activities, pertinent issues, upcoming events, and potential problems.

c. Demonstrate effective oral and written communication skills in daily work.

d. Support the Section, OIG, and Department, and work with others in an effort to accomplish the goals of the Section, OIG, and Department.

e. Adhere to established safety procedures and practices in the work area.

2-9. Reporting Misconduct. OIG staff who have reason to believe that criminal misconduct or a violation of the Code of Ethics may have been committed by another Department employee, a former Department employee, or any other individual whose acts might affect the Department, shall report this knowledge to the Chief of Investigations through the respective Regional Investigator Supervisor. A written complaint on an OIG staff member shall be made as follows:

a. A written complaint involving OIG personnel that entails allegations of misconduct regarding their duties and responsibilities under § 20.055, F.S., shall be submitted to the Chief of Investigations or directly to the Inspector General in addition to the Department Secretary and the CIG.

b. A written complaint involving the Chief of Investigations shall be reported to the Inspector General, the Department Secretary, and the CIG.

c. A written complaint involving the Inspector General shall be submitted to the Department Secretary and the CIG.

2-10. Reporting Suspected Abuse, Neglect, Abandonment, or Exploitation. All OIG staff are mandated by § 39.201, F.S., to report suspected abuse, neglect, abandonment, or exploitation to the Florida Abuse Hotline (Hotline).

2-11. Attendance and Leave. Staff shall request leave for any anticipated absence to their respective supervisors with as much notice as possible prior to taking leave. The use of annual, compensatory, administrative, some types of sick leave, and the personal holiday require prior approval in accordance with CFP 60-1. Requests for sick leave will be approved in accordance with current personnel rules and operating procedures.

2-12. Travel. To obtain reimbursement for official travel, staff will follow the directions contained in CFOP 40-1, "Official Travel of DCF Employees and Non-Employees." This includes maintaining all forms in accordance with Department rules and policies. The original forms will be maintained by the traveler or as the supervisor designates.

2-13. Equipment. Staff shall be responsible for cellular telephones, laptop computers, and all other Department equipment issued to them. Department equipment shall be maintained in proper working order and used **only** for its intended purpose in accordance with established procedures. (Reference CFP 60-1, "Employee Handbook," CFOP 50-4, "Computer Software Licensing and Copyright Policy," CFOP 50-13, "Internet/Intranet Policy," CFOP 70-6, "Unauthorized Use of State Telephones, State Owned or Leased Cellular Telephones, and Third-Party Billing," and CFOP 80-2 "Property Management," etc.). Staff shall secure and care for all Department equipment issued to them and protect the equipment from abuse, damage, neglect, or loss. Equipment that becomes damaged or lost will be reported immediately to their Chief/Director of their respective section or the Inspector General.

2-14. Duty Hours. Staff will submit his/her regularly scheduled work hours to the appropriate supervisor. Lunch periods and breaks will be in accordance with the Employee Handbook. Staff are expected to adhere to the approved schedule, unless a change is approved by their supervisor, and to follow Department policies regarding the use of leave.

Chapter 3

INVESTIGATIONS SECTION

3-1. Purpose. This operating procedure establishes uniform policies and procedures for the Investigations Section, OIG, and Department.

3-2. Scope.

a. Each investigator represents the Inspector General and has been delegated the full authority by the Department Secretary to conduct independent investigations in compliance with the policies and procedures contained herein, enter facilities, and secure and review all records, data, and other information of the Department. Investigators are not law enforcement officers, do not have arrest or search powers, and cannot conduct custodial interviews. Investigators are not involved in the administering of disciplinary action that is based upon the findings of OIG investigations.

b. The Regional Investigator Supervisor and Chief of Investigations with the concurrence of the Inspector General, will recommend the hiring and termination of staff in compliance with CFOP 60-25,

Chapter 1, "Recruitment and Selection," and CFOP 60-55, Chapter 1, "Standards of Conduct and Standards for Disciplinary Action for Department Employees."

3-3. Legal Authority. Pursuant to § 20.055(7), F.S., the Inspector General shall initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. In carrying out the investigative duties and responsibilities, the Inspector General shall:

- a. Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act pursuant to ss. [112.3187](#)–[112.31895](#), F.S.
- b. Receive and consider the complaints which do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate.
- c. Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, whenever the inspector general has reasonable grounds to believe there has been a violation of criminal law.
- d. Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This shall include freedom from any interference with investigations and timely access to records and other sources of information.
- e. At the conclusion of each investigation in which the subject of the investigation is a specific entity contracting with the state or an individual substantially affected as defined by this section, and if the investigation is not confidential or otherwise exempt from disclosure by law, the inspector general shall, consistent with s. 119.07(1), F.S., submit findings to the subject that is a specific entity contracting with the state or an individual substantially affected, who shall be advised in writing that they may submit a written response within 20 working days after receipt of the findings. Such response and the inspector general's rebuttal to the response, if any, shall be included in the final investigative report.
- f. Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head, except for whistle-blower's investigations, which shall be conducted and reported pursuant to s. [112.3189](#), F.S.

3-4. Processing Complaints. Complainants are generally persons with a personal interest in the matter they are reporting and are to be treated with respect and dignity at all times.

- a. Each complaint received in the OIG is reviewed for investigative need and tracked to completion. Allegations within each complaint are screened to determine whether the facts suggest possible misconduct by a Department or provider employee. Complaints that represent management issues or concerns that will be resolved through management intervention will be referred to the appropriate Department or office, such as circuit administration, other Department managers, or other state agencies for investigation or review.
- b. Allegations of significant waste, fraud, abuse, employee misconduct, malfeasance, or misfeasance may be assigned for investigation.
- c. Complaints and requests for investigations are received via telephone, letters, faxes, emails, and in person. Requests come from a variety of sources such as:

- (1) The CIG and other state Offices of Inspector General;

- (2) Legislators;
- (3) The Department Secretary, managers, administrators, and employees;
- (4) State Hotlines;
- (5) Department clients; or,
- (6) The public.

d. When feasible, the complainant should be thoroughly interviewed to obtain all available and relevant information.

e. All complaints within the jurisdiction of the OIG will be reviewed at the beginning of the complaint process for possible Whistle-blower status. If Whistle-blower protection is requested on behalf of the complainant, a Whistle-blower Complaint Determination Form will be completed in accordance with Chapter 112, F.S., and CIG protocols. Designation as a Whistle-blower ensures that the complainant's identity is protected when reporting violations of federal, state, or local laws, rules, or regulations that create and present substantial and specific danger to the public's health, safety, or welfare and includes acts of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty.

f. All responses to Management Inquiries will be assessed for sufficiency to ensure that resolution or correction has occurred. If the response adequately addresses the allegations, the complaint is closed and the complainant is advised of the outcome to the extent confidentiality guidelines permit. If a response does not adequately address the allegation(s), the responding entity will be asked to respond again until the allegation(s) is addressed satisfactorily. If at any time a complaint response suggests that further investigation is necessary, the complaint is referred to the appropriate OIG regional office for full investigation. When deemed necessary, allegations regarding policy violations or inappropriate application of Department policies may be referred to the appropriate policy unit for expert consultation.

g. Generally, the Inspector General does not investigate allegations regarding provider employees where the allegation does not directly involve a violation of state rule or state statute of the provider's contractual obligations. Staff may accept such complaints and recommend that the matter be referred to the appropriate office, agency, or provider for further handling. (See CFOP 180-4 for the types of incidents and allegations that require mandatory reporting.)

3-5. Documenting. A complaint received by the OIG shall be documented in the Investigations and Complaint Management System (ICMS).

3-6. Control Numbers. A sequential control number for each complaint is automatically assigned in ICMS.

3-7. The Investigative Process. Investigations Section staff will conduct investigations within timeframes established by the Chief of Investigations and Inspector General and outlined in the Investigative Directives Manual. This includes:

- a. Reviewing records, contracts, and other source documents for accuracy.
- b. Interviewing witnesses.
- c. Preparing detailed reports of investigation in proper format as outlined in the Investigative Directives Manual.

- d. Preparing memorandum and written communication, as required.
- e. Serving as liaison with local law enforcement.
- f. Providing testimony, as required.
- g. Briefing managers on investigative matters.
- h. Prioritizing assigned investigations, as appropriate.
- i. Maintaining case management and tracking records thoroughly, timely, and consistently.
- j. Adhering to the Whistle-blower's Act and complying with confidentiality requirements.
- k. Serving as members of investigative teams, committees, workgroups, and task forces, as assigned.
- l. Conducting outreach presentations to Department and provider employees.

3-8. Types of Cases. The Inspector General may conduct an investigation, during which all leads are comprehensively addressed and followed. Management reviews may be conducted when the office receives multiple or serious allegations suggesting that management is not addressing internal problems or that a systemic problem exists.

a. Investigations. Complaints that may lead to an investigation are received directly from complainants, outside agencies, or intra-Department referrals. Allegations that may warrant an investigation include the following:

(1) Allegations of suspected or confirmed breaches of confidentiality by a state employee or provider employee unless inadvertent and self-reported.

(2) Allegations of falsification of official records, not including minor leave discrepancies or errors. Alleged falsification of client records or travel vouchers by a Department employee requires some investigation by the Investigations Section to determine if there is sufficient reason to suspect that criminal law has been violated. If during the investigation, information is obtained that constitutes reasonable grounds to believe there has been a violation of criminal law, a law enforcement agency will be notified.

(3) Allegations of creating false or fictitious client files.

(4) Allegations of misuse of position, employees, equipment, or supplies for personal gain or profit.

(5) Allegations of intentional violations of rules, regulations, or policy, which result in serious damage or are detrimental to the Department.

(6) Allegations of failure to report known or suspected neglect or abuse of a client.

(7) Allegations of contracting or purchasing improprieties, by the Department or provider staff, that result in improper expenditures of public funds, etc.

b. Management Reviews. The Inspector General or Chief of Investigations may initiate a management review when multiple or serious allegations are received indicating management is not addressing problem areas or that a systemic issue exists. Such reviews are conducted in accordance with internal management review guidelines and require the approval of the Inspector General.

Findings are reported and recommendations for correction are made to senior management. Corrective measures are requested and tracked to completion.

3-9. Whistle-blower Cases. Whistle-blower protection ensures that the complainant's identity is protected when reporting violations of federal, state, or local laws, rules, or regulations that create and present substantial and specific danger to the public's health, safety, or welfare and includes acts of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty.

3-10. Writing Investigative Reports. Reports shall be written in accordance with the guidelines outlined in the Investigative Directives Manual.

3-11. Investigations and Complaint Management System (ICMS). This resource was established to serve as an automated management tool for tracking all investigative correspondence, public records requests, and investigations. The system contains a wide variety of fields, allowing quick retrieval of complaint and investigative information. In addition, various reports are produced using the system. The overall efficiency of the system is dependent upon the timely and accurate input of data by staff. Staff are required to adhere to the timeframes established for timely and accurate data input.

3-12. Correspondence. All correspondence is logged into ICMS. A control number is automatically generated upon entry of a correspondence. The correspondence is reviewed, assigned, and provided a due date. The correspondence is tracked through completion.

3-13. Investigations. A specific case number will be automatically assigned to each investigation when entered into ICMS. General information is entered and reviewed by the Chief of Investigations. The Chief of Investigations assigns the case to a specific Regional Investigator Supervisor, who will then assign the case to a specific investigator. The investigator is responsible for updating the case file as the investigation progresses. The case Status section should be updated by the Regional Investigator.

NOTE: Detailed instructions regarding ICMS are located in the Investigations and Complaint Management System User Manual.

3-14. Notification of Testifying. Upon receipt of a subpoena or summons to testify at a hearing, trial, or deposition, the investigator will notify his/her supervisor. The document will be forwarded to the Office of the General Counsel for coordination with the other involved attorneys.

3-15. Prior to Testifying. The subpoenaed or summoned investigator should meet with the designated Office of the General Counsel attorney, as appropriate, before testifying for a briefing on testifying. In addition to reading the applicable investigative file, the subpoenaed or summoned investigator should review all relevant documents and be fully prepared to testify.

3-16. Release of Investigative Files or Documents. All requests for release of investigative files, documents, or reports MUST be processed through the public records custodian or their supervisor, who will request a legal review (if needed) of the material by the Office of the General Counsel prior to release.

3-17. Including Written Response in Final Investigative Report for Some Investigations. In accordance with § 20.055(7)(e), F.S., at the conclusion of each investigation in which the subject of the investigation is a specific entity contracting with the state or an individual substantially affected, as defined by this statute, and if the investigation is not confidential or otherwise exempt from disclosure by law, the Inspector General shall, consistent with § 119.07(1), F.S., submit the findings to the subject that is a specific entity contracting with the state or an individual substantially affected, who shall be advised in writing that they may submit a written response within 20 working days after receipt of the

findings. Such response, if any, and the Memorandum of Rebuttal to Subject Response, if any, shall be included in the final investigative report.

3-18. Allegations of Misconduct by Employees of the Office of Inspector General. In accordance with § 20.055(8), F.S., the Inspector General in each agency shall provide to the agency head, upon receipt, all written complaints concerning the duties and responsibilities in this section or any allegation of misconduct related to the OIG or its employees, if received from subjects of audits or investigations who are individuals substantially affected or entities contracting with the state, as defined in this section. The Inspector General shall also provide the complaint to the CIG.

Chapter 4

INTERNAL AUDIT SECTION

4-1. Purpose and Scope.

a. To conduct financial, performance, and compliance audits of all systems, processes, programs, operations, functions, and financial activities, as required by § 20.055, F.S., in accordance with the International Professional Practices Framework (IPPF), as published by the Institute of Internal Auditors, Inc. and/or the Government Auditing Standards, as published by the Government Accountability Office.

b. To ensure consistent application of administrative policies and procedures.

c. To ensure on-going scrutiny of financial operations and internal controls.

d. To provide Departmental management information necessary on which to base operational and programmatic decisions.

4-2. Legal Authority. § 20.055(6), F.S., in carrying out the audit duties and responsibilities of this act, each Inspector General shall review and evaluate internal controls necessary to ensure fiscal accountability of the state agency. The Inspector General shall conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The scope and assignment of the audits shall be determined by the Inspector General; however, the agency head may at any time request the Inspector General to perform an audit of a special program, function, or organizational unit. The performance of the audit shall be under the direction of the Inspector General, except that if the Inspector General does not possess the qualifications specified in subsection (4), the Director of Auditing shall perform the functions listed in this subsection.

a. Such audits shall be conducted in accordance with the current International Standards for the Professional Practice of Internal Auditing as published by the Institute of Internal Auditors, Inc., or, where appropriate, in accordance with generally accepted governmental auditing standards. All audit reports issued by internal audit staff shall include a statement that the audit was conducted pursuant to the appropriate standards.

b. Audit workpapers and reports shall be public records to the extent that they do not include information which has been made confidential and exempt from the provisions of §119.07(1), F.S., pursuant to law. However, when the Inspector General or a member of the staff receives from an individual a complaint or information that falls within the definition provided in § 112.3187(5), F.S., the name or identity of the individual may not be disclosed to anyone else without the written consent of the

individual, unless the Inspector General determines that such disclosure is unavoidable during the course of the audit or investigation.

c. The Inspector General and the staff shall have access to any records, data, and other information of the state agency he or she deems necessary to carry out his or her duties. The Inspector General may also request such information or assistance as may be necessary from the state agency or from any federal, state, or local government entity.

d. At the conclusion of each audit, the Inspector General shall submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit who shall respond to any adverse findings within 20 working days after receipt of the preliminary findings. Such response and the inspector general's rebuttal to the response shall be included in the final audit report.

e. In accordance with § 20.055(6)(e), F.S., at the conclusion of an audit in which the subject of the audit is a specific entity contracting with the state or an individual substantially affected, if the audit is not confidential or otherwise exempt from disclosure by law, the Inspector General shall submit the findings to the entity contracting with the state or the individual substantially affected, who shall be advised in writing that they may submit a written response within 20 working days after receipt of the findings. The response and the Inspector General's rebuttal to the response, if any, must be included in the final audit report.

f. The Inspector General shall submit the final report to the agency head, the Auditor General, and, for state agencies under the jurisdiction of the Governor, the CIG.

g. The Auditor General, in connection with the independent post-audit of the same agency pursuant to § 11.45, F.S., shall give appropriate consideration to internal audit reports and the resolution of findings therein. The Legislative Auditing Committee may inquire into the reasons or justifications for failure of the agency head to correct the deficiencies reported in internal audits that are also reported by the Auditor General and shall take appropriate action.

h. The Inspector General shall monitor the implementation of the state agency's response to any report on the state agency issued by the Auditor General or by the Office of Program Policy Analysis and Government Accountability. No later than six months after the Auditor General or the Office of Program Policy Analysis and Government Accountability publishes a report on the state agency, the Inspector General shall provide a written response to the agency head or, for state agencies under the jurisdiction of the Governor, the CIG on the status of corrective actions taken. The Inspector General shall file a copy of such response with the Legislative Auditing Committee.

i. The Inspector General shall develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include post-audit samplings of payments and accounts. The plan shall show the individual audits to be conducted during each year and related resources to be devoted to the respective audits. Audit plans shall be submitted to the CIG. The plan shall be submitted to the agency head for approval. A copy of the approved plan shall be submitted to the Auditor General.

4-3. Specific Procedures.

a. Responsibility for Internal Auditing.

(1) In accordance with Florida Statutes, the Inspector General, appointed by the CIG and under the general supervision of the Secretary of the Department for administrative purposes, will be responsible for the management of the internal audit function.

(2) The Director of Auditing, in coordination with the Inspector General, will review and evaluate internal controls to ensure fiscal accountability, conduct audits, and prepare audit reports.

b. Administration.

(1) On an annual basis, Department activities, operational units, and programs will be reviewed using a risk-based approach that considers input from management, internal and external assurance report findings, and OIG assessment using other quantitative and qualitative factors. This assessment will become the basis of the annual audit plan.

(2) The primary consideration of the audit plan is to provide the greatest possible coverage of the Department's vulnerable areas using the available audit resources. Audits will be scheduled for inclusion in an audit plan and will be conducted in accordance with applicable Standards. Any special audit request will receive prompt consideration. The Secretary may request the Inspector General to perform an audit. The scope and assignment of audits will be determined by the Director of Auditing in consultation with the Inspector General, as necessary.

(3) As representatives of the OIG and in order to perform their duties, internal auditors are authorized to have full, free, and unrestricted access to all Departmental functions, records, property, and personnel.

(4) The auditor-in-charge will conduct an entrance conference with management of the audited activity. The purpose of this conference is to communicate the preliminary audit scope, objectives, logistics, and address any management concerns.

(5) The auditor(s) will conduct an exit conference with management of the audited activity. The exit conference will generally take place at the conclusion of audit fieldwork and prior to the issuance of the draft report. If an issue requires immediate attention, management will be notified during the course of the audit so that appropriate action can be taken.

(6) A draft report of preliminary and tentative findings and recommendations, where appropriate, will be distributed for comment. Responsible management will respond in writing to all findings within twenty (20) working days after receipt as required by § 20.055, F.S. The response will be included as part of the audit report.

(7) In accordance with § 20.055(6)(e), F.S., at the conclusion of an audit in which the subject of the audit is a specific entity contracting with the state or an individual substantially affected, if the audit is not confidential or otherwise exempt from disclosure by law, the inspector general shall, consistent with §119.07(1), F.S., submit the findings to the entity contracting with the state or the individual substantially affected, who shall be advised in writing that they may submit a written response within 20 working days after receipt of the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report.

(8) In accordance with § 20.055(8), F.S., the Inspector General in each agency shall provide to the agency head, upon receipt, all written complaints concerning the duties and responsibilities in this section or any allegation of misconduct related to the OIG or its employees, if received from subjects of audits or investigations who are individuals substantially affected or entities contracting with the state, as defined in this section. The Inspector General shall also provide the complaint to the CIG.

(9) The Audit Section will conduct follow-up inquiries to ensure corrective actions are adequate to achieve satisfactory disposition of findings noted in audit reports.

(10) The Audit Section must be notified immediately of any work being conducted at any Departmental location by external auditors (i.e., Auditor General, OPPAGA, and federal auditors, etc.).

This notification should include complete information relating to the scope of work, opinions expressed, and findings presented by the external auditors. A representative for the Audit Section will attend external audit entrance and exit conferences, as appropriate.

(11) A draft report of preliminary and tentative findings and recommendations, where appropriate, will be distributed for comment. For Auditor General reports, management will respond in writing to all findings within thirty (30) calendar days after receipt as required by § 11.45(4)(d), F.S. For OPPAGA reports, as required by § 11.51(2), F.S., OPPAGA may request management to submit the written statement of explanation or rebuttal within fifteen (15) days after the receipt of the findings. If the response time is not requested to be within 15 days, management shall submit the response within thirty (30) days after receipt of the preliminary findings. The responses will be included as part of the final report. For federal reports, management will respond in writing to all findings within thirty (30) calendar days after the date of the cover letter, or, if applicable, the postmark or receipt date.

(12) The Audit Section will be responsible for monitoring compliance with the Auditor General's and OPPAGA's recommendations within the Department and will coordinate any required follow-up responses.

c. Audit Procedures Manual. The Director of Auditing will maintain technical instructions to be published under separate cover. These instructions will provide details on how the internal audit function of the Department achieves uniformity in its method of operating and in discharging its responsibilities in compliance with the Standards. Technical instructions will contain the specific directions and application of auditing standards for the organization and administration of the Audit Section.

Chapter 5

APPEAL HEARINGS SECTION

5-1. Purpose. This operating procedure establishes responsibilities and procedures for the conduct of fair hearings under the jurisdiction of the Appeal Hearings Section. The Appeal Hearings Section follows specific laws, regulations, and rules in its operations and this operating procedure includes parts of these rules and the procedure implementation. All information contained in this operating procedure is for the purpose of implementing these laws, regulations, and rules and may not be interpreted to amend or invalidate any law, regulation, or rule.

5-2. Program Scope.

a. The Department is required to provide an opportunity for a hearing to any applicant or recipient when Department action, or failure to act, would adversely affect the individual's or family's eligibility for, or amount of, any type of financial assistance, Medicaid Program benefits, social services, or Supplemental Nutrition Assistance Program (SNAP) benefits; or where action on a claim for such assistance or service is unreasonably delayed. The Department may contract with a provider to provide services. These providers may have authority to take action and send notices of those actions to the applicant or recipient that affect the applicant's or recipient's eligibility for the service. Applicants or recipients will have the same opportunity to appeal actions taken by a provider in the place of the Department. Additionally, SNAP and Temporary Cash Assistance (TCA) Program staff initiate administrative disqualification hearing requests for the purpose of disqualifying an individual from receiving program benefits when intentional program violations have been proven by clear and convincing evidence.

b. The Appeal Hearings Section is generally limited under § 120.80, F.S., to conducting hearings for those social and economic programs that were administered by the Division of Family Services of the former Department of Health and Rehabilitative Services prior to the 1974 reorganization effected by chapter 75-48, Laws of Florida. Subsequent to the reorganization, some of the programs that were a part of the old Division of Family Services have been transferred in whole or in part to other state agencies. The office continues to conduct hearings for these programs by inter-agency agreements with the new agencies. These programs are generally federally funded assistance programs under the Social Security Act and the Food Stamp Act. The Department also administers a number of programs which are funded by general revenue; OSIH has no jurisdiction for programs funded by general revenue. Hearings for these programs are either completed informally within the Department or referred to the Division of Administrative Hearings within the Department of Management Services. The Appeal Hearings Section holds hearings for the following programs which were a part of the Division of Family Services prior to the 1974 reorganization:

- (1) Temporary Cash Assistance (TCA).
- (2) Supplemental Nutrition Assistance Program (SNAP).
- (3) Special Supplemental Food Program for Women, Infants and Children (WIC).
- (4) Medicaid Program related to eligibility.
- (5) Optional State Supplementation (OSS).
- (6) Title IV-E Adoption Assistance, Foster Care Maintenance Payments, and Child and Family Services' payment programs such as Independent Living.
- (7) Refugee Assistance Program (RAP).
- (8) Child Support Enforcement (CSE) activities limited to federal income tax interception and state collected payment distribution and passport denials.

c. In addition to the hearings conducted under the exemption appearing in § 120.80, F.S., the section also conducts nursing facility discharge hearings in accordance with § 400.0255, F.S., and Title 42 of the Code of Federal Regulations (C.F.R.) § 431.200. OSIH conducts hearings for the Agency for Persons with Disabilities (APD) related to the iBudget Medicaid Waiver Program.

5-3. Legal Authority. §§ 120.80(7), F.S. and 409.285(1), F.S., provide the general hearing authority for the Appeal Hearings Section. Specific hearing authority for each program is as follows:

- a. TCA. Chapter 65-2, Florida Administrative Code (F.A.C.) and 45 C.F.R § 205.10.
- b. SNAP. Chapter 65-2, F.A.C., Title 7 C.F.R. § 273.15 (Fair hearings), and Title 7 C.F.R. § 273.16 (Disqualification for intentional Program violations).
- c. WIC. Title 7 C.F.R. § 246.9.
- d. Medicaid. Chapter 65-2, F.A.C. and 42 C.F.R. § 431.200.
- e. OSS. Chapter 65-2, F.A.C.
- f. Title IV-E Adoption Assistance. Rule 65C-16.013(2)(c), F.A.C., and 45 C.F.R. §§ 205.10, 213.1-33.

- g. Extended Foster Care (EFC) Program. Rule 65C-41.006, F.A.C.
- h. Guardian Assistance Program (GAP). Rule 65C-44.003(5), F.A.C., and § 39.6251, F.S.
- i. Road-to-Independence Programs (RTI). Rule 65C-42.004, F.A.C., and § 409.1451(4), F.S.
- j. RAP. Chapter 65-2, F.A.C., and 42 C.F.R. § 400.53(b).
- k. CSE. Title 45 C.F.R. § 303.
- l. APD. § 393.125(a), F.S.
- m. Nursing Facilities. Title 42 C.F.R. § 483.15 and § 400.0255, F.S.

5-4. Organization and Administration. The Appeal Hearings Section is located at headquarters in Tallahassee. Hearing officers are located throughout the state.

5-5. Program Office/Department Responsibilities. The Appeal Hearings Section holds hearings for individuals regarding specific program benefits or services. It is the responsibility of the involved central program offices or Department (e.g., Economic Self-Sufficiency, Child Welfare, Agency for Persons with Disabilities, Department of Health, Department of Elder Affairs, APD, and the Department of Revenue) to send notice to the Appeal Hearings Section any time there is a change in law, regulation or rule that would affect an appeal.

5-6. Right to Request a Hearing.

a. Any applicant or recipient dissatisfied with the Department's action or failure to act has a right to request a hearing at any time.

b. The Department may initiate a request for a SNAP/TCA administrative disqualification hearing when it believes an individual has committed an intentional Program violation.

5-7. Definition of Request for Hearing. A request for hearing is defined as any clear written or oral statement to the Department that the applicant/recipient or his authorized representative wants an opportunity to present his case to a higher authority. The freedom to make such a request must not be limited or interfered with in any way.

EXCEPTION: APD hearing requests must be made in writing.

5-8. Date of Request. The date of the request for a hearing is the date the request is received by the Department. The Department must date the request when received.

5-9. Filing the Request. A Request for Hearing may be made by the applicant/recipient or someone on his/her behalf. However, if the appeal is filed by someone other than the applicant/recipient, attorney, legal guardian, spouse, next of kin, or a person allowed by the Department as an authorized representative to participate in the eligibility determination, the person making the appeal must have written authorization of the applicant/recipient. Such written authorization must accompany the Hearing Request. Should the request be filed without the written authorization, the authorization must be provided in response to a request from the Department or hearing officer, prior to the appeal going forward. Without prior proper written authorization, OSIH will treat a request for hearing as being made by someone not authorized to do so and the appeal will be dismissed. A hearing request for the APD Medicaid Waiver program must initially be submitted to APD and then forwarded to OSIH.

5-10. Time Limits in Which to Request Hearings.

a. The right to appeal must be exercised within ninety (90) calendar days of the written notice in all programs with the following exceptions:

(1) For SNAP, a household may request a fair hearing at any time within a certification period to dispute its current level of benefits.

(2) Adoption Subsidy appeals must be requested within twenty-one (21) days of receipt of the notice.

(3) APD, CSE Distribution, EFC, RTI Programs, and GAP appeals must be requested within thirty (30) days of receipt of the notice.

(4) WIC appeals must be requested within sixty (60) days.

b. The time limitation does not apply when the Department fails to send required notification, fails to take action on a specific request, or denies a request without informing the appellant. If the notice is not mailed on the date on the notice, the time period commences on the date it is mailed.

5-11. Rejection of a Hearing Request. A hearing request may only be rejected by a hearing officer.

5-12. Submission of Request for Hearing.

a. All hearing requests must be sent to the Appeal Hearings Section within three (3) working days, excluding holidays and weekends, along with a copy of the Notice of Case Action to identify the issue under appeal. Any evidence filed with the Appeal Hearings Section must also be copied to the Petitioner.

b. Requests for SNAP/TCA administrative disqualification hearings are submitted by the Department as the Department is the Petitioner.

c. When the hearing request is received by the Appeal Hearings Section directly from the Petitioner, the Appeal Hearings Section will notify the Department so that preparation for the hearing can begin.

5-13. DCF Supervisory Review upon Request for Hearing.

a. Upon request for a hearing, a supervisory review of the issue being appealed is mandated by Rule 65-2.049(2), F.A.C. The supervisor should schedule a conference with the individual. The supervisor should advise the individual the conference is optional and does not replace or delay the hearing process. Should an error be discovered during this process, immediate action must be taken to rectify it, and the appellant be advised. The supervisory interview may satisfy the appellant regarding his/her case so that a request for hearing is withdrawn.

b. the Appeal Hearings Section must be notified immediately when the review results in the change of status of the case. If the appellant is satisfied with this adjustment and/or explanation by the Department's representative, the appellant will be given the opportunity to withdraw the request. If the appellant chooses to withdraw the appeal, he will be requested to make a written statement to this effect, stating the reason for the withdrawal. However, if the appellant declines to make a written statement, the Department's representative will immediately notify the Appeal Hearings Section in writing of the appellant's decision. A verbal request to withdraw a Medicaid-related appeal will be accepted. The hearing officer will contact the Department if further action is required on the appeal.

5-14. Eligibility for Continued Benefits. All actions to reduce or cancel benefits or services will be reviewed by the Department to determine whether the client's appeal was filed within the program-specific time frame, which would require or allow the Department to continue benefits or services. The Department will take proper action to continue benefits or services as required or authorized by the various programs, including APD.

5-15. Access to Case Record Information. The Department will prepare an evidence packet at least seven days prior to the hearing and provide a copy to the Petitioner and the hearing officer. A Certificate of Service is to be provided to show the hearing officer who was provided a copy and how the copy was provided. If additional information is needed, the Department will supplement the record, again providing a copy to Petitioner. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to inspect or challenge will not be introduced at the hearing or affect the hearing officer's decision.

5-16. Ex Parte Communication. Ex parte communication between the hearing officer and either party to the hearing regarding the merits of the appeal is expressly prohibited by § 120.66, F.S. Any information relative to the merits of the case provided to a hearing officer other than on record must be provided in written form and at the same time copied to the other party to the appeal or their attorney/representative.

5-17. Transportation for Appellant to Hearing. The Department or the Agency has the responsibility of assuring that the customer has transportation to the hearing, when an in-person hearing is scheduled, and if requested by the Petitioner.

5-18. Advance Notice of Hearing.

a. The appellant will be afforded an opportunity for a hearing after a reasonable notice of not less than nineteen (14) days; however, the fourteen-day notice requirement may be waived with the consent of all parties.

b. Notice of no less than thirty (30) days is required for SNAP/TCA administrative disqualification hearings.

5-19. Content of Notice of Hearing. The notice must include:

a. A statement of the date, time and place of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. The name, address, and phone number of the person to notify in the event it is not possible for the appellant to attend the scheduled hearing.

d. A statement that the Department will dismiss the hearing request if the appellant or his representative fails to appear for the hearing without good cause, except for SNAP/TCA administrative disqualification hearings, as these hearings are conducted in the recipient's absence.

e. Reference to the Department's hearing procedures and other information that might provide the appellant with an understanding of the proceeding and may contribute to the effective presentation of the appellant's case.

f. Statements explaining that the household or representative may examine the case file prior to the hearing. However, with the current telephonic hearings, evidence is provided pre-hearing and there is typically no need for this type of request.

5-20. Group Hearings. The Appeal Hearings Section may respond to a series of individual requests for hearings by conducting a single group hearing. Hearings requested by more than one person may be heard at the same time only when the sole issue is one of state or federal law or policy or change in state or federal law. In all group hearings, the procedures governing hearings must be followed. Each individual appellant will be permitted to present their own case or to be represented by his authorized representative. While there is a provision for group hearings, in very limited situations, the concern for confidentiality prevents scheduling hearings in this manner.

5-21. Consolidating Requests for Hearing. In the situation where one individual has multiple appeals involving different programs, the office practice is to consolidate these and conduct one hearing to address each program action under appeal.

5-22. Place of Hearing. The majority of hearings are conducted telephonically. When requested, an in-person or video hearing is scheduled.

5-23. Discovery. To the extent the rules of discovery in the Florida Rules of Civil Procedure are not inconsistent with Chapter 120, F.S., the rules of discovery of the Florida Rules of Civil Procedure will be applicable. The hearing officer may issue appropriate orders to effectuate the purpose of discovery and to prevent delay.

5-24. Subpoenas.

a. Subpoenas may be issued pursuant to the statutory authority of the Department in Chapter 120, F.S. Subpoenas can be requested by contacting OSIH.

b. Any party or person against whom a subpoena is directed may file a motion to quash or limit the subpoena. Motions must set forth the grounds relied on to support the motion.

c. The service and completion of the subpoena must be in accordance with Chapter 120, F.S. Additionally, witness fees must be tendered in accordance with Section 120.58, F.S.

5-25. Continuances and Postponements.

a. The hearing officer, at his discretion, may grant a continuance of a hearing for good cause or upon stipulation of all parties of record.

b. In appeals related to SNAP, the household may request and is entitled to receive one postponement of the scheduled hearing. Postponements will not exceed thirty (30) days and the time limit for action on the decision may be extended for as many days as the hearing is postponed.

5-26. Request for Informal Hearing. The hearing is a formal proceeding and will be conducted pursuant to the rules appearing in Chapter 65-2, F.A.C. At the request of the appellant, the hearing may be conducted as an informal proceeding pursuant to § 120.57(2), F.S.

5-27. Safeguarding Confidentiality. Federal regulations require that public assistance records shall be confidential. The hearings are only open to a party or witness, except as provided in federal regulation.

5-28. Request to Disqualify A Hearing Officer.

a. The hearing officers are members of the staff of the Appeal Hearings Section and are impartial officials who have not been directly involved in the action in question.

b. Unless consented to by the Appeal Hearings Section, all motions to disqualify the hearing officer pursuant to § 120.665, F.S., must be made at least five (5) days prior to the proceeding. A party

may, however, move to disqualify at any time for the causes provided in § 120.665, F.S., if the appellant was previously unaware of the matter causing disqualification.

5-29. Representatives for the Appellant and the Department.

a. A person may be represented by an attorney, or other qualified representative, or may appear on his own behalf.

b. An authorized representative appearing at the hearing in place of the appellant is required to have a written statement from the appellant authorizing him to act in his behalf. If the representative does not have this statement by the time of the hearing, the request for hearing will be denied.

c. A representative of the Department must attend the hearing. This representative must be prepared to present evidence necessary to resolve the issue under appeal and refer to the particular Department rules, which were used in making the determination under appeal.

d. SNAP regulations allow the attendance of friends or relatives of the household if the household so chooses. The hearing officer has the authority to limit the number of persons in attendance if space limitations exist.

5-30. Opening and Closing Statements. Opening and closing statements may be presented.

5-31. Presentation of Evidence.

a. Oral evidence will be taken only by oath or affirmation.

b. Each party will have the right:

(1) To present evidence relevant to the issue;

(2) To bring witnesses;

(3) To cross-examine witnesses on any matter relevant to the issue;

(4) To impeach any witness, regardless of which party first called him to testify; and,

(5) To rebut the evidence presented against him, through the introduction of rebuttal evidence or testimony.

5-32. Motions. All motions must be made in writing unless made on the record during the hearing and must fully state the action requested and the grounds relied on. The rules regarding filing written notice appear in Rule 65-2.057(7), F.A.C.

5-33. Relevant Issues Presented at a Hearing.

a. One of the major purposes of the fair hearing is to develop a full and complete record. By rule, the hearing officer is required to request, receive, and make a part of the record information determined necessary to decide the issues being raised. The hearing officer must be actively involved in the evidentiary portion of the hearing. The hearing officer may ask questions of the parties during the evidentiary presentation for the purposes of clarifying evidence and, at the end of the presentation, will conscientiously inquire into and explore any relevant facts not adequately covered. This is done on the behalf of both parties and ensures that both favorable and unfavorable facts and circumstances are made part of the record. Rule 65-2.56, F.A.C., "Basis of Hearings," provides for a hearing to include consideration of the following:

(1) Any Department action, or failure to act with reasonable promptness, on a claim of financial assistance, social services, medical assistance, or SNAP benefits, which includes delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination, or reduction in assistance.

(2) Any Department decision regarding eligibility for financial assistance, social services, medical assistance, or SNAP benefits in both initial and subsequent determination, the amount of financial or medical assistance or a change in payments.

b. The decision is made to determine whether the action by the Department was correct at the time the action was taken.

5-34. Rehearing or Reconsideration. A hearing officer will not grant a motion for rehearing or reconsideration. However, should the respondent file and the hearing officer approve a good cause claim for failure to appear for an ADH hearing within ten (10) days of the date of the hearing, the matter will be reheard.

5-35. Transcript. The proceeding is electronically recorded. On request of any party, the Department will make available a transcript of the recording at actual cost; or, at the option of the requesting party, a reproduction of the recording. The method of recording will be at the option of the hearing officer. A party may provide, at its own expense, a record of the proceeding. If either party files a motion offering a transcript for the proceeding, the hearing officer may accept the transcript, reject or return it for correction.

5-36. Good Cause Claims.

a. Abandonment will be deemed to have occurred if the appellant or his authorized representative, without good cause, fails to appear at the hearing. The Department must transmit to the hearing officer, for his consideration, any claim of good cause the appellant may make to the Department for his failure to appear at his scheduled hearing. The hearing officer will make a determination of whether good cause existed; and if good cause is shown, the hearing will be rescheduled.

b. The SNAP/TCA administrative disqualification hearing process provides for the hearing to be held in the absence of the client; however, if the client can show good cause for failure to appear within ten (10) calendar days from the date of the hearing, the decision will be invalidated, and the hearing reconvened in accordance with Title 7 of the C.F.R. § 273.16.

5-37. Submission of Evidence after the Hearing. There are times when it is appropriate for a party to request additional time to supplement the record. If this is done before the record closes, a timeframe is established for the additional evidence to be received. The other party is given time after that

deadline to submit any rebuttal evidence. If additional evidence is sent to the hearing officer after the record is closed it will be marked as received but typically not used for the decision.

5-38. Hearsay Evidence. In accordance with Chapter 120, F.S., the hearing need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence, including hearsay which has substantial probative effect, must be admitted if it is the sort of evidence on which reasonable prudent persons are accustomed to relying in the conduct of their affairs regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil action. However, hearsay evidence will not be sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. Irrelevant and unduly repetitious evidence will be excluded.

5-39. Burden of Proof.

a. The burden of proof, except where otherwise required by statutes, rule or regulations, is on the party asserting the affirmative of the issue. The party which has the burden of proof presents its evidence first at the hearing. The burden is on the Department when the Department takes action, which would reduce or terminate benefits or payments being received by the recipient. The burden is upon the petitioner if an application for benefits or payments is denied. The party having the burden must establish his position by a preponderance of evidence in a Fair Hearing, to the satisfaction of the hearing officer.

b. The significant difference between the hearing procedure related to the SNAP/TCA administrative disqualification hearing and a fair hearing is that the Department is making the charge of intentional Program violation and has the burden to prove by clear and convincing evidence that the individual intentionally committed a program violation.

5-40. Medical Issues. There are no current situations that require the Department to pay for a medical exam when the hearing involves a medical issue. Petitioners are expected to provide available evidence to prove their case.

5-41. Proposed Orders. The parties or their representative will have an opportunity to submit a proposed findings of fact, conclusions of law, or order to the hearing officer within fourteen (14) days after the hearing.

5-42. Final Orders Issued by Hearing Officer. Orders issued by the hearing officers of the Appeal Hearings Section are final orders and must be implemented immediately upon receipt by the Department staff.

5-43. Basis for Final Order. The final order must be based exclusively on evidence and other materials introduced at the hearing or materials submitted after the hearing upon agreement of all parties.

5-44. Structure of Final Order. The final order will be in writing and include a caption, time, and place of the hearing, appearances, statement of the issues, findings of fact, conclusions of law, decision and right to judicial review. These orders will adhere to the requirements of the Florida Administrative Procedure Act, Chapter 120, F.S. Federal regulations for the WIC Program and SNAP require decisions of the hearing authority comply with federal law and that the pertinent federal regulation be cited in the decision.

5-45. Judicial Review of Final Orders. The final order issued by the hearing officer will be signed by the hearing officer and dated by the clerk of the Department on the date it is mailed. The period for judicial review will run from this date. The final order will include a notice, which provides the claimant with the opportunity for judicial review. Any request for judicial review received by circuit personnel must be forwarded immediately to the Appeal Hearing Section.

5-46. Time Standards for Issuing Final Orders. The final order will be rendered within ninety (90) days of request for all programs except the SNAP, in which case it will be rendered within sixty (60) days; in Child Support Enforcement distribution issues, the final order will be rendered within sixty (60) days; and WIC decisions will be rendered within forty-five (45) days. The time limits can be extended when the petitioner causes the delay. In SNAP hearings, there is a time limit of thirty (30) days per extension.

5-47. Corrective Action Included in Final Orders. In the final order, the hearing officer will authorize corrective action retroactively to the date the incorrect action was taken, unless inconsistent with legal authorities.

Chapter 6

WHISTLE-BLOWER'S ACT

6-1. Purpose. In accordance with § 112.3187(2), F.S., the Whistle-blower's Act prevents agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employee or independent contractor that create a substantial and specific danger to the public's health, safety, or welfare. It is further the intent to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee.

6-2. Filing for Whistle-blower Protection. In accordance with § 112.3187(7), F.S., employees and persons may file with the CIG's office , OIG, the Florida Commission on Human Relations, or the Whistle-blower's Hotline at 1-800-543-5353 for whistle-blower protection when they disclose information as described below:

a. Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.

b. Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

6-3. Actions Prohibited.

a. An agency or independent contractor shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information.

b. An agency or independent contractor shall not take any adverse action that affects the rights or interests of a person in retaliation for the person's disclosure of information.

c. The provisions of this paragraph shall not be applicable when an employee or person discloses information known by the employee or person to be false.

6-4. Remedies.

a. Any employee with any state agency who is discharged, disciplined, or subjected to other adverse personnel action due to engaging in an activity protected by the Whistle-blower's Act may file a complaint with the Florida Commission on Human Relations, in accordance with § 112.31895, F.S.

b. Retaliatory action by supervisory/management personnel is prohibited even for disclosures that do not meet the criteria under the Whistle-blower's Act.

6-5. Reporting Suspected Wrongdoing.

a. All Department employees are responsible for reporting suspected wrongdoing in accordance with CFOP 180-4 to the OIG. The Department will not tolerate or condone any attempt to conceal fraud or other illegal acts. A complaint of retaliation may be submitted directly to the Florida Commission on Human Relations.

b. Reports of suspected wrongdoing, including retaliation for disclosing minor offenses, may also be submitted through the use of the OIG's automated web-based complaint form available on the Department's home page under "Submit a Complaint," by e-mailing a complaint to IG.complaints@myflfamilies.com, or by mailing a complaint directly to: Office of Inspector General, 2415 North Monroe Street, Suite 400-I, Tallahassee, FL 32303-4135.



RECEIPT OF OFFICE OF INSPECTOR GENERAL OPERATING PROCEDURE 180-2

I hereby acknowledge receipt of a complete copy of CFOP 180-2, Policies and Procedures of the Office of Inspector General. I understand that it is my responsibility to review the operating procedure in detail and request any clarification needed from my supervisor.

I also understand that this signed acknowledgment of receipt will become a permanent part of my personnel file.

Print Name: _____

SIGNATURE: _____

DATE: _____