906 KAR 1:100. Nurse aide abuse registry, home health aide abuse registry, and hearing procedures.

RELATES TO: KRS 13B.005-13B.070, 194A.030(1)(c), 216.532, 216.935, 216.937, 314.025, 42 C.F.R. 488.301

STATUTORY AUTHORITY: KRS 13B.170, 216.936, 216.939, 42 C.F.R. 483.75, 483.150-.158, 488.335, 42 U.S.C. 1395I-3(g)(1)(d), 1396r(g)(1)(d)

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.936 requires the Cabinet for Health and Family Services to establish an abuse registry to include findings of resident and patient abuse, neglect, and misappropriation of a resident's or patient's property by a nurse aide or home health aide. KRS 216.939 requires the cabinet to promulgate administrative regulations that establish the abuse registry and appeals process. 42 C.F.R. 483.156(a) requires the Cabinet for Health and Family Services, as part of its agreement with the Centers for Medicare and Medicaid Services, to establish and maintain a nurse aide registry. This administrative regulation establishes the procedures for placing a nurse aide or home health aide on the abuse registry and an administrative appeals process to provide due process to an aide against whom a charge is brought.

Section 1. Definitions.

(1) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish and includes physical abuse, verbal abuse, sexual abuse, and mental abuse.

(2) "Abuse registry" means a computerized listing of nurse aides certified under 907 KAR 1:450 and home health aides who have had a final order issued by the Secretary of the Cabinet for Health and Family Services substantiating resident or patient neglect, abuse, or misappropriation of a resident's or patient's property, or who have failed to request or perfect an appeal following a preliminary determination of resident or patient neglect, abuse, or misappropriation of a resident's or patient's property.

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Certified" means a nurse aide has satisfactorily completed all course work and clinical skills training and passed all examinations required for certification under 907 KAR 1:450.

(5) "Home health agency" is defined by KRS 216. 935.

(6) "Home health aide" is defined by KRS 216.935.

(7) "Misappropriation of a resident's or patient's property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use, of a resident's or patient's belongings or money without the resident's or patient's consent.

(8) "Neglect" means failure to provide goods or services that are necessary to avoid physical harm, mental anguish, or mental illness, but does not include a failure caused by factors beyond the control of the individual.

(9) "Nurse aide" is defined by KRS 216.935.

(10) "Nursing facility" means a facility that is licensed under 902 KAR 20:300 or 902 KAR 20:026.

(11) "Secretary" means the Secretary of the Cabinet for Health and Family Services.

(12) "Willful" means the voluntary, conscious decision to do the act which the law forbids, but does not require specific intent to cause harm, pain, or mental anguish.

Section 2. Abuse Registry and Preliminary Determination.

(1) The cabinet shall establish and maintain accountability of an abuse registry that includes the listing of nurse aides and home health aides who have had a final order issued by the secretary of the cabinet substantiating resident or patient abuse, neglect, or misappropriation of a resident's or patient's property, or who have failed to appeal

following a preliminary finding of resident or patient neglect, abuse, or misappropriation of a resident's or patient's property. The registry shall include the information specified in Section 4 of this administrative regulation.

(2) If the cabinet makes a preliminary determination that a nurse aide working in a nursing facility or a home health aide employed by a home health agency has committed neglect or abuse or has misappropriated a resident's or patient's property, the cabinet shall notify in writing by certified mail within ten (10) working days of the completion of the cabinet's investigation:

(a) If a nurse aide, the nurse aide and the current administrator of the facility in which the nurse aide was employed when the incident occurred;

(b) If a home health aide, the home health aide and the home health agency that employed the home health aide.

(3) The notice to the nurse aide or home health aide shall include:

(a) The preliminary determination establishing the nature of the allegation, the date and time of occurrence, and a summary of the evidence that led the cabinet to conclude the allegation is valid;

(b) An opportunity to make a written response that shall be maintained with the abuse registry along with the cabinet's findings;

(c) Hearing procedures and appeal rights;

(d) A statement that the preliminary determination of neglect, abuse, or misappropriation of a resident's or patient's property shall be reported on the abuse registry within ten (10) working days of the date the finding becomes final; and

(e) A statement that the preliminary determination shall become final when:

1. The secretary issues the final order after an administrative hearing;

2. The nurse aide or home health aide fails to file a written request for hearing with the secretary on or before thirty (30) days after the notice was mailed; or

3. Fails to appeal.

Section 3. Administrative Hearing.

(1) A nurse aide or home health aide who has received a preliminary determination of neglect, abuse, or misappropriation of a resident's or patient's property may appeal the finding and request an administrative hearing.

(2) The appeal and request for administrative hearing shall be made in writing and filed with the secretary within thirty (30) calendar days of the date the notice of preliminary finding is mailed to the nurse aide or home health aide. If a request for hearing is not filed or if the appeal is not timely filed, the preliminary determination shall become final, and the individual's name shall be placed on the abuse registry within ten (10) working days of the expiration of the appeal time.

(3) Upon receipt of a request for hearing, the cabinet shall appoint a hearing officer to preside over the matter appealed. The hearing officer shall:

(a) Notify the appellant of the scheduled hearing and the right to have counsel present in accordance with KRS Chapter 13B;

(b) Conduct the administrative hearing in accordance with KRS Chapter 13B;

(c) Issue proposed findings of fact, conclusions of law, and a recommended decision within sixty (60) days after the last day of testimony or the adjournment of the hearing, whichever occurs first; and

(d) Include a finding that the preliminary determination is substantiated or not substantiated based on the law and evidence of record.

(4) A party who disagrees with the hearing officer's proposed findings of fact, conclusions of law, and recommended decision may tender written exceptions that shall:

(a) Be filed with the secretary within fifteen (15) days from the date the proposed findings of fact, conclusions of law, and recommended decision was mailed;

(b) Specify all facts and conclusions of law that are in dispute; and

(c) Be required to exhaust administrative remedies available to the aggrieved party.

(5) The secretary shall issue the final decision of the cabinet within fifteen (15) calendar days of receipt of exceptions if exceptions are filed or within fifteen (15) calendar days of the date exceptions were due if exceptions are not filed.

(6) A party who has exhausted administrative remedies may appeal the final order to the circuit court by filing a petition for review within thirty (30) calendar days after the final order of the agency is mailed or delivered by personal service.

Section 4. Reporting Requirements and Abuse Registry Content.

(1) If the nurse aide or home health aide fails to appeal a preliminary determination, or if a final order is issued substantiating neglect, abuse, or misappropriation of a resident's or patient's property, the cabinet shall place the individual's name and adverse findings on the abuse registry within ten (10) working days of the last date to appeal or issuance of the final order and shall include:

(a) A summary statement, if any, by the individual disputing the findings, which shall be disclosed in response to inquiries made to the registry;

(b) Documentation of the investigation, including a summary of evidence that led to the finding of neglect, abuse, or misappropriation of a resident's or patient's property; and

(c) The date of the hearing, if held, and its outcome.

(2) If the nurse aide or home health aide fails to appeal, or if the final order substantiates neglect, abuse, or misappropriation of a resident's or patient's property, the cabinet shall report the findings in writing within ten (10) working days of the final date to appeal or issuance of the final order to:

(a) The individual against whom the decision has been made;

(b)

1. The home health agency that employed the home health aide on the date the incident occurred; or

2. The administrator of the nursing facility in which the incident occurred; and

(c) If known, the administrator of the nursing facility or home health agency currently employing the nurse aide or home health aide.

(3) If the cabinet's preliminary determination of neglect, abuse, or misappropriation of a resident's or patient's property is not substantiated in the hearing process, the cabinet shall:

(a) Not place the individual's name on the registry; and

(b) Send notification to the individual that the preliminary finding is not substantiated.

Section 5. Review of Prior Findings.

(1) A nurse aide or home health aide whose name was added to the abuse registry after January 1, 1995 may petition the cabinet to review the finding of nurse aide or home health aide neglect after the passage of one (1) year from the date that the nurse aide's or home health aide's name was placed on the abuse registry.

(2) The nurse aide or home health aide petitioning the cabinet to have his name removed from the abuse registry shall submit a written request for review of the finding to the cabinet.

(3) The cabinet secretary shall make the determination to remove the name from the abuse registry if the nurse aide or home health aide proves:

(a) The employment and personal history of the nurse aide or home health aide does not reflect a pattern of abusive behavior, neglect or misappropriation of property; and

(b) The neglect involved in the finding which resulted in the name of the nurse aide or home health aide being added to the abuse registry was a singular occurrence.

(4) If the cabinet does not remove the nurse aide's or home health aide's name from the abuse registry upon consideration of the grounds stated in the petition for review, the nurse aide or home health aide may request a hearing within thirty (30) days of notification of the cabinet's decision. The hearing shall be conducted pursuant to KRS Chapter 13B and shall follow the hearing procedure established in Section 3 of this administrative regulation.

(906 KAR 001:100. 18 Ky.R. 2083; 2581; eff. 3-7-1992; 22 Ky.R. 2174; eff. 7-5-1996; 30 Ky.R. 1106; 1519; eff. 1-5-2004; 32 Ky.R. 2380; 33 Ky.R. 418; eff. 9-1-2006; Crt eff. 1-11-2019; Crt eff. 12-1-2025.)