CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended at Subject Matter Committee)

922 KAR 5:070. Adult protective services.

RELATES TO: KRS Chapter 13B, 61.872, 194A.010, 202A.051, 202B.100, Chapter 209, 387.540(1), 42 U.S.C. 1397

STATUTORY AUTHORITY: KRS 194A.050(1), 209.030(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.030(1) authorizes the secretary to promulgate administrative regulations necessary for the implementation of adult protective services. This administrative regulation establishes the procedures for investigation and protection of adults who are suffering or at risk of abuse, neglect, or exploitation.

Section 1. Definitions.

(1) "Abuse" is defined by KRS 209.020(8).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Authorized agency" is defined by KRS 209.020(17).

(4) "Caretaker" is defined by KRS 209.020(6).

(5) "Emergency" is defined by KRS 209.020(11).

(6) "Employee" is defined by KRS 209.032(1)(a).

(7) "Exploitation" is defined by KRS 209.020(9).

(8) "Investigation" is defined by KRS 209.020(10).

(9) "Mental injury" means a negative impact on the emotional or psychological state of the adult that is inconsistent with an individual's medical care and:

(a) Requires medical or therapeutic treatment;

(b) Is manifested by a behavioral change; or

(c) Caused the person to feel fear, distress, humiliation, or ridicule.

(10) "Neglect" is defined by KRS 209.020(16).

(11) "Protective services" is defined by KRS 209.020(5).

(12) "Records" is defined by KRS 209.020(15).

(13) "Unreasonable confinement" means the unnecessary restriction of an adult's movement through physical or chemical restraints or the unnecessary isolation of an individual.

(14) "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).

Section 2. Receiving a Report of Adult Abuse, Neglect, or Exploitation.

(1) An individual suspecting that an adult has suffered abuse, neglect, or exploitation shall:

(a) Report to the cabinet in accordance with KRS 209.030(2) and (3); and

(b) Provide the information specified in KRS 209.030(4).

(2) The identity of the reporting individual shall remain confidential in accordance with KRS 209.140.

(3) The cabinet shall make available a twenty-four (24) hour on-call response system for emergency reporting after normal office hours.

(4) The cabinet shall investigate an anonymous report that provides sufficient information regarding the alleged abuse, neglect, or exploitation of an adult.
(5) If a report does not meet criteria for investigation, the cabinet may refer the reporting source to:
(a) Community resources;
(b) General adult services in accordance with 922 KAR 5:090; or
(c) A domestic violence protective services provider.
(6) Upon accepting a report for investigation of alleged adult abuse, neglect, or exploitation, the cabinet shall:
(a) Conduct an initial assessment and initiate an investigation in accordance with KRS 209.030(5); and
(b) Take into consideration the safety of the adult when proceeding with the actions necessary to initiate an investigation.
(7) The cabinet shall initiate an investigation upon acceptance of a report of:
(a) Abuse if the report alleges an adult:
1. Being hit in a critical area of the body, such as the head, face, neck, genitals, abdomen, or kidney areas;
2. Has an injury that:
a. Was inflicted by another person; or
b. Is of unknown origin in a critical area of the body;
3. Was sexually abused;
4. Was subjected to unreasonable confinement;
5. Was subjected to intimidation; or
6. Received a punishment that resulted in pain, injury, or mental injury;
(b) Neglect of an adult that may result in harm to the health and safety of the adult in the following areas:
1. Hygiene neglect, if the adult has physical symptoms that require treatment due to poor care as a result of:
a. An act or omission by a caretaker; or
b. The absence of a caretaker;
2. Supervision neglect, if the reporting source has observed a physical health and safety risk to an adult resulting from a lack of necessary and appropriate supervision;
3. Food neglect, if an adult shows symptoms of:
a. Malnutrition;
b. Dehydration;
c. Food poisoning; or
d. Lack of adequate food for a period of time that:
(i) Results in physical symptoms; or
(ii) Requires treatment;
4. Environmental neglect, if a serious health and safety hazard is present, and the adult or the adult's caretaker is not taking appropriate action to eliminate the problem; or
5. Medical neglect, if the adult is not receiving treatment for an injury, illness, or disability that:
a. Results in an observable decline in the adult's health and welfare;
b. May be life threatening; or
c. May result in permanent impairment;
(c) Exploitation of an adult if the report alleges:
1. Isolation from friends, relatives, or important information, such as:
a. Screening telephone calls;
b. Denying visitors; or

c. Intercepting mail;
2. Physical or emotional dependency;
3. Manipulation;
4. Acquiescence; and
5. Loss of resources to a person in a position of trust to the alleged victim; or
(d) An adult in need of protective services.
(8) If a report alleging the exploitation of an adult does not meet criteria established in subsection (7)(c) of this section, the report may be referred to an appropriate authorized agency or community resource.
(9) The following criteria shall be used in identifying a report of alleged adult abuse, neglect, or exploitation not requiring an adult protective service investigation:
(a) The report does not meet the statutory definitions of:
1. Adult; and
2.
a. Abuse;
b. Neglect; or
c. Exploitation; or
(b) There is insufficient information to:
1. Identify or locate the adult; or
2. Explore leads to identify or locate the adult.
(10) For a report accepted for investigation of alleged adult abuse, neglect, or exploitation, designated regional cabinet staff shall provide the information specified in KRS 209.030(4):
(a) For a determination of investigation assignment by cabinet supervisory staff;
(b) To the local guardianship office, if the adult is a state guardianship client; and
(c) To appropriate authorized agencies, as specified in KRS 209.030(5).

Section 3. Adult Protective Service Investigations.
(1) The cabinet shall coordinate its investigation in accordance with KRS 209.030(6).
(2) An adult protective service investigation may include contact with the alleged perpetrator and collaterals, if the contact does not pose a safety concern for the adult or cabinet staff.
(3) Information obtained as a result of a protective service investigation shall be kept confidential in accordance with KRS 209.140.
(4) Requests for written information of the protective service investigation, except for court ordered releases, shall be handled through the open records process in accordance with KRS 61.872 and 922 KAR 1:510.
(5) Designated regional cabinet staff shall initiate the investigation of a report of alleged adult abuse, neglect, or exploitation. If the accepted report of alleged adult abuse, neglect, or exploitation with the expressed permission of the adult indicates:
(a) An emergency, the investigation shall be initiated within four (4) hours; or
(b) A nonemergency, the investigation shall be initiated within forty-eight (48) hours.
(6) If permission is granted by the adult, designated regional cabinet staff may take photographs, audio, or video recordings.
(7)
(a) The cabinet shall obtain a written voluntary statement of adult abuse, neglect, or exploitation if the adult, witness, or alleged perpetrator is willing to provide the written statement; and
(b) The cabinet shall inform the adult, witness, or alleged perpetrator that the:
1. Statement may be shared with appropriate authorized agencies;
2. Statement may be used in an administrative hearing conducted by the cabinet; and

3. Individual may be required to testify in an administrative hearing or in a court of law.

(8) If investigating reports of alleged abuse or neglect of an adult resulting in death, designated regional cabinet staff shall:

(a) Examine the coroner's or doctor's report;

(b) Obtain a copy of the death certificate for the case record, if possible;

(c) Notify the commissioner or designee;

(d) Consult with appropriate law enforcement, in accordance with KRS 209.030(6)(a) in completing the investigation, if an adult died allegedly as a result of abuse or neglect; and

(e) Determine if another resident in an alternate care facility is at risk of abuse or neglect, if the findings of an investigation suggest that an adult in the alternate care facility died allegedly as a result of abuse or neglect.

(9) Unless the legal representative is alleged to have abused, neglected, or exploited the adult, a legal representative may act on behalf of an adult for purposes of this administrative regulation.

Section 4. Results of the Investigation.

(1) Designated regional cabinet staff shall address the following when evaluating the results of the investigation:

(a) The adult's account of the situation, if possible;

(b) The alleged perpetrator's account of the situation, if available;

(c) The information supplied by collateral contact;

(d) Records and documents;

(e) The assessment information;

(f) Previous reports involving the adult or alleged perpetrator; and

(g) Other information relevant to the protection of an adult.

(2) The findings of the adult protective service investigation shall be:

(a) Shared with appropriate authorized agencies in accordance with KRS 209.030(5); and

(b) Documented on the cabinet's database.

(3) Designated regional cabinet staff shall maintain a written record, as specified in KRS 209.030(5), to include:

(a) Information reported in accordance with KRS 209.030(4); and

(b) A narrative documenting:

1. The investigation; and

2. Findings of the investigation.

(4) If an issue or concern identified by the cabinet does not require a protective service case being opened, the cabinet may work with the adult to develop an aftercare plan:

(a) At the consent of the adult; and

(b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

Section 5. Substantiation Criteria and Submission of Findings.

(1) In determining if an allegation is substantiated, the cabinet shall use the statutory definitions of:

(a) Adult; and

(b)

1. Abuse;

2. Neglect; or

3. Exploitation.

(2) If preponderance of evidence exists, designated regional cabinet staff may make a finding of and substantiate abuse, neglect, or exploitation.

(3) A finding made by cabinet staff shall not be a judicial finding.

(4) Cabinet supervisory staff shall review and approve a finding of an investigation prior to its finalization.

Section 6. Reports of Alleged Adult Abuse, Neglect, or Exploitation Involving an Employee or Compensated Person. If the cabinet receives a report involving an employee or a person acting with the expectation of compensation, cabinet staff shall provide the alleged perpetrator during the investigative interview:

(1) Notice of the basic allegations, which shall be void of any specifics that may compromise the investigation;

(2) Notice that the alleged perpetrator will be provided notification of the findings upon completion of the investigation;

(3) Due process requirements in accordance with KRS Chapter 13B and KRS 209.032; and

(4) A statement that a validated substantiated finding shall be reported on the caregiver misconduct registry established by 922 KAR 5:120.

Section 7. Opening a Case.

(1) A case may be opened:

(a) As a result of a protective service investigation; or

(b) Upon identification of an adult through a general adult services assessment as being at risk of abuse, neglect, or exploitation.

(2) The decision to open a case shall be based on the:

(a) Voluntary request for, or acceptance of, services by an adult who needs adult protection or general adult services; or

(b) Need for involuntary emergency protective services.

(3) If it has been determined that an adult is incapable of giving consent to receive protective services, the court may assume jurisdiction and issue an ex parte order in accordance with KRS 209.130.

(4) Emergency protective services shall be provided in accordance with KRS 209.100.

(5) The cabinet shall develop an adult's case plan with the adult and, upon consent of the adult, may include consideration of the following:

(a) Designated regional cabinet staff;

(b) Family members;

(c) Family friends;

(d) Community partners; or

(e) Other individuals requested by the adult.

(6) Within thirty (30) calendar days of opening a case, designated regional cabinet staff shall:

(a) Initiate a case plan with the adult; and

(b) Submit the plan to supervisory staff for approval.

Section 8. Referrals for Criminal Prosecution. The cabinet shall refer substantiated reports of adult abuse, neglect, or exploitation to Commonwealth's Attorneys and county attorneys for consideration of criminal prosecution in accordance with KRS 209.180.

Section 9. Restraining Order or Injunctive Relief. If necessary, designated regional cabinet staff shall contact the cabinet's Office of Legal Services for advice and assistance in obtaining restraining orders or other forms of injunctive relief that may be issued for protection of an adult, in accordance with KRS 209.040.

Section 10. Guardianship or Conservatorship of Disabled Persons.

(1) In an attempt to provide appropriate protective services, designated regional cabinet staff shall assess the need for guardianship if an individual appears unable to make an informed choice to:

(a) Manage personal affairs;
(b) Manage financial affairs; or
(c) Carry out the activities of daily living.

(2) Designated regional cabinet staff may assist in protective service situations in seeking out family, friends, or other interested and qualified individuals who are willing and capable to become guardians.

(3) Upon an order of the court, the cabinet shall file an interdisciplinary evaluation report in accordance with KRS 387.540(1).

Section 11. Involuntary Hospitalization.

(1) Designated regional cabinet staff shall encourage the voluntary hospitalization of an adult who needs to secure mental health treatment to avoid serious physical injury or death.

(2) Designated regional cabinet staff may file a petition for involuntary hospitalization in accordance with KRS 202A.051 and 202B.100 if:

(a) The adult lacks the capacity to consent or refuses mental health treatment;
(b) Other resources are not available;
(c) Another petitioner is absent or unavailable; and
(d) Prior cabinet supervisory approval is obtained.

Section 12. Reporting.

(1) Reports of alleged adult abuse, neglect, or exploitation shall be maintained in the cabinet's database for:

(a) Use in future investigations; and
(b) Annual reporting requirements as specified in KRS 209.030(12).

(2) The cabinet shall submit a report annually to the Governor and Legislative Research Commission in accordance with KRS 209.030(12)(b).

(a) In addition to the information required by KRS 209.030(12)(b), the summary of reports received by the cabinet shall include for each individual who is the subject of a report:

1. Age;
2. Demographics;
3. Type of abuse;
4. The number of:
   a. Accepted reports; and
   b. Substantiated reports; and
5. Other information relevant to the protection of an adult.

(b) The information required in paragraph (a) of this subsection shall only be provided if it does not identify an individual.

Section 13. Case Closure and Aftercare Planning.

(1) The cabinet's decision to close an adult protective service case shall be based upon:

(a) Evidence that the factors resulting in adult abuse, neglect, or exploitation are resolved to the extent that the adult's needs have been met;
(b) The request of the adult; or
(c) A lack of legal authority to obtain court ordered cooperation from the adult.

(2) An adult shall be:

(a) Notified in writing of the decision to close the protective service case; and
(b) Advised of the right to request a service appeal in accordance with Section 14 of this administrative regulation.

(3) If an adult protective service case is appropriate for closure, the cabinet may work with the adult to develop an aftercare plan:

(a) At the consent of the adult; and

(b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

(4) If the cabinet closes the protective service case in accordance with this section, aftercare planning may link the adult to community resources for the purpose of continuing preventive measures.

Section 14. Appeal Rights.

(1) A victim of adult abuse, neglect, or exploitation may request a service appeal in accordance with 922 KAR 1:320, Section 2.

(2) If the cabinet makes a finding that an individual providing care to an adult as an employee or with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall receive appeal rights in accordance with 922 KAR 5:120.

(17 Ky.R. 3618; eff. 8-21-1991; Am. 21 Ky.R. 667; eff. 9-21-1994; Recodified from 905 KAR 5:070, 10-30-1998; Am. 25 Ky.R. 2473; 26 Ky.R. 81; 403; eff. 8-16-1999; TAm eff. 8-1-2005; 32 Ky.R. 1002; 1450; 1677; eff. 3-9-2006; 41 Ky.R. 664; 1408; 1665; eff. 2-5-2015; 48 Ky.R. 2311, 3021; 49 Ky.R. 596; eff. 8-25-2022.)

FILED WITH LRC: August 25, 2022

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.