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

922 KAR 5:120. Vulnerable adult maltreatment registry and appeals.

RELATES TO: KRS 194A.060, Chapter 209, 42 U.S.C. 1320d - 1320d-9, 1397 - 1397e, 1397m-1

STATUTORY AUTHORITY: KRS 194A.050(1), 209.032(5)

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 209.032(5) requires the cabinet to promulgate administrative regulations necessary to implement a central registry of substantiated findings. This administrative regulation establishes the vulnerable adult maltreatment registry, due process prior to the addition of an individual to the registry, and error resolution for correction of the cabinet's records.

Section 1. Definitions.

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

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

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

(4) "Department" is defined by KRS 209.020(3).

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

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

(7) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal, including:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or
2. Participate in a proceeding related to an administrative hearing.

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

(9) "Near fatality" means an injury or condition, as certified by a physician, that places an adult in serious or critical condition.

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

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

(12) "Secure methodology" means the deployment of technology to protect the application's authenticity and to keep user communications, browsing, and identity private in accordance with KRS 209.032.

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

(14) "Vulnerable adult services provider" is defined by KRS 209.032(1)(c).

Section 2. Vulnerable Adult Maltreatment Registry.

(1) The cabinet shall establish a vulnerable adult maltreatment registry that contains an individual:

(a) Who was an employee or a person acting with the expectation of compensation;

(b) Who was the perpetrator of adult abuse, neglect, or exploitation:

1. Pursuant to 922 KAR 5:070; and
2. Substantiated on or after July 15, 2014; and

(c) With a validated substantiated finding of adult abuse, neglect, or exploitation.

(2) An individual with a validated substantiated finding of adult abuse, neglect, or exploitation shall:

(a) Remain on the vulnerable adult maltreatment registry for a period of at least seven (7) years; and

(b) Be removed from the vulnerable adult maltreatment registry:

1. In accordance with the error resolution process established in Section 6 of this administrative regulation if an error is confirmed; or

2. After a period of seven (7) years if:

a. No additional validated substantiated finding of adult abuse, neglect, or exploitation has occurred since the last finding for which the individual's name was placed on the vulnerable adult maltreatment registry; and

b. Cabinet records indicate that the incident for which the individual's name was placed on the vulnerable adult maltreatment registry did not relate to an adult fatality or near fatality related to adult abuse or neglect.

(3) The vulnerable adult maltreatment registry shall be available for a web-based query using a secure methodology by:

(a) A vulnerable adult services provider in accordance with KRS 209.032(2);

(b) An individual in accordance with KRS 209.032(3); and

(c) An employee of the cabinet with a legitimate interest in the case.

(4) The vulnerable adult maltreatment registry shall be accessible through:

(a) The department's main webpage; or

(b) Another cabinet system, such as the Kentucky Applicant Registry and Employment Screening (KARES) Program established in accordance with 906 KAR 1:190.

(5) If an individual or a vulnerable adult services provider established in KRS 209.032(1)(c)11 does not have access to the internet, the individual or provider shall submit a signed and completed DPP-246, Vulnerable Adult Maltreatment Registry Self-Query, to conduct a self-query in accordance with KRS 209.032(2) or (3).

Section 3. Notification of Finding.

(1) If the cabinet finds that an employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation in accordance with 922 KAR 5:070, the cabinet shall send notice of the finding to the perpetrator by certified mail to the perpetrator's last known address.

(2) The cabinet's notice of a finding of adult abuse, neglect, or exploitation to an employee or a person acting with the expectation of compensation shall include:

(a) The factual basis for the finding of adult abuse, neglect, or exploitation;

(b) The results of the investigation;

(c) The perpetrator's right to appeal the substantiated finding in accordance with KRS 209.032 and this administrative regulation;

(d) A statement that a finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation in accordance with KRS 209.032 and Section 5 of this administrative regulation; and

(e) A statement that a perpetrator of a validated substantiated finding of adult abuse, neglect, or exploitation shall be added to the vulnerable adult maltreatment registry.

(3)

(a) The cabinet shall reserve the right, in its sole discretion, to amend, modify, or reverse its investigative finding of adult abuse, neglect, or exploitation at any time if the finding appears to be improper based upon:

1. A review of the cabinet's records; or

2. Subsequent discovery of additional information.

(b) If amendment, modification, or reversal of an investigative finding results in a substantiated finding of abuse or neglect of an adult, the cabinet shall act in accordance with Section 3(1) and (2) of this administrative regulation.

Section 4. Request for Appeal.

(1) In accordance with KRS 209.032, if the cabinet makes a finding that an employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall have the right to appeal the substantiated finding through an administrative hearing.

(2) A request for appeal shall:

(a) Be submitted:

1. In writing by the appellant, with the assistance of the cabinet if the appellant is unable to comply without assistance; and

2. To the cabinet no later than thirty (30) calendar days from the individual's receipt of the notice in accordance with Section 3(1) of this administrative regulation;

(b) State the nature of the investigative finding;

(c) State the reason the individual disputes the cabinet's substantiated finding; and

(d) Include a copy of the notice of a substantiated finding in accordance with Section 3 of this administrative regulation, if available.

(3) The cabinet shall not dismiss a request for appeal as untimely if an appellant demonstrates good cause.

(4) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue or an unsubstantiated finding of adult abuse, neglect, or exploitation shall not be reviewed through an administrative hearing.

Section 5. Administrative Hearing.

(1) An administrative hearing conducted by the cabinet or its designee shall be in accordance with KRS Chapter 13B and 209.032.

(2) The cabinet's investigative finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation if the:

(a) Perpetrator does not request an administrative hearing in accordance with Section 4 of this administrative regulation;

(b) Perpetrator fails to:

1. Participate in any stage of the proceedings after requesting an appeal in accordance with Section 4 of this administrative regulation; and

2. Demonstrate good cause; or

(c) Cabinet's substantiated finding is upheld through the administrative hearing process.

(3) The secretary or designee shall issue the final order in accordance with KRS 13B.120 and 209.032.

(4) A party aggrieved by the secretary's decision shall have the right to pursue judicial review in accordance with KRS 13B.140, 13B.150, and 209.032(1)(b).

(5) The proceedings of the administrative hearing shall be disclosed only in accordance with KRS 194A.060, 42 U.S.C. 1320d - 1320d-9, 1397 - 1397e, 1397m-1, 920 KAR 1:060, and 922 KAR 1:510.

(6) If the matter is not subject to the requirements of this section, the cabinet shall inform the person that the matter may be pursued through:

(a) A service complaint process established in 922 KAR 1:320; or

(b) The error resolution process in accordance with Section 6 of this administrative regulation.

Section 6. Error Resolution.

(1) In accordance with KRS 209.032(5)(a), an individual seeking error resolution shall:

(a) Submit a written request for record correction to the Commissioner of the Department for Community Based Services, 275 East Main Street (3W-A), Frankfort, Kentucky 40621;

(b) State the:

1. Date of the vulnerable adult maltreatment registry query which resulted in the error being identified; and

2. Error contained in the vulnerable adult maltreatment registry query results; and

(c) Provide documentation that verifies the error, if available.

(2) Within thirty (30) days of receipt of a request in accordance with subsection (1) of this section, the commissioner or designee shall:

(a) Determine if an error exists; and

(b)

1. If the cabinet confirms an error:

a. Correct the records; and

b. Notify the requesting individual that the records have been corrected; or

2. If the cabinet cannot confirm an error:

a. Notify the individual that an error cannot be confirmed based upon the information and documentation submitted with the request; and

b. Include information or documentation to verify an error pursuant to the individual's request, if any.

Section 7. Incorporation by Reference.

(1) The "DPP-246, Vulnerable Adult Maltreatment Registry Self-Query", 12/23, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621; Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx.

(41 Ky.R. 703; 1412; 1668; eff. 2-5-2015; 43 Ky.R. 1327; 1792; 1985; eff. 6-2-2017; Cert to be Am 3-11-2024; 50 Ky.R. 1610, 2406; eff. 6-19-2024.)

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