

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 5:120. Vulnerable adult maltreatment ~~{Caregiver misconduct}~~ registry and appeals.

RELATES TO: KRS Chapter 13B, 194A.060, 205.140, Chapter 209, 42 U.S.C. 1320d-1320d-9, ~~{42 U.S.C.}~~ 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~~{caregiver misconduct}~~ 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) ~~{(4)}~~ "Employee" is defined by KRS 209.032(1)(a).
- (6) ~~{(5)}~~ "Exploitation" is defined by KRS 209.020(9).
- (7) ~~{(6)}~~ "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) ~~{(7)}~~ "Investigation" is defined by KRS 209.020(10).
- (9) ~~{(8)}~~ "Near fatality" means an injury or condition, as certified by a physician, that places an adult in serious or critical condition.
- (10) ~~{(9)}~~ "Neglect" is defined by KRS 209.020(16).
- (11) ~~{(10)}~~ "Records" is defined by KRS 209.020(15).
- (12) ~~{(11)}~~ "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) ~~{(12)}~~ "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).
- (14) ~~{(13)}~~ "Vulnerable adult services provider" is defined by KRS 209.032(1)(c).

Section 2. Vulnerable Adult Maltreatment ~~{Caregiver misconduct}~~ Registry.

- (1) The cabinet shall establish a vulnerable adult maltreatment~~{caregiver misconduct}~~ 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~~[caregiver misconduct]~~ registry for a period of at least seven (7) years; and
 - (b) Be removed from the vulnerable adult maltreatment~~[caregiver misconduct]~~ registry:
 - 1. In accordance with the error resolution process described 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~~[caregiver misconduct]~~ registry; and
 - b. Cabinet records indicate that the incident for which the individual's name was placed on the vulnerable adult maltreatment~~[caregiver misconduct]~~ registry did not relate to an adult fatality or near fatality related to adult abuse or neglect.
- (3) The vulnerable adult maltreatment~~[caregiver misconduct]~~ 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);~~and~~
 - (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~~[caregiver misconduct]~~ 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~~[service]~~ provider described 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~~[Caregiver misconduct]~~ 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~~[caregiver misconduct]~~ registry.

~~misconduct~~] 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) Describe the nature of the investigative finding;

(c) Specify 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 subject to review 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, 205.140, 42 U.S.C. 1320d-1320d-9, ~~[42 U.S.C.]~~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 described in 920 KAR 1:030 or 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) Specify the:

- 1. Date of the vulnerable adult maltreatment~~[caregiver misconduct]~~ registry query which resulted in the error being identified; and
- 2. Error contained in the vulnerable adult maltreatment~~[caregiver misconduct]~~ 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 whether 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. Outline information or documentation that may verify an error pursuant to the individual's request, if any.

Section 7. Incorporation by Reference.

(1) The "DPP-246, Vulnerable Adult Maltreatment~~[Caregiver Misconduct]~~ Registry Self-Query", 12/23~~[11/14]~~, 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>.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 11, 2023

FILED WITH LRC: December 6, 2023 at 1:20 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 26, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 19, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the

public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 29, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the vulnerable adult maltreatment (formerly caregiver misconduct) registry, due process prior to the addition of an individual to the registry, and error resolution for correction of the cabinet's records.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish standards for the operation of the vulnerable adult maltreatment registry, including due process and error resolution for correction of the cabinet's records.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the authorizing statutes by establishing a vulnerable adult maltreatment registry for individuals who have a substantiated adult abuse, neglect, or exploitation finding.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation currently assists in the effective administration of the statutes through its establishment of a vulnerable adult maltreatment registry.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment primarily updates the name of the caregiver misconduct registry to the vulnerable adult maltreatment registry and makes other minor amendments of a technical nature, including adding a definition and clarifying those who have access to the registry. Material incorporated by reference is also being amended to reflect the change in the name of the registry and to update contact information.

(b) The necessity of the amendment to this administrative regulation:

The amendment updates the registry name to reflect accuracy of registrant information and makes other minor necessary updates.

(c) How the amendment conforms to the content of the authorizing statutes:

The registry is required by statute, this amendment conforms to the content of the authorizing statutes by clarifying definitions and who may access the registry. The amendment also updates the registry name to reflect accuracy of registrant information.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment assists in the effective administration of the statutes by clarifying definitions, ensuring staff access, and updating the registry name to reflect accuracy of registrant information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This registry currently contains a list of 465 individuals, 35 of which were added within the past year. Additionally, there were 549 adult protective services inquiries and 128 registry cases processed in the past year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

There is no new action required on the part of regulated entities above and beyond those that are statutorily prescribed or originally prescribed through this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There are no anticipated costs with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Regulated entities will benefit from the amendment clarifying that department staff have accessibility during an investigation and service delivery.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There are no anticipated costs with this amendment.

(b) On a continuing basis:

There are no anticipated costs with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The implementation and enforcement of this administrative regulation are funded through state general funds and the federal Social Services Block Grant.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

An increase in fees or funding will not be necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Cabinet for Health and Family Services will be impacted by this administrative regulation through its administration of the registry.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 194A.050(1), 209.032(5).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not generate any revenue in its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This administrative regulation will not generate any revenue in its subsequent years.

(c) How much will it cost to administer this program for the first year?

The administrative body does not project any new additional cost associated with the amendment to this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years?

The administrative body does not project any new or additional cost associated with the amendment to this administrative regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

This administrative regulation will not generate cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

This administrative regulation will not generate cost savings.

(c) How much will it cost the regulated entities for the first year?

There is no cost to regulated entities associated with this administrative regulation.

(d) How much will it cost the regulated entities for subsequent years?

There is no cost to regulated entities associated with this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact.