

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

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

RELATES TO: KRS 194A.060, Chapter 209, 216.2955, 216B.015(13), 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) "Health facility" is defined by KRS 216B.015(13).
- (9) "Investigation" is defined by KRS 209.020(10).
- (10) ~~((9))~~ "Near fatality" means an injury or condition, as certified by a physician, that places an adult in serious or critical condition.
- (11) ~~((10))~~ "Neglect" is defined by KRS 209.020(16).
- (12) ~~((11))~~ "Records" is defined by KRS 209.020(15).
- (13) ~~((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.
- (14) ~~((13))~~ "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).
- (15) ~~((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; or
- (d) With a pending appeal.
- (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;
 - (d) A health facility in accordance with KRS 216.2955; or
 - (e) A health care provider enrolled in the Kentucky Medicaid Program in accordance with KRS 216.2955.
- (4) The vulnerable adult maltreatment registry with pending appeals shall be available for a web-based query using a secure methodology by a vulnerable adult service provider in accordance with KRS 209.032(2).
- (5) ~~(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.
- (6) ~~(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 Office of Administrative Hearings within the Department of Law ~~[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>.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 1, 2024

FILED WITH LRC: August 14, 2024 at 2:10 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 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 October 14, 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 October 31, 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; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Smith or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

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.

(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 implements legislation that passed in the 2024 Regular Session of the General Assembly, Senate Bill (SB) 145. This amendment authorizes health facilities or health care providers enrolled in Medicaid to check the adult misconduct registry for current or prospective employees. Vulnerable adult service providers will also be notified if a queried individual has appealed a substantiated finding of adult abuse, neglect, or exploitation and that the appeal is pending.

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

The amendment is necessary to conform to KRS 216.2955, established by SB 145 from the 2024 Regular Session.

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

This amendment conforms to KRS 216.2955, which authorizes additional facilities to access the vulnerable adult misconduct registry for current or prospective employees. Additionally, vulnerable adult service providers will be notified if a queried individual has appealed a substantiated finding of adult abuse, neglect, or exploitation, and that the appeal is pending.

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

KRS 209.032(5) requires the cabinet to promulgate administrative regulations necessary to implement a central registry of substantiated findings, including the vulnerable adult maltreatment registry. This amendment conforms to authorizing statutes that provide registry access to additional facilities.

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

There are 9,097 health facilities licensed or surveyed by the Office of the Inspector General and approximately 46,000 health care providers enrolled in Medicaid. These facilities will have the ability to submit an inquiry to the vulnerable adult misconduct registry for a prospective or current employee. The vulnerable adult maltreatment registry currently lists 666 individuals, 30 of which were added from July 2022 to June 2023. Additionally, there were 549 adult protective service inquiries and 128 registry cases processed.

(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 identifying 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 IMPACT STATEMENT

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

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

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The Cabinet for Health and Family Services, Department for Community Based Services, is the promulgating agency.

(a) Estimate the following for the first year:

Expenditures:None.

Revenues:None.

Cost Savings:None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The amendment does not alter expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

None.

(a) Estimate the following for the first year:

Expenditures:None.

Revenues:None.

Cost Savings:None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

No change is expected.

(4) Identify additional regulated entities not listed in questions (2) or (3):

Health facilities or health care providers enrolled in Medicaid will be able to submit an inquiry to the vulnerable adult maltreatment registry for current or prospective employees. This is optional, not a requirement.

(a) Estimate the following for the first year:

Expenditures:None.

Revenues:None.

Cost Savings:None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

No change is expected.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

This amendment does not have a fiscal impact.

(b) Methodology and resources used to determine the fiscal impact:

This amendment implements SB 145 (2024 Regular Session), which authorized but did not require submitting an inquiry to the vulnerable adult maltreatment registry.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

No, this administrative regulation does not have a negative or adverse economic impact.

(b) The methodology and resources used to reach this conclusion:

This amendment authorizes additional facilities to request submit an inquiry to the vulnerable adult maltreatment registry for prospective or current employees, but it is not mandatory.