

209.032 Query as to whether prospective or current employee has validated substantiated finding of adult abuse, neglect, or exploitation -- Administrative regulations -- Central registry of substantiated findings made on or after July 15, 2014.

(1) As used in this section:

(a) "Employee" means a person who:

1. Is hired directly or through a contract by a vulnerable adult services provider who has duties that involve or may involve one-on-one contact with a patient, resident, or client; or
2. Is a volunteer who has duties that are equivalent to the duties of an employee providing direct services and the duties involve, or may involve, one-on-one contact with a patient, resident, or client;

(b) "Validated substantiated finding of adult abuse, neglect, or exploitation" means that the cabinet has:

1. Entered a final order concluding by a preponderance of the evidence that an individual has committed adult abuse, neglect, or exploitation against a different adult for whom the individual was providing care or services as an employee or otherwise with the expectation of compensation;
2. The individual has been afforded an opportunity for an administrative hearing under procedures compliant with KRS Chapter 13B, and an appeal to the Circuit Court of the county where the abuse, neglect, or exploitation is alleged to have occurred or, if the individual consents, to the Franklin Circuit Court; and
3. That any appeal, including the time allowed for filing an appeal, has concluded or expired; and

(c) "Vulnerable adult service provider" means:

1. Adult day health care program centers as defined in KRS 216B.0441;
2. Adult day training facilities;
3. Assisted-living communities as defined in KRS 194A.700;
4. Boarding homes as defined in KRS 216B.300;
5. Group homes for individuals with an intellectual disability and developmentally disabled (ID/DD);
6. Home health agencies as defined in KRS 216.935;
7. Hospice programs or residential hospice facilities licensed under KRS Chapter 216B;
8. Long-term-care hospitals as defined in 42 U.S.C. sec. 1395ww(d)(1)(B)(iv);
9. Long-term-care facilities as defined in KRS 216.510;
10. Personal services agencies as defined in KRS 216.710;
11. Providers of home and community-based services authorized under KRS Chapter 205, including home and community based waiver services and

supports for community living services; and

12. State-owned and operated psychiatric hospitals.

- (2) A vulnerable adult services provider shall query the cabinet as to whether a validated substantiated finding of adult abuse, neglect, or exploitation has been entered against an individual who is a bona fide prospective employee of the provider. The provider may periodically submit similar queries as to its current employees and volunteers. The cabinet shall reply to either type of query only that it has or has not entered such a finding against the named individual.
- (3) An individual may query the cabinet as to whether the cabinet's records indicate that a validated substantiated finding of adult abuse, neglect, or exploitation has been entered against him or her. The cabinet shall reply only that it has or has not entered such a finding against the named individual, although this limitation shall not be construed to prevent the individual who is the subject of the investigation from obtaining cabinet records under other law, including the Kentucky Open Records Act. An individual making a query under this subsection may direct that the results of the query be provided to an alternative recipient seeking to utilize the care or services of the querying individual.
- (4) Every cabinet investigation of adult abuse, neglect, or exploitation committed by an employee or a person otherwise acting with the expectation of compensation shall be conducted in a manner affording the individual being investigated the level of due process required to qualify any substantiated finding as a validated substantiated finding of adult abuse, neglect, or exploitation.
- (5) The cabinet shall promulgate administrative regulations to implement the provisions of this section. Included in these administrative regulations shall be:
 - (a) An error resolution process allowing an individual whose name is erroneously reported to have been the subject of a validated substantiated finding of adult abuse, neglect, or exploitation to request the correction of the cabinet's records; and
 - (b) A designation of the process by which queries may be submitted in accordance with this section, which shall require that the queries be made using a secure methodology and only by providers and persons authorized to submit a query under this section.
- (6) If the cabinet does not respond to a query under subsection (2) of this section within twenty-four (24) hours and a vulnerable adult services provider hires or utilizes an employee provisionally, the provider shall not be subject to liability solely on the basis of hiring or utilizing the employee before having received the cabinet's response.
- (7) This section shall only apply to instances of abuse, neglect, or exploitation substantiated on or after July 15, 2014, which shall be compiled into a central registry for the purpose of queries submitted under this section.

Effective: July 15, 2014

History: Created 2014 Ky. Acts ch. 110, sec. 1, effective July 15, 2014.