

A Follow-Up Report on Adult Abuse Registries

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Building on our prior studies of Adult Abuse Registries (November 2010 and August 2011), this report provides more comprehensive information about Adult Abuse Registries nationwide. In addition, the report specifies how individuals are placed on state registries, the nature of appeal processes for the registries and the frequency and success of appeals in 14 states.

The study gathers information based on two resources: the National Baseline Survey of Adult Protective Services which was conducted by the National APS Resource Center and the National Association of States United for Aging and Disabilities (NASUAD) in early 2012. We were able to obtain raw survey data about adult abuse registries from the National Adult Protective Services Association (NAPSA). In addition, we conducted an email-based survey, complemented with follow up phone calls to appropriate agencies in each state, to ask nine questions in reference to each state's registry:

1. When does a person find out they are being investigated for possible inclusion on the adult abuse registry?
2. What agency does the investigation? Is this agency different from the agency that oversees the appeal process (assuming there is an appeal process)?
3. Who finds out the outcome of the investigation? Do they find out before or after the person has been placed on the registry?
4. How does a person appeal the decision that they are to be placed on the registry?
5. While appeals are pending, does the person's name go on the registry?
6. Who can access the registry and what information are they given? ("Jane Smith was found to have physically abused an elderly woman in her care" versus "Jane Smith is on the adult abuse registry" versus "Jane Smith is not approved for hire as an adult caretaker")
7. How is the registry accessed?

8. How long do individuals stay on the registry?

9. Are there any other noteworthy due process protections?

These responses were then recorded, compiled, and summarized.

The rest of the report is organized as follows: the next section outlines some background information about adult abuse registries. Section II briefly describes due process and appeal procedure of adult abuse registries. Section III provides state-by-state information.

Background

An adult abuse registry is a form of protection provided to abused, neglected, or exploited older persons and/or adults with disabilities. States design adult abuse registries to help protect vulnerable adults and elderly from physical, emotional, verbal and sexual abuse. Due to lack of national standards, laws and regulations about adult abuse registries vary greatly, and not all states maintain an adult abuse registry. The National Baseline Survey (2012) shows that just forty percent of states reported having an abuser registry. By comparison, our survey has collected responses from 28 states, of which 17 (60.71%) states reported maintaining an abuse registry.

Table 1 Survey Response about Adult Abuse Registry

State	Adult Abuse Registry	
	No	Yes
Alabama	0	1
Alaska	1	0
Arkansas	0	1
California	1	0
Connecticut	1	0
Delaware	0	1
Idaho	1	0
Indiana	1	0
Maryland	0	1
Massachusetts	1	0
Minnesota	0	1
Missouri	0	1
Montana	1	0
Nebraska	0	1
Nevada	1	0
New Hampshire	0	1
New Jersey	0	1
New Mexico	0	1
New York	1	0
North Dakota	1	0
Ohio	0	1
Oklahoma	0	1
Utah	0	1
Vermont	0	1
Virginia	1	0
Washington	0	1
West Virginia	0	1
Wyoming	0	1
Total	11	17

Generally speaking, the adult abuse registry is administered/operated by Adult Protective Service (APS) Agencies, Departments of Human Services, Departments of Health and Human Services, or Departments on Aging. The National Baseline Survey of Adult Protective Services (2012) indicates that about half of the existing adult

abuse registries are operated by APS agencies, while other agencies administer the remaining half.

The registry itself is most often accessible only to authorized personnel. However, states allow these employees to view different information. For example, Washington allows them to view all information provided in the registry, Utah allows them to view cases that have been supported but no further information, and Arkansas allows only a yes or no answer as to whether a person's name exists in the registry. Only two states, Oklahoma and Delaware, have specified that their registry is open to the public.

Although not all states maintain an adult abuse registry, almost all the states mandate professionals and social service providers (i.e. doctors, police, attorneys, and mental health providers) who have regular contact with vulnerable adults and older adults to report observed or suspected abuses. Colorado, New York, and North Dakota are the only exceptions in this case. By comparison, only 19 states are required by state statute to establish an adult abuse registry. (National Baseline Survey, 2012)

Table 2 Adult Abuse Registry Required by State Statute

Arizona
Arkansas
Delaware
Hawaii
Iowa
Kansas
Minnesota
Mississippi
Missouri
Nebraska
New Hampshire
New Mexico
Oklahoma
Tennessee
Texas
Utah
Vermont
West Virginia
Wyoming

Due Process

To protect the rights of the accused, states typically notify the accused when a complaint has been filed and an investigation opened. They also provide some combination of administrative review and administrative hearing through which an individual can appeal a listing on a registry.

In brief, the process in the states works as follows:

1. Statutory provisions and administrative rules govern the process for placing individuals on an abuse registry.
2. A complaint is filed.
3. The agency conducts a field investigation.

4. All information is reviewed and determination is made.
5. Specific criteria guide determinations.
6. If the investigation warrants, the individual is placed on the registry.
7. The Individual may file an administrative appeal to be removed from registry
8. If the administrative appeal is unsuccessful, the individual may appeal through the courts.

The National Baseline Survey (2012) points out:

The due processes afforded to alleged perpetrators and victims listed in the registry are minimal. In fewer than 20 states alleged perpetrators are notified of allegations, the substantiated decisions, and provided the right to appeal and a hearing. The number of states is less for alleged victims, with just 11 states notifying allegations and substantiated decisions, and only five states allowing for an appeal by the victim.

While an extensive process is in place for individuals to appeal their presence on a registry, very few do. There have been individuals who have successfully been removed from registries through that process. Based on the limited information available from these states, incorrect placements on registries are rare, but when they occur they can be successfully appealed.

State by State Information

The adult abuse registry information on Missouri, Nebraska, New Hampshire, New Jersey, Vermont, and Wyoming can be found in the previous report (August 2011). Here we report on the new states.

Arkansas:

1. An alleged offender discovers they are under investigation when the Field Investigator makes initial contact with them, and divulges the reason for their meeting.
2. Adult Protective Services (APS), the investigative arm of the Department of Human Services is given statutory investigative powers under Arkansas Code Annotated 12-12-1710. The Department of Human Services also oversees any appeal filed by the offender, but those appeals are managed, heard, and litigated by the Office of Appeals and Hearings.
3. The outcome of the investigation is released to the victim and the offender, and if the offense occurred in a long-term care facility, the owners of that facility (corporation/agency).
4. An offender may appeal the findings of a “Founded” investigation by way of request to the Office of Appeals and Hearings within thirty (30) days from receipt of the notice of findings.
5. The offender’s name is not entered into the registry until such time as the appeal process is completed.
6. Only those authorized APS personnel may access the Adult Maltreatment Registry for the sole purpose of verifying whether or not a specific person’s name exists in the registry. Requests for Registry checks are sent to APS predominantly for employment purposes. APS does not make employment decisions for any requesting potential employer. The response to the request is only a “yes or no” as to the person’s name existing in the registry.

7. The Registry is accessed by way of an encrypted computer system by authorized APS personnel only.
8. A person's name remains in the registry unless "removed by a statute" or "removed under a rule". (ACA 12-12-1716)
9. There are no public announcements or listing of names that appear in the Adult Maltreatment Registry. Offenders are served all investigative findings by way of a legal process server.

Minnesota:

From Minnesota Statute 626.557 Reporting of Maltreatment of Vulnerable Adults.

URL: <https://www.revisor.mn.gov/statutes/?id=626.557>

Response to reports

Law enforcement is the primary agency to conduct investigations of any incident in which there is reason to believe a crime has been committed. Law enforcement shall initiate a response immediately. If the common entry point notified a county agency for adult protective services, law enforcement shall cooperate with that county agency when both agencies are involved and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). County adult protection shall initiate a response immediately. Each lead investigative agency shall complete the investigative process for reports within its jurisdiction. A lead investigative agency, county, adult protective agency, licensed facility, or law enforcement agency shall cooperate in coordinating its investigation with other agencies and may assist another agency upon request within the limits of its resources and expertise and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). The lead investigative agency shall obtain the results of any investigation conducted by law enforcement officials. The lead investigative agency has the right to enter facilities and inspect and copy records as part of investigations. The lead investigative agency has access to not public data, as defined in section 13.02, and medical records under sections 144.291 to 144.298, that are maintained by facilities to the extent necessary to conduct its investigation. Each lead investigative agency shall develop guidelines for prioritizing reports for investigation.

Notification

Within ten calendar days of completing the final disposition, the lead investigative agency shall provide a copy of the public investigation memorandum under subdivision 12b, paragraph (b), clause (1), when required to be completed under this section, to the following persons: (1) the vulnerable adult, or the vulnerable adult's guardian or health care agent, if known, unless the lead investigative agency knows that the notification would endanger the well-being of the vulnerable adult; (2) the reporter, if the reporter requested notification when making the report, provided this notification would not endanger the well-being of the vulnerable adult; (3) the alleged perpetrator, if known; (4) the facility; and (5) the ombudsman for long-term care, or the ombudsman for mental health and developmental disabilities, as appropriate.

Administrative reconsideration

(a) Except as provided under paragraph (e), any individual or facility which a lead investigative agency determines has maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on behalf of the vulnerable adult, regardless of the lead investigative agency's determination, who contests the lead investigative agency's final disposition of an allegation of maltreatment, may request the lead investigative agency to reconsider its final disposition. The request for reconsideration must be submitted in writing to the lead investigative agency within 15 calendar days after receipt of notice of final disposition or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the vulnerable adult or the vulnerable adult's guardian or health care agent. If mailed, the request for reconsideration must be postmarked and sent to the lead investigative agency within 15 calendar days of the individual's or facility's receipt of the final disposition. If the request for reconsideration is made by personal service, it must be received by the lead investigative agency within 15 calendar days of the individual's or facility's receipt of the final disposition. An individual who was determined to have maltreated a vulnerable adult under this section and who was disqualified on the basis of serious or recurring maltreatment

under sections [245C.14](#) and [245C.15](#), may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted in writing within 30 calendar days of the individual's receipt of the notice of disqualification under sections [245C.16](#) and [245C.17](#). If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the lead investigative agency within 30 calendar days of the individual's receipt of the notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the lead investigative agency within 30 calendar days after the individual's receipt of the notice of disqualification.

Access

The statewide database must be accessible to all entities required to conduct investigations under this section, and must be accessible to ombudsman and advocacy programs.

New Mexico:

From Employee Abuse Registry, Aging and Long-Term Services Department.

[8.11.6.1 NMAC - N, 4/28/2006]

Scope

This rule applies to a broad range of New Mexico providers of health care and services and employees of these providers who are not licensed health care professionals or certified nurse aides. This rule requires that providers check with the registry and avoid employing any individual on the registry. This rule further requires listing employees with substantiated registry-referred abuse, neglect or exploitation on the registry, following an opportunity for a hearing. This rule supplements other pre-employment screening requirements currently applicable to health care providers, such as the requirement for criminal history screening of caregivers employed by care providers subject to the Caregiver Criminal History Screening Act, Sections 29-17-1 through 29-17-5 NMSA 1978 and that act's implementing rule, 7.1.9 NMAC. It also supplements requirements for pre-employment screening of certified nurse aides applicable to nursing facilities pursuant to 42 CFR Sections 483.75(e) and 488.335 and 16.12.20 NMAC. This rule does not address the consequences of abuse, neglect, or exploitation for which a provider, as distinguished from an employee, is responsible. This rule is meant to compliment department of health rule 7.1.12 NMAC.

[8.11.6.2 NMAC - N, 4/28/2006]

Notification to provider and employee

If APS determines, following an investigation, that an instance of either substantiated or substantiated registry-referred employee abuse, neglect, or exploitation has occurred, then APS shall promptly notify the employee and the provider.

Hearings

Hearings are provided to employees by the department or the department of health, depending upon whether APS or the department of health made the registry referral determination.

Judicial review

An employee may appeal the secretary's adjudicated decision of abuse, neglect or exploitation to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. The custodian will enter the employee's name into the registry within two (2) working days following receipt of the adjudicated decision. The custodian shall promptly remove the employee from the registry upon the receipt of an order issued by the district court granting a stay pending the outcome of the appeal, or upon the receipt of a district court order reversing the adjudicated decision.

Court of Appeals

If the employee seeks review in the court of appeals by writ of certiorari, the employee shall remain on the registry, unless a stay is granted or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses, notification shall be made to the custodian who shall promptly remove the employee from the registry.

[8.11.6.14 NMAC - N, 4/28/2006]

Removal from the Registry

After a period of three years from the effective date of placement on the registry, an individual on the registry may petition the department of health for removal from the registry in accordance with the terms of department of health rule 7.1.12 NMAC.

[8.11.6.17 NMAC - N, 4/28/2006]

Ohio:

Currently, Ohio has two adult abuse registries. The "Nurse Aide Registry" is maintained by the Ohio Department of Health. This registry keeps track of those individuals who have met written and skills test criteria to be certified for employment in long-term care settings, usually nursing homes. The registry also maintains records of those nurse aides who have had a finding of abuse, neglect or misappropriation of property against them.

The other registry is the "Abuser Registry" maintained by the Ohio Department of Developmental Disabilities. The Abuser Registry was established by law to prohibit people from working with individuals if they have committed acts of abuse, neglect, misappropriation, failure to report, and/or prohibited sexual relations thereby meeting the criteria for placement on the Abuser Registry.

Ohio does not have an Elder Abuse registry established at this time. However, Ohio does have an adult protective services (APS) case incident reporting system, which allows county agencies that administer APS to submit data to the Ohio Department of Job and Family Services concerning APS intakes, investigations, and case dispositions. The purpose of the system is to have a uniform method of collecting data for all of Ohio's 88 counties, to standardize reporting and to allow county agencies to receive reports from the Department on their investigative activities monthly, quarterly and annually. The system was not designed to collect extensive data on alleged adult victims or perpetrators (e.g., risk assessment data or case planning information), nor are the names of the perpetrators listed.

Oklahoma:

From email response and Section 1025.1 et seq. of Title 56 of the Oklahoma Statutes.

Administrative Regulation URL:

<http://www.okdhs.org/library/policy/oac340/100/03/0039000.htm>

Establishing Statute: Section 1025.1 et seq. of Title 56

Section 1025.1 et seq. of Title 56 of the Oklahoma Statutes requires the Oklahoma Department of Human Services (OKDHS) to establish and maintain a registry listing the names of community services workers against whom a final investigative finding of maltreatment involving a service recipient, has been made by OKDHS or an administrative law judge.

Oklahoma has been operating the registry since 1997 and it includes the names of community services workers (defined in policy and statute) who provide certain services (direct care) to service recipients, adults and children, of the OKDHS Developmental Disabilities Services Division.

Procedures for notice and due process

OKDHS divisions responsible for investigating allegations of maltreatment, per OAC 340:2-3, OAC 340:5, or OAC 340:75-3, send reports of investigations to the DDSD director or designee.

The OKDHS division responsible for the investigation notifies the provider, or appropriate OKDHS representative, when the investigative report reveals systemic administrative issues regarding:

- (A) protection or safety of the service recipient; or
- (B) provider agency shortcomings.

Notification to community services worker: OKDHS sends written notice of the results of the investigation to the community services worker alleged to have

committed maltreatment. The name of the community services worker who has a confirmed finding of maltreatment is added to the Registry when OKDHS has sent proper notice to the last known address of the community services worker, and the notice was returned as unclaimed or undeliverable. The notice:

(A) is sent within three working days of receipt by OCA of the OKDHS determination to proceed with the Registry process. If the allegation is ruled out, the provider is also notified;

(B) is sent by certified mail, return receipt requested, if the investigation resulted in a finding of maltreatment;

(C) contains a summary of the evidence supporting the finding of maltreatment without identifying the complainant;

(D) specifies that, if the community services worker desires to contest the finding, he or she submits a detailed written statement with a request that OKDHS issue a reconsideration decision reversing the finding;

(E) advises the community services worker that a reconsideration decision must be requested in writing, postmarked within ten calendar days of receipt of the notice; and

(F) notifies the community services worker that failure, absent good cause, to request a reconsideration decision within ten calendar days, as evidenced by the date of his or her signature on the U.S. Postal Service return receipt card:

(i) results in the finding becoming final;

(ii) waives the right to further administrative or judicial review; and

(iii) authorizes:

(I) entry of the community services worker's name in the Registry; and

(II) disclosure per OAC 340:100-3-39(I) to any person requesting such information per OAC 340:100-3-39(j).

Public access to Registry

Access to the Registry is available to the public through the OKDHS Web site:
www.okdhs.org

Texas:

From Texas Department of Aging and Disability Services, Employee Misconduct Registry Handbook

URL: <http://www.dads.state.tx.us/handbooks/emr/93/93.htm>

§93.3 Employment and Registry Information

(a) Before a facility or agency hires an employee, the facility or agency must search the Employee Misconduct Registry (EMR) and Nurse Aide Registry (NAR) to determine if the person applying for employment is listed as unemployable on either registry.

(b) A facility or agency must not hire or continue to employ a person listed in the EMR or NAR as unemployable.

(c) A facility or agency must provide information about the EMR to an employee within five working days after hiring the employee. The information must:

(1) be in writing;

(2) state that a person listed in the EMR is not employable by a facility or agency;

(3) include a reference to this chapter and Chapter 253, Texas Health and Safety Code, Employee Misconduct Registry; and

(d) A facility or agency must search the EMR and NAR annually to determine if an employee is listed on either registry as unemployable.

(e) A facility or agency must maintain a copy of the results of the searches required by subsections (a) and (d) of this section in the person's personnel file.

§93.4 Investigations

(a) DADS investigates allegations of abuse, neglect, and exploitation made against an employee of a facility.

(b) The Department of Family and Protective Services investigates allegations of abuse, neglect, and exploitation made against an employee of an agency.

(c) If DADS determines that a substantiated allegation of abuse, neglect, or exploitation by an employee of a facility meets the definition of reportable conduct, DADS is responsible for the provision of due process described in §§93.5, 93.6, and 93.7 of this chapter (relating to DADS Investigates: Notice to Employee of Reportable Conduct, DADS Investigates: Informal Review, and DADS Investigates: Notice of Opportunity for Administrative Hearing).

(d) Sections 93.5, 93.6, and 93.7 of this chapter apply only to an investigation conducted by DADS, as described in subsection (a) of this section.

§93.9 Removing Information from the EMR

DADS may remove an employee's name from the EMR if:

(1) DADS determines that the employee does not meet the requirements for listing in the EMR based on additional information gathered by DADS or notification received from the Department of Family and Protective Services or another referring entity; or

(2) an entry of reportable conduct in the EMR was based on an entry in the NAR and the entry in the NAR is subsequently removed.

Utah:

From email response and Human Services, Aging and Adult Services Rules

Establishing Statute

Powers and Duties of Adult Protective Services State Statue § 62A-3-303

Statewide data base- restricted use and access State Statue § 62A-3-311

Human services, Aging and Adult Services Rules Rules R510-302

Overall view on the State of Utah database/registry

State of Utah Adult Protective Services maintains a database for reports of vulnerable adult abuse, neglect, or exploitation. The database contains the names and identifying data of the alleged abused, neglected, or exploited vulnerable adult and the alleged perpetrator. The database also provides the information regarding whether or not the allegation of abuse, neglect, or exploitation was found to be: supported, inconclusive, without merit.

1. When does a person find out they are being investigated for possible inclusion on the adult abuse registry?
During the course of our investigations, Investigators are required to talk to the alleged perpetrator in the case. It is during this time the alleged perpetrators are informed that there was an abuse, neglect or exploitation allegation made against them.
2. What agency does the investigation? Is this agency different from the agency that oversees the appeal process (assuming there is an appeal process)?
State of Utah, Adult Protective Services is the investigative agency. The Office of Administrative hearings oversee the appeal process.
3. Who finds out the outcome of the investigation? Do they find out before or after the person has been placed on the registry?

Normally the outcome of the case is communicated to those involved like the victim and the alleged perpetrator. They are informed after their name is added to the database. APS can share the findings of the case with LE and our own prosecution attorney's if it is a criminal case. The information on our database is protected under GRAMA so our agency has to follow the rules on whom we share this information with.

4. How does a person appeal the decision that they are to be placed on the registry?

Only "supported" cases can be appealed. Once the case is closed the perpetrator will receive a Notice of agency Action letter informing them of the finding. They have a 30 day from when they receive the NAA letter to appeal the findings of the case. After the 30 day period and no appeal has been filed then the case findings stand.

5. While appeals are pending, does the person's name go on the registry?

The person's name was added to the database when a referral was taken. There is not a process to remove a name from the database. The original finding of the case remains on the database during the appeal process. The only thing that can change is the case finding and that's if the Administrative Hearing Judge overturns the APS Supported Finding then this new finding is entered into the system.

6. Who can access the registry and what information are they given? ("Jane Smith was found to have physically abused an elderly woman in her care" versus "Jane Smith is on the adult abuse registry" versus "Jane Smith is not approved for hire.

State Statue § 62A-3-311 is very specific on who can access our data. When one of the approved agencies uses our database for a background check, they can only view cases that have been supported. They do not have access to look at additional information on the persons on the database.

7. How is the registry accessed?

A designee from the authorized agency must have approval from Department Head to gain access into the database.

8. How long do individuals stay on the registry?

State of Utah has no time frame on which a person's name is removed from the database.

9. Are there any other noteworthy due process protections?

If the findings of the APS case are upheld in the Admin Hearing, the perpetrator can appeal the findings of the Administrative Hearings in the State of Utah District Court. State Statute § 62A-3-311

Washington:

1. When does a person find out they are being investigated for possible inclusion on the adult abuse registry?

An individual or Alleged Perpetrator knows that they are involved in an APS investigation from the beginning of the investigation. The notification that they are a substantiated abuser comes at the end of the investigation and is a formalized process with written notification and appeal rights.

2. What agency does the investigation?

Adult Protective Services within Home & Community Services-Aging & Disability Services in the Department of Social & Health Services. APS is responsible for investigations of reports of allegations of abuse, abandonment, neglect, self-neglect and financial exploitation of vulnerable adults living in the community.

Is this agency different from the agency that oversees the appeal process (assuming there is an appeal process)?

Yes-the agency that would oversee the appeal process is the Office of Administrative Hearings.

3. Who finds out the outcome of the investigation?

In a manner consistent with confidentiality requirements concerning the alleged victim (the vulnerable adult), witnesses and reporter, APS may provide notification of a substantiated initial finding to: Other divisions in the department (Social & Health Services), the agency or program identified under Washington law with which the alleged perpetrator is associated as an employee, volunteer or contractor, law enforcement, other investigative authority consistent with Washington law and the facility in which the incident occurred. It becomes a final finding when: an alleged perpetrator does not request an administrative hearing, the administrative law judge

dismisses the hearing following default or withdrawal by the alleged perpetrator or the ALJ issues an initial order upholding the substantiated finding and the alleged perpetrator fails to file a request for review of the ALJ's decision with the department's Board of Appeals or the Board of Appeals issues a final order upholding the substantiated finding.

Do they find out before or after the person has been placed on the registry?
Before the individual is placed on the registry.

4. How does a person appeal the decision that they are to be placed on the registry?

There are no appeal rights once an individual is placed on the adult abuse registry.

5. While appeals are pending, does the person's name go on the registry?

No, it does not.

6. Who can access the registry and what information are they given? ("Jane Smith was found to have physically abused an elderly woman in her care" versus "Jane Smith is on the adult abuse registry" versus "Jane Smith is not approved for hire as an adult caretaker")

Specifically identified state employees with proper clearance are given access to the adult abuse registry and can view all information it contains. The entries for individuals placed on the Adult Abuse Registry with a date of birth identifier are uploaded nightly for inclusion in the DSHS-affiliated background check results. Only the name fields and date of birth transmit to the Background Central Checks Unit.

7. How is the registry accessed?

The Department of Social & Health Services within Aging & Disability Services maintains the adult abuse registry of final findings and, upon

request of any person, may disclose the identity of a person or entity with a final finding of abandonment, abuse, financial exploitation or neglect.

8. How long do individuals stay on the registry?

Once placed on the adult abuse registry, an individual remains there permanently.