

## **CABINET FOR HEALTH AND FAMILY SERVICES**

### **Department for Community Based Services**

#### **Division of Protection and Permanency**

#### **(New Administrative Regulation)**

### **922 KAR 1:290. Background checks for private child-caring or child-placing staff members.**

RELATES TO: KRS 17.165, 17.500-17.580, 199.011, 199.642, Chapters 209, 506, 511, 515, 520, 525, 527, 529, 530, 336.220, 620.050-620.120, 34 U.S.C. 20921, 45 C.F.R. 98.43

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), 199.642(8), 42 U.S.C. 671(a)(20)(D)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.640(5)(a) requires the secretary to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies relating to the health and safety of all children in the care of the facility or agency, the basic components for a quality program, and any other factors as may be necessary to promote the welfare of children cared for or placed by the agencies and facilities. KRS 199.642(8) requires the cabinet to promulgate an administrative regulation necessary to implement child-caring or child-placing staff member background checks in accordance with 42 U.S.C. 671(a)(20)(D). This administrative regulation establishes background check requirements for child-caring and child-placing staff members, reporting requirements, and appeals.

#### Section 1. Definitions.

- (1) "Address check" means a cabinet search of the Kentucky or National Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.
- (2) "Cabinet" is defined by KRS 199.011(3).
- (3) "Child-caring facility" is defined by KRS 199.011(5).
- (4) "Child-placing agency" is defined by KRS 199.011(6).
- (5) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190.
- (6) "Rap back system" is defined by KRS 199.011(14).
- (7) "Staff member" is defined by KRS 199.642(1).

#### Section 2. Applicability, Implementation, and Enforcement.

- (1) This administrative regulation shall apply to child-caring or child-placing providers and their prospective and current staff members.
- (2) A person who is a child-caring or child-placing staff member prior to the effective date of this administrative regulation shall submit to and complete background checks in accordance with this administrative regulation no later than July 1, 2023.
- (3) A prospective child-caring or child-placing staff member shall complete the background check process required in accordance with this administrative regulation and have been found to have no disqualifying offense prior to becoming a child-caring or child-placing staff member.
- (4) To assure timely processing of background checks, the cabinet shall prioritize the processing of background checks for prospective child-caring and child-placing staff members.

(5) A current or prospective child-caring or child-placing staff member shall be subject to background checks in accordance with Sections 3 and 4 of this administrative regulation.

### Section 3. Procedures and Payments.

(1) To initiate the process of obtaining a background check on a prospective or current child-caring or child-placing staff member, the provider shall:

(a) Request that the staff member provide a copy of his or her driver's license or other government-issued photo identification and verify that the photograph clearly matches the staff member;

(b) Request that the prospective or current staff member complete and sign the:

1. DPP-500, Private Child-Caring or Child-Placing Staff Member Waiver Agreement and Statement; and

2. DPP-501, Disclosures to be Provided to and Signed by the Applicant Private Child-Caring or Child-Placing Staff Member; and

(c) Log on to the NBCP portal and enter the prospective or current staff member's demographic information for a check of the:

1. Child abuse and neglect central registry pursuant to 922 KAR 1:470;

2. National Crime Information Center's National Sex Offender Registry in accordance with 34 U.S.C. 20921; and

3. Sex Offender Registry established in accordance with KRS 17.500 through 17.580.

(2)

(a) In accordance with KRS 199.642, KRS 336.220, and 42 U.S.C. 671(a)(20)(D), a child-caring or child-placing provider shall submit payment via credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If a staff member's rap back has not expired, a new fingerprint check shall not be required.

(b) A child-caring or child-placing provider enrolled in the Kentucky NBCP shall pay a fee not to exceed twenty-five (25) dollars in addition to any fees charged in accordance with paragraph (a) of this subsection for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing rap back services.

(3) Upon submission of payment in accordance with subsection (2) of this section, the staff member shall:

(a) Have no more than thirty (30) calendar days from the date of payment pursuant to subsection (2) of this section to submit his or her fingerprints at an authorized collection site for NBCP; and

(b) Present his or her driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(4) Upon completion of the background checks in accordance with this section and Section 4 of this administrative regulation, the cabinet:

(a) Shall provide notice to the provider within seven (7) business days in accordance with KRS 199.642(5) that the prospective or current staff member is:

1. Eligible for hire or continuation of employment; or

2. Not eligible for hire or continued employment if the prospective or current staff member is found by the cabinet to have a disqualifying background check result in accordance with Section 5 of this administrative regulation;

(b) May release any record of state criminal history found in the files of the Kentucky centralized criminal history record information system to the provider or another entity included on the waiver in accordance with subsection (1)(b) of this section; and

(c) Shall, upon receipt of written request from an applicant, send a copy of a KSP or FBI criminal history report to the prospective or current staff member by certified mail, restricted delivery service. The staff member shall show proof of identity and sign to receive his or her criminal history report from the local post office.

(5) A provider shall not be obligated to employ or offer employment to an individual who has been found by the cabinet to be eligible for hire pursuant to subsection (4)(a)1. of this section.

(6) A staff member may submit a request for a protection and permanency record in accordance with 922 KAR 1:510.

(7)

(a) If the NBCP portal is not operational, the cabinet may request a federal waiver that would allow a prospective staff member to undergo a:

1. Child abuse and neglect central registry check pursuant to 922 KAR 1:470;
2. Criminal records check conducted by the Kentucky Justice and Public Safety Cabinet or Administrative Office of the Courts;
3. National Crime Information Center's National Sex Offender Registry check in accordance with 34 U.S.C. 20921; and
4. Sex Offender Registry check in accordance with KRS 17.500 through 17.580.

(b) A background check completed through the NBCP portal shall be required as soon as operational.

#### Section 4. Checks of Other States.

(1) A prospective or current staff member who resides in or has resided in another state within the last five (5) years shall:

(a) Request from each state of current or prior residency, in accordance with the state's laws, policies, and procedures, with a courtesy notice to the cabinet:

1. An in-state criminal records check by:
  - a. Means of fingerprints for the state of residence; or
  - b. Any means accepted by a state of prior residency;
2. A check of the state's sex offender registry or repository; and
3. A check of the state-based child abuse and neglect registry and database; and

(b) Direct results of the checks required in paragraph (a) of this subsection to the Department for Community Based Services, Division of Protection and Permanency, 275 East Main Street, 3E-A, Frankfort, Kentucky 40621, or securely send results to [privateagencyliaison@ky.gov](mailto:privateagencyliaison@ky.gov).

(2) If the prospective or current staff member's current or prior state of residency participates in the FBI's National Fingerprint File Program, the staff member shall be exempt from the requirements of subsection (1)(a)1. of this section.

(3) In accordance with KRS 336.220, a child-caring or child-placing provider shall pay a fee charged by another state for a background check as permitted pursuant to 45 C.F.R. 98.43(f) for a prospective or current staff member.

(4) If another state fails to respond to a check submitted in accordance with subsection (1) of this section within thirty (30) calendar days from the date of the background check's request as verified by the staff member, the cabinet shall:

(a) Process a staff member's background checks and issue notice to the provider in accordance with Section 3(4) of this administrative regulation to ensure compliance with 45 C.F.R. 98.43(e); and

- (b) Send notice in accordance with Section 3(4) of this administrative regulation if:
1. Another state provides requested background check results at a later date; and
  2. A disqualifying background check result is identified.

#### Section 5. Disqualifying Background Check Results.

(1) Unless a rehabilitative review pursuant to Section 8 of the administrative regulation determines the individual is eligible to be hired, an individual shall be ineligible to be hired or otherwise serve as a staff member if the individual:

- (a) Meets a criterion specified in 45 C.F.R. 98.43(c);
- (b) Has a felony conviction, entered an Alford plea, a plea of guilty, or a plea of nolo contendere, related to:
  - 1. A spouse, a child, sexual violence, or death as established in 42 U.S.C. 671(a)(2); or
  - 2. Physical abuse, battery, drugs, or alcohol within the five (5) year period prior to the check;
  - 3. KRS Chapter 209, protection of adults;
  - 4. KRS Chapter 506, inchoate offenses;
  - 5. KRS Chapter 511, burglary and related offenses;
  - 6. KRS Chapter 515, robbery;
  - 7. KRS Chapter 520, escape and other offense related to custody;
  - 8. KRS Chapter 525, riot, disorderly conduct, and related offenses;
  - 9. KRS Chapter 527, offenses relating to firearms and weapons;
  - 10. KRS Chapter 529, prostitution offenses; or
  - 11. KRS Chapter 530, family offenses, excluding KRS 530.050;
- (c) Has a criminal conviction relating to child abuse or neglect;
- (d) Has a civil judicial determination related to child abuse or neglect;
- (e) Has been found to have:
  - 1. Committed sexual abuse or sexual exploitation of a child; or
  - 2. Been responsible for a child fatality or near fatality related to abuse or neglect;
- (f) Has been convicted of, or has entered an Alford plea, a plea of guilty, or a plea of nolo contendere to:
  - 1. A sex or violent crime pursuant to KRS 17.165; or
  - 2. An offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph;
- (g) Is listed on the:
  - 1. Central registry established in accordance with 922 KAR 1:470; or
  - 2. Another state's state-based child abuse and neglect registry or database;
- (h) Has an open warrant for a disqualifying offense established in this subsection; or
- (i) Has a pending charge for a criminal offense specified in this subsection.

(2) An individual who has received a pardon for a disqualifying offense, has had the record expunged, or has evidenced dismissal of a warrant or disqualifying charge may serve as a staff member.

(3) Unless there is a pending informal review, rehabilitative review, or appeal in accordance with Section 6 of this administrative regulation, a provider shall be subject to a cabinet action against the provider's license in accordance with 922 KAR 1:305, if the provider employs a staff member who is ineligible for employment pursuant to subsection (1) of this section.

#### Section 6. Notice of a Disqualifying Background Check Result and Appeals.

(1) The cabinet shall notify each prospective or current staff member determined to have a disqualifying background check result in accordance with Section 5 of this administrative regulation.

(2) In addition to the cabinet's notification in accordance with subsection (1) of this section, a provider that receives notice from the cabinet that a prospective or current staff member has been determined to have a disqualifying background check result in accordance with Section 5 of this administrative regulation shall notify the staff member of the cabinet's determination within three (3) business days of receipt of the notice.

(3) A prospective or current staff member who receives notice of having a disqualifying background check result in accordance with Section 5 of this administrative regulation may:

(a) Challenge the accuracy of the cabinet's determination by submitting a written request for informal review, including any information the individual wishes to be considered, to the Department for Community Based Services, Division of Protection and Permanency, 275 East Main Street, 3E-A, Frankfort, Kentucky 40621, within ten (10) calendar days of the date of notice in accordance with subsection (1) of this section; or

(b) Request a rehabilitative review pursuant to Section 8 of this administrative regulation.

(4) Upon completion of an informal review upon request pursuant to subsection (3)(a) of this section, the cabinet shall provide written notice of the cabinet's decision to uphold or rescind the notice of disqualifying background check result to the prospective or current staff member.

(5) A prospective or current staff member may appeal the results of an informal review or a rehabilitative review pursuant to Section 8 of this administrative regulation, in accordance with 922 KAR 1:480.

(6) If a prospective or current staff member wishes to challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(7) If a prospective or current staff member challenges the finding that he or she is the true subject of the results from a registry or repository check, the cabinet shall refer the individual to the agency responsible for maintaining the registry or repository.

#### Section 7. Termination or Relocation of a Staff Member upon Receipt of Notice of a Disqualifying Background Check Result.

(1) If a prospective or current staff member has not requested an informal review or a rehabilitative review in accordance with Section 8 of this administrative regulation, the child-caring or child-placing provider shall:

(a) Terminate the staff member no later than ten (10) calendar days after receipt of notice of the cabinet's determination, including the disqualifying background check result; and

(b) Use the NBCP to provide electronic notification to the cabinet affirming the staff member's dismissal within three (3) business days of termination.

(2)

(a) If a prospective or current staff member requests an informal review or a rehabilitative review in accordance with Section 8 of this administrative regulation, the child-caring or child-placing provider:

1. May retain the staff member pending resolution of the informal review or rehabilitative review; and

2. Shall ensure that the staff member:

a. Is subject to direct, onsite supervision; or

b. Does not have duties or proximity that involves one-on-one contact with a child in care.

(b) A provider shall terminate the staff member if the:

1. Informal review upholds the cabinet's determination of a disqualifying background check result, or the rehabilitative review committee does not grant a waiver; and

2. Staff member does not request an administrative hearing in accordance with Section 6(5) of this administrative regulation, in which the provider shall terminate

the staff member no later than the thirty-first calendar day following written notice of the results of the informal review or rehabilitative review.

(c) If a staff member requests an administrative hearing in accordance with Section 6(5) of this administrative regulation to appeal the decision from an informal review or rehabilitative review, the provider:

1. May retain the staff member pending the appeal's resolution if the staff member:
  - a. Remains subject to direct, onsite supervision; or
  - b. Does not have duties or proximity that involves one-on-one contact with a child in care; and
2. Shall terminate the staff member no later than the thirty-first calendar day from the issuance of the final order if the staff member does not prevail.

(d) Using the NBCP, the provider shall provide electronic notification to the cabinet affirming the individual's dismissal within three (3) business days of the termination.

#### Section 8. Rehabilitative Review.

(1)

(a) A prospective or current staff member found to have a disqualifying background check result shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying background check result under the rehabilitative review process described in this section shall not apply to:

1. A disqualifying felony offense that occurred less than ten (10) years prior to the date of the criminal background check;
2. Any disqualifying felony or misdemeanor offense related to abuse, neglect, or exploitation of a child;
3. Registration as a sex offender under federal law or under the law of any state;
4. A sex or violent crime as defined by KRS 17.165; or
5. A child abuse and neglect substantiated finding that:
  - a. Occurred less than five (5) years prior to the date of the registry check; or
  - b. Involved:
    - (i) Sex abuse or sex exploitation of a child;
    - (ii) A child fatality related to abuse or neglect; or
    - (iii) A near fatality of a child related to abuse or neglect.

(2)

(a) A prospective or current staff member may submit a written request for a rehabilitative review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination issued pursuant to Section 3(4) or 6(4) of this administrative regulation regarding a determination of a disqualifying background check result.

(b) If a prospective or current staff member requests a rehabilitative review, the staff member:

1. May be retained by the provider pending the rehabilitative review; and
2. Shall be subject to restrictions and termination in accordance with Section 7 of this administrative regulation.

(3) The request for a rehabilitative review shall include the following information:

(a) A written explanation of each disqualifying background check result, including:

1. A description of the events related to the disqualifying background check result;
2. The number of years since the occurrence of the disqualifying background check result;
3. The age of the individual at the time of the disqualifying background check result; and
4. Any other circumstances surrounding the disqualifying background check result;

- (b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;
  - (c) The date probation or parole was satisfactorily completed, if applicable;
  - (d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently; and
  - (e) Evidence that the individual has pursued or achieved rehabilitation with regard to a disqualifying background check result.
- (4) A rehabilitative review shall be conducted by a committee of three (3) employees of the cabinet, none of whom were responsible for determining that the individual has a disqualifying background check result.
- (5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances including:
- (a) The amount of time that has elapsed since the disqualifying background check result;
  - (b) The lack of a relationship between the disqualifying background check result and the position for which the individual has applied; and
  - (c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the disqualifying background check result.
- (6) No later than thirty (30) calendar days from receipt of the written request for the rehabilitative review, the cabinet shall send the committee's determination on the rehabilitation waiver to the prospective or current child care staff member.
- (7) The decision of the committee shall be subject to appeal in accordance with Section 6(5) of this administrative regulation.
- (8) A provider shall not be obligated to accept an individual who is granted a waiver pursuant to this section as a staff member.

#### Section 9. Status of Employment.

- (1) A provider shall maintain the employment status of each staff member who has submitted to a fingerprint-based criminal background check by reporting the status using the NBCP Web-based system.
- (2) The cabinet shall inspect a provider to verify conformity with this administrative regulation.

#### Section 10. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "DPP-500, Private Child-Caring or Child-Placing Staff Member Waiver Agreement and Statement", 04/2022; and
  - (b) "DPP-501, Disclosures to be Provided to and Signed by the Applicant Private Child-Caring or Child-Placing Staff Member", 04/2022.
- (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>.

*MARTA MIRANDA-STRAUB, Commissioner*  
*ERIC C. FRIEDLANDER, Secretary*

APPROVED BY AGENCY: April 25, 2022  
FILED WITH LRC: April 26, 2022 at 12:25 p.m.

**PUBLIC HEARING AND COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on July 25, 2022, 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 July 18, 2022, 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 July 31, 2022. 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 502-564-6746; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).