CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:280. Background checks for child care staff members, reporting requirements, and appeals.

RELATES TO: KRS 17.165, 17.500-17.580, 199.011(14), 199.466, 199.894, Chapter 209, 336.220, Chapter 506, 511, 515, 520, 525, 527, 529, 530, ~~[620.050-620.120,]~~625.050-625.120, 45 C.F.R. 98.43, 34 U.S.C. 20921, 42 U.S.C. 9857-9858q

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6)

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 program. KRS 199.896(2) and 199.8982(1)(f) authorize, and 199.8994(6) requires the cabinet to promulgate administrative regulations pertaining to standards of a child-care center, family child-care home, and a child care provider that receives a child care subsidy administered by the cabinet, including criminal convictions that impact the safety and security of children in care. KRS 199.8965(8) requires the cabinet to promulgate an administrative regulation necessary to implement child care staff member background checks in accordance with 42 U.S.C. 9858f and implementing federal rule. This administrative regulation establishes background check requirements for child care staff members, reporting requirements, and appeals.

Section 1. Definitions.

(1) "Cabinet" is defined by KRS 199.894(1).

(2) "Child-care center" is defined by KRS 199.894(3).

(3) "Child care provider" is defined by 45 C.F.R. 98.43(a)(2)(i).

(4) "Child care staff member" is defined by 45 C.F.R. 98.43(a)(2)(ii).

(5) "Family child-care home" is defined by KRS 199.894(5).

(6) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190 and 45 C.F.R. 98.43(b).

(7) "Rap back system" is defined by KRS 199.011(14).

(8) "Registered relative child care provider" means a child care provider who meets the requirements established in 922 KAR 2:180.

(9) "State and national criminal history records" means all background check components required by 45 C.F.R. 98.43(b).

(10) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Applicability and Exceptions. This administrative regulation shall apply to a child care staff member~~[age eighteen (18) or older]~~, including:

(1) An owner, operator, or employee of a child care provider;

(2) A child-care center licensee or director;

(3) An adult household member of a Type II child-care center, family child-care home, or ~~[provider]~~registered relative child care provider~~[in accordance with 922 KAR 2:180]~~;

(4) An employee who is present during the time a child is receiving care;

(5) Any person with supervisory or disciplinary control over a child in care; and
(6) Any person having unsupervised contact with a child in care.

Section 3. Implementation and Enforcement.

(1) A child care staff member shall complete the background checks required in accordance with this administrative regulation and be found to have no disqualifying offense prior to becoming a child care staff member.

(2) A current or prospective child care staff member shall be subject to background checks in accordance with Sections 4 and 5 of this administrative regulation at intervals pursuant to 45 C.F.R. 98.43(d).

(3) A child care provider shall request a background check in accordance with this administrative regulation once during each five (5) year period of employment for each current child care staff member.

(4) Prior to re-employment, a child care staff member shall repeat background checks required by this administrative regulation if they have been separated from employment with a child care provider within Kentucky for a period of one-hundred and eighty (180) consecutive days or more.

(5) A parent or guardian shall be required to consent to the background check of an individual who is under the age of eighteen (18).

Section 4. Procedures and Payments.

(1) To initiate the process of~~[for]~~ obtaining a background check~~[checks]~~ on a prospective child care staff member, the child care provider shall:

(a) Request the prospective child care 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 prospective child care staff member;

(b) Request the prospective child care staff member complete and sign the:

1. DCC-500, Applicant Child Care Staff Member Waiver Agreement and Statement; and

2. DCC-501, Disclosures to Be Provided to and Signed by the Applicant Child Care Staff Member; and

(c) Log on to the NBCP portal and enter the prospective child care staff member's demographic information in order for the cabinet to perform~~[for]~~ a check of the:

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

2. National Sex Offender Public Web site~~[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 199.8965(8), 336.220, and 45 C.F.R. 98.43(f), a child care 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 child care staff member's rap back has not expired, a new fingerprint check shall not be needed.

(b) A child care provider enrolled in the Kentucky NBCP shall pay a fee not to exceed thirty (30)~~[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) To the extent funds are available, the cabinet shall absorb, in whole or in part, fees using funding in accordance with 42 U.S.C. 9857-9858q.

(4) Upon submission of payment in accordance with subsections (2) and (3) of this section, the child care staff member shall:

(a) Have no more than thirty (30) calendar days from the date of payment pursuant to subsections (2) and (3) of this section, to submit his or her fingerprints at an authorized collection site for NBCP to check state and national criminal history records; 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.

(5) Upon completion of a check of the state and national criminal history records~~[the background checks]~~ in accordance with this section and Section 5 of this administrative regulation, the cabinet:

(a) Within forty-five (45) days, shall ~~[Shall]~~ provide notice to the child care provider and prospective child care staff member in accordance with 45 C.F.R. 98.43(e) that the prospective child care staff member is:

1. Eligible for hire; or

2. Not eligible for hire if the prospective child care staff member is found by the cabinet to have a disqualifying background check result in accordance with Section 6 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 ~~[child care provider or another]~~entity provided on the waiver in accordance with subsection (1)(b) of this section; and

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

(6) A child care 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 (5)(a) of this section.

(7) A prospective or current child care staff member may submit a request for a protection and permanency record in accordance with 922 KAR 1:510.

(8)

(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 Sex Offender Public Website~~[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 5. Checks of Other States.

(1) If ~~[In accordance with 45 C.F.R. 98.43(b)(3])[,]~~ a prospective child care staff member ~~[who]~~resides in or has resided in another state within the last five (5) years, the cabinet, in accordance with 45 C.F.R 94.43 (b)(3), 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. A state ~~[An in-state]~~ criminal records check by means~~[:]~~

~~[a.]~~ ~~[Means]~~ of fingerprints for the state of residence unless the state participates in the FBI National Fingerprint File Program; ~~[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 be provided to the cabinet[Department for Community Based Services, Division of Child Care, 275 East Main Street, 3C-F, Frankfort, Kentucky 40621, or securely send results to CHFSDCCNBCP@ky.gov].

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

[(3)] In accordance with KRS 336.220, an employer[a child care provider] shall pay any 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 child care staff member.

(3) [(4)] If another state fails to respond to a check submitted in accordance with subsection (1) of this section within forty-five (45)[thirty (30)] calendar days from the date of the background check request[as verified by the child care staff member], the cabinet shall:

(a) Process a child care staff member's background checks and issue notice to the child care provider and staff member in accordance with Section 4(5) of this administrative regulation to ensure compliance with 45 C.F.R. 98.43(e); and

(b) Send notice in accordance with Section 4(5) 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.

(4) [(5)] A child abuse and neglect central registry check in accordance with 922 KAR 1:470 may be requested by [a]:

(a) A parent [Parent] or legal guardian in accordance with KRS 199.466; or

(b) Another state's child care licensing agency [Child care staff member in another state].

Section 6. Disqualifying Background Check Results.

(1) Unless a rehabilitative review pursuant to Section 9 of the administrative regulation determines the individual is eligible to be hired, an individual shall be ineligible to:

(a) Be hired as a child care staff member or be an adult household member of a registered relative child care provider, family child-care home, or Type II child-care center[or otherwise serve as a child care staff member] if the individual:

1. Meets a criterion specified in 45 C.F.R. 98.43(c);

2. Has been convicted of, or has entered an Alford plea, a plea of guilty, or a plea of nolo contendere to:

a. A drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;

b. A sex or violent crime pursuant to KRS 17.165;

c. A felony offense under:

(i) KRS Chapter 209, protection of adults;

(ii) KRS Chapter 506, inchoate offenses;

(iii) KRS Chapter 511, burglary and related offenses;

(iv) KRS Chapter 515, robbery;

(v) KRS Chapter 520, escape and other offense related to custody;

(vi) KRS Chapter 525, riot, disorderly conduct, and related offense;

(vii) KRS Chapter 527, offenses relating to firearms and weapons;

(viii) KRS Chapter 529, prostitution offenses; or

(ix) KRS Chapter 530, family offenses, excluding KRS 530.050; or

d. A misdemeanor offense under:

(i) KRS 525.130, cruelty to animals in the second degree - exemptions - offense involving equines; or

(ii) KRS 525.135, torture of dog or cat;

3. Is listed on:

a. The central registry established in accordance with 922 KAR 1:470; or

b. Another state's state-based child abuse and neglect registry or database;

4. Has been convicted of, or has entered an Alford plea, plea of guilty, or a plea of nolo contendere to, an offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph;

5. Has an open warrant for a disqualifying offense established in this paragraph; or

6. Has a pending charge for a criminal offense specified in this paragraph; or

(b) Serve as an owner,~~[a]~~ child-care provider's ~~[applicant,]~~licensee, administrative staff, or director if the individual has been convicted of, or has entered an Alford plea, a plea of guilty, or a plea of nolo contendere to, a felony offense involving fraud, embezzlement, theft, or forgery.

(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 child care staff member.

(3) Unless there is a pending informal review, rehabilitative review, or appeal in accordance with Section 7 of this administrative regulation, a child care provider shall be ineligible for the Child Care Assistance Program and shall be subject to a cabinet action against the child care provider's license in accordance with 922 KAR 2:090, certification in accordance with 922 KAR 2:100, or registration in accordance with 922 KAR 2:180, if the child care provider:

(a) Employs a child care staff member who is ineligible for employment under subsections (1) and (2) of this section; or

(b) Is a registered relative child care provider, certified family child-care home, or Type II licensed child-care center and includes an adult household member who has a disqualifying background check result in accordance with subsections (1)(a) and (2) of this section.

Section 7. Notice of a Disqualifying Background Check Result and Appeals.

(1) If applicable, the ~~[The]~~ cabinet shall notify each prospective or current child care staff member of:

(a) A ~~[determined to have a]~~ disqualifying background check result in accordance with Section 6 of this administrative regulation; and

(b) The applicant or employee's rights to:

1. Challenge the accuracy of the cabinet's determination;

2. Request an informal review;

3. Request a rehabilitative review; and

4. Request an administrative hearing.

(2) In addition to the cabinet's notification in accordance with subsection (1) of this section, a child care provider that receives notice from the cabinet that a prospective or current child care staff member has been determined to have a disqualifying background check result in accordance with Section 6 of this administrative regulation shall notify the child care staff member of the cabinet's determination within three (3) business days of receipt of the notice.

(3) Pursuant to 45 C.F.R. 98.43(e)(3), a prospective or current child care staff member who receives notice of having a disqualifying background check result in accordance with Section 6 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 Child Care, 275 East Main Street, 3C-F, 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 9 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 child care staff member and child care provider.

(5) A prospective or current child care staff member may appeal the results of an informal review or a rehabilitative review pursuant to Section 9 of this administrative regulation and 45 C.F.R. 98.43(e)(3), in accordance with 922 KAR 2:260.

(6) If a prospective or current child care 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 child care 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 8. Termination or Relocation of a Child Care Staff Member upon Receipt of Notice of a Disqualifying Background Check Result.

(1) If a prospective or current child care staff member has not requested an informal review or a rehabilitative review in accordance with Section 9 of this administrative regulation, the child care provider shall:

(a)

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

2. Change residence of an adult household member in the child care provider's home no later than fifteen (15) calendar days after receipt of notice of the cabinet's determination, including disqualifying background check result; and

(b) Use the NBCP to provide electronic notification to the cabinet affirming the child care staff member's dismissal or household member's change in residence within three (3) business days of termination or residence change.

(2)

(a) If a prospective or current child care staff member or adult household member requests an informal review or a rehabilitative review in accordance with Section 9 of this administrative regulation, the child care provider:

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

2. Shall ensure that the child care 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 child care provider shall terminate the child care staff member or relocate the adult household 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. Child care staff member does not request an administrative hearing in accordance with Section 7(5) of this administrative regulation, in which the child care provider shall terminate the child care staff member or relocate the adult household 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 child care staff member or adult household member requests an administrative hearing in accordance with Section 7(5) of this administrative regulation to appeal the decision from an informal review or rehabilitative review, the child care provider:

1. May retain the child care staff member pending the appeal's resolution if the child care 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 child care staff member or relocate the adult household member no later than the thirty-first calendar day from the issuance of the final order if the child care staff member or adult household member does not prevail.

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

Section 9. Rehabilitative Review.

(1)

(a) A prospective or current child care staff member or adult household 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 offense established in 45 C.F.R. 98.43(c);

2. A disqualifying felony offense that occurred less than ten (10) years prior to the date of the criminal background check;

3. ~~[2.]~~ Any disqualifying felony or misdemeanor offense related to abuse, neglect, or exploitation of a child;

4. ~~[3.]~~ Registration as a sex offender under federal law or under the law of any state;

5. ~~[4.]~~ A sex or violent crime as defined by KRS 17.165; or

6. ~~[5.]~~ A child abuse and neglect substantiated finding that:

a. Occurred less than seven (7) 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;

(iii) A near fatality of a child related to abuse or neglect; or

(iv) The involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.

(2)

(a) A prospective or current child care staff member or adult household 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 4(5) or 7(4) of this administrative regulation regarding a determination of a disqualifying background check result.

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

1. May be retained by the child care provider pending the rehabilitative review; and

2. Shall be subject to restrictions and termination or relocation in accordance with Section 8 of this administrative regulation.

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

(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 prospective or current child care staff member or adult household member~~[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 7(5) of this administrative regulation.

(8) A child care provider shall not be obligated to accept an individual who is granted a waiver pursuant to this section as a child care staff member.

Section 10. Transparency. The cabinet shall maintain information concerning the background check processes in accordance with this administrative regulation on its Web site in accordance with 45 C.F.R. 98.43(g).

Section 11. Status of Employment.

(1) A child care provider shall maintain the employment or residential status of each child care 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 child care provider to verify conformity with this administrative regulation.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DCC-500, Applicant Child Care Staff Member Waiver Agreement and Statement", 01/2022; and

(b) "DCC-501, Disclosures to Be Provided to and Signed by the Applicant Child Care Staff Member", 01/2022.

(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.

(44 Ky.R. 1782, 2231, 2331; eff. 6-1-2018; 48 Ky.R. 2316, 2988; eff. 7-20-2022; 50 Ky.R. 978; eff. 2-20-2024.)

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 28, 2023

FILED WITH LRC: September 7, 2023 at 12:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 27, 2023, 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 November 16, 2023, 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 November 30, 2023. 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.

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 background check requirements for child care staff members, reporting requirements, and appeals.

(b) The necessity of this administrative regulation:
This administrative regulation is necessary to establish background check requirements for child care staff members, reporting requirements, and appeals.

(c) How this administrative regulation conforms to the content of the authorizing statutes:
This administrative regulation conforms to the content of the authorizing statutes through its establishment of child care staff members' background checks, reporting requirements, and appeals. KRS 199.8965(8) requires the cabinet to promulgate an administrative regulation necessary to implement child care staff member background checks in accordance with 42 U.S.C. 9858. KRS 199.896(2) and 199.8982(1)(f) authorize, and KRS 199.8994(6) requires, the cabinet to promulgate administrative regulations pertaining to standards of a child care provider, including criminal convictions that impact the safety and security of children in care.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
This administrative regulation will assist in the effective administration of the statutes through its establishment of child care staff member background checks, reporting requirements, and appeals.

(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:
The amendment addresses non-compliances that were identified during the Department for Community Based Services (DCBS) Division of Child Care federal monitoring visit in 2022. Non-compliances addressed within this administrative regulation include Child Care Development Fund (CCDF) Rule Provisions §98.43, plan items 5.5.2, 5.5.3, 5.5.5, and 5.5.8. This includes clarifying the need for child care staff members who are minors to complete background check components. The amendment also clarifies the federal requirement to repeat fingerprint-based background checks every five (5) years and clarifies that the cabinet (not a provider) is responsible for obtaining information needed for out of state background checks if the other state doesn't participate in the FBI National Fingerprint File Program. The amendment also clarifies that background check notices shall be sent to the child care staff member and the child care provider. The amendment to this administrative regulation also increases the administrative fee for the fingerprint-based background check from up to twenty-five (25) dollars to up to thirty (30) dollars. The cabinet is currently using federal child care funds to cover this cost for providers.

(b) The necessity of the amendment to this administrative regulation:
The amendments are to ensure the DCBS Division of Child Care is addressing the non-compliances identified during the federal monitoring visit in 2022. The amendments ensure the cabinet is meeting all requirements of CCDF rules and

ensures the health and safety of children in care. The fee increase is necessary because, in accordance with a state master agreement, IDEMIA Identity & Security USA serves as the central hub for fingerprint-supported background checks. IDEMIA recently raised their rates per fingerprint check. This amendment is necessary to offset the cost of IDEMIA's rate increase being passed on to the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes:
KRS 199.8965(8) requires the cabinet to promulgate an administrative regulation necessary to implement child care staff member background checks in accordance with 42 U.S.C. 9858. KRS 199.896(2) and 199.8982(1)(f) authorize, and 199.8994(6) requires the cabinet to promulgate administrative regulations pertaining to standards of a child care provider, including criminal convictions that impact the safety and security of children in care.

(d) How the amendment will assist in the effective administration of the statutes:
The amendment ensures compliance with federal and state law and the safety and security of children in care.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
As of July 14, 2023, there were 1,804 licensed child care providers, 207 certified providers, and 46 registered providers whose staff have undergone national fingerprint-based background checks. Since implementing the National Background Check Program (NBCP) for child care staff in 2018, over 70,000 background checks have been conducted in this manner.

(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:
Child care providers will need to continue to ensure they are employing child care staff that have completed the required background checks.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):
To the extent possible, the department has and will continue to use its resources to absorb or offset costs for child care providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Child care providers have access to comprehensive state and national background checks for potential and current child care staff members (including child care staff members who are minors). The utilization of the Kentucky National Background Check Program meets federal recommendations.

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

(a) Initially:
The DCBS Division of Child Care has secured federal funds to pay for these background checks for child care staff.

(b) On a continuing basis:

The DCBS Division of Child Care will absorb or offset costs associated with implementation of the federal mandate within its existing appropriations, including federal award, to the extent possible.

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

The Child Care and Development Fund Block Grant, state match, and maintenance of effort for the block grant, and limited agency funds will support the ongoing implementation and enforcement of this administrative regulation.

(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 is necessary and is included in this amendment. The company the Kentucky State Police contract with to complete national fingerprint-based background checks, IDEMIA Identity & Security USA, has increased their fee per background check for the first time in five (5) years. This increase is included in this amendment although the DCBS Division of Child Care is utilizing federal funds to cover this cost for child care providers.

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

This amendment does directly increase a fee. The amendment increases the administrative fee for the fingerprint-based background check from up to twenty-five (25) dollars (established in 2018) to up to thirty (30) dollars. The cabinet is currently using federal child care funds to cover this cost for providers. The fee increase is necessary because, in accordance with a state master agreement, IDEMIA Identity & Security USA serves as the central hub for fingerprint-supported background checks. IDEMIA recently raised their rates per fingerprint check. This amendment is necessary to offset the cost of IDEMIA's rate increase being passed on to the cabinet.

(9) TIERING: Is tiering applied?

Tiering is not applied. Compliance with this administrative regulation applies equally to all individuals and entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.
45 C.F.R. 98.43, 42 U.S.C. 9857-9858q.

(2) State compliance standards.
KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6).

(3) Minimum or uniform standards contained in the federal mandate.
The provisions of the administrative regulation comply with the federal mandate.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
This administrative regulation does not impose stricter, additional, or different responsibilities or requirements than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.
This administrative regulation does not impose stricter, additional, or different responsibilities or requirements than those required by the federal mandate.

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. Quasi-governmental agencies, local governments, and school districts that operate a licensed child-care center will be impacted by this administrative regulation by being required to meet the standards contained herein.

(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), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6), 45 C.F.R. 98.43, 42 U.S.C. 9857-9858q.

(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 generate no revenue. Fees passed along to regulated entities (and covered by the cabinet for at least the time being) are not allowed to exceed the actual cost of the check. This increase is necessary due to a recent IDEMIA rate increase.

(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 generate no revenue in its subsequent years.

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

The program is already in operation.

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

The department anticipates being able to absorb or offset costs within its existing state and federal awards.

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?

There are no cost savings.

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

There are no cost savings.

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

The cabinet is using federal funds to cover this rate increase to providers.

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

The cabinet is using federal funds to cover this rate increase to providers.

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 regulatory amendment will not have a major economic impact on child care providers that participate in the National Background Check Program. The cost of conducting a national fingerprint-based background check has increased for the first time in five (5) years, but the cabinet continues to cover this cost for providers through the utilization of federal funds.