

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

922 KAR 2:165. Employee Child Care Assistance Partnership.

RELATES TO: KRS 199.881-888, 199.8943, 42 U.S.C. 2000d

STATUTORY AUTHORITY: KRS 194A.050(1), 199.884, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.884 requires the cabinet to promulgate administrative regulations to effectuate the provisions of KRS 199.881 to 199.888. KRS 199.8994 requires the cabinet to administer all child care funds in a manner that is in the best interest of the clients to be served. This administrative regulation establishes eligibility requirements and procedures for the implementation of the Employee Child Care Assistance Partnership to the extent that funding is available.

Section 1. Definitions.

(1) "Applicant" means an employer applying for the Employee Child Care Assistance Partnership (ECCAP) program with the intention of entering into a contract with an employee and a child care provider to support an employee by contributing to his or her child care costs.

(2) "Cabinet" is defined by KRS 199.882(1).

(3) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent or guardian's responsibility for the child's protection, development, and supervision.

(4) "Child care desert" means a census tract with more than fifty (50) children under the age of five (5) that contains either no child care providers or so few that there are more than three (3) times as many children as licensed child care slots.

(5) "Contribution" is defined by KRS 199.882(3).

(6) "Eligible child care costs" is defined by KRS 199.882(4).

(7) "Employee" is defined by KRS 199.882(5).

(8) "Employer" is defined by KRS 199.882(6).

(9) "Family" means a parent, child, or other responsible adult residing in the same home as a child.

(10) "Fund" is defined by KRS 199.882(7).

(11) "Program" means the Employee Child Care Assistance Partnership and is defined by KRS 199.882(8).

(12) "Responsible adult" means an individual who is:

- (a) The natural parent, adoptive parent, or stepparent;
- (b) The legal guardian of a child; or
- (c) The spouse of an individual caring for a child in loco parentis.

(13) "Small business" is defined by KRS 199.882(9).

(14) "State match" is defined by KRS 199.882(10).

(15) "State median household income" is defined by KRS 199.882(11).

Section 2. Application and Contract Requirements and Timeframes.

(1) An employer may apply for the Employee Child Care Assistance Partnership (ECCAP).

(2) An application shall have been made on the date a signed and completed form "DCC-600, Employee Child Care Assistance Partnership Application and Contract", is received by the cabinet.

(3) An application shall not be received by the cabinet prior to April 2, 2023, in accordance with KRS 199.883(9)(b).

(4) The cabinet shall review and consider an application received on or after April 2, 2023, pursuant to KRS 199.883(3) through (5).

(5) The cabinet shall not disburse a state match pursuant to this program prior to July 1, 2023, in accordance with KRS 199.883(9)(c).

(6) If necessary, the cabinet shall maintain a waitlist pursuant to KRS 199.883(6).

(7) Pursuant to KRS 199.883(10), if funding is available, beginning in 2024, the cabinet shall accept an application for the next fiscal year on:

(a) April 2 of each year for an employer already participating in the program.

(b) May 17 of each year for an employer not already participating in the program.

(8)

(a) In accordance with the procedures established in 920 KAR 1:070, interpreter or speech impaired services shall be provided for persons who are:

1. Deaf; or

2. Hard of hearing.

(b) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

(9) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex or gender, sexual orientation, disability, religion, national origin or ancestry, political beliefs, or reprisal or retaliation for prior civil rights activity.

(10)

(a) The employer shall be the primary source of information and shall:

1. Provide verification of:

a. Employment;

b. The employee's income; and

c. Technical eligibility required pursuant to Section 3 of this administrative regulation; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information, failure of an employer to respond within ten (10) business days shall be considered a failure to present adequate proof of eligibility.

(11) The cabinet shall verify that the employer, employee, and child care provider are eligible to participate in the program pursuant to the requirements established in this administrative regulation.

(12) The cabinet shall:

(a) Render a decision on each application; and

(b) Within thirty (30) calendar days of receipt of the application submitted in accordance with KRS 199.884(4), send notice of approval or denial to all parties on the "DCC-605, Employee Child Care Assistance Partnership Notice of Action".

Section 3. Technical Eligibility.

(1) An employee shall not be eligible to participate in the program if child care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A person living in the same residence as the child in need of care; or

(d) A provider not:

1.
 - a. Licensed pursuant to 922 KAR 2:090; or
 - b. Certified pursuant to 922 KAR 2:100; and
2. Rated pursuant to the quality-based graduated early care and education program established in KRS 199.8943 and 922 KAR 2:270.
- (2) An employee whose family meets the eligibility requirements for the Child Care Assistance Program pursuant to 922 KAR 2:160 shall be referred to that program by the cabinet.
- (3) An employee shall not be eligible to participate in the Employee Child Care Assistance Partnership program if a member of his or her family is eligible for the Child Care Assistance Program pursuant to 922 KAR 2:160.
- (4) An employee shall be a member of the family of the child for whom child care is being provided and paid for.
- (5) A licensed or certified child care provider shall be eligible to apply for this program as an employer.
- (6) The owner of a child care facility shall not be eligible to participate as an employee.
- (7) An individual shall not be eligible to apply as more than one (1) party to a contract.

Section 4. Priority Determinations.

- (1) The cabinet shall review and consider applications in the order in which they are received.
- (2) In each fiscal year, twenty-five (25) percent of the total fund shall be set aside to fund applications in which the employer is a small business.
- (3) The cabinet shall prioritize approving applications in which:
 - (a) The employer is located in a child care desert;~~or~~
 - (b) The employer shall contribute at least thirty-three (33) percent of the eligible child care costs; or
 - (c) The employee resides in Kentucky.

Section 5. Continuing Participation.

- (1) Each approved contract shall remain in place for the approved fiscal year unless the contract is terminated pursuant to Section 7 of this administrative regulation.
- (2) An employer with an approved contract in place shall reapply to continue participation each year pursuant to KRS 199.883(10)(a).

Section 6. Payment ~~[Payments]~~ Rates.

- (1) To the extent funds are available, the cabinet shall make payments to the child care provider based on the start and end date of enrollment of each child identified in the DCC-600.
- (2) Except as provided in subsection (3) of this section, the state match to the contribution provided by the employer shall be in accordance with the following tiered table of an employee's household income pursuant to KRS 199.885(7):

Employee Household Income Compared to State Median Household Income	State Match Percentage
Equal to or less than 100%	100%
Above 100% through 120%	90%
Above 120% through 140%	80%
Above 140% through 160%	70%
Above 160% through 180%	60%
Above 180%	50%

(3) The state match provided shall not exceed the balance necessary to pay for child care in full.

(4) The state match provided shall remain unchanged for the approved fiscal year unless the contract is terminated pursuant to Section 7 of this administrative regulation.

(5) A child care provider shall not charge a rate for a program participant that is different from that charged to the general public.

Section 7. Termination of Contract.

(1) The contract shall be terminated if:

(a) Employment is terminated pursuant KRS 199.887(1)(a);

(b) An employer fails to make the agreed upon contribution towards child care pursuant KRS 199.887(1)(b);

(c) An employee fails to pay remaining child care costs and the child care provider requests the cabinet terminate the contract;

(d) A child care provider ceases participating in the program;

(e) A child care provider no longer participates in the quality rating system established in KRS 199.8943 and 922 KAR 2:270; or

(f) An employer,~~for~~ employee, or child care provider requests the contract be terminated by the cabinet at any time for any reason pursuant KRS 199.887(2)(c).

(2) If employment is terminated, the employer shall notify the child care provider and cabinet within three (3) business days.

(3) If an employer fails to make the agreed upon contribution, the child care provider shall notify the cabinet within five (5) business days.

(4) If a child care provider ceases participation in the program or no longer participates in the quality rating system, the provider shall notify all parties to the agreement immediately.

(5) If an employer,~~for~~ employee, or child care provider requests a contract be terminated by the cabinet, he or she shall notify all parties to the contract and specify the desired termination date that shall occur no less than two (2) weeks from the date of notice.

(6) If a party to the contract fails to meet the notice requirements of this section, reimbursement shall be made in accordance with KRS 199.887.

(7) All parties to a contract shall be financially obligated up to the date of termination of the contract.

(8) The cabinet shall notify all parties of a termination of contract on the DCC-605.

Section 8. Appeals. An employer, employee, or child care provider may request an administrative hearing regarding an eligibility or payment determination within thirty (30) days of adverse action from the Office of the Ombudsman and Administrative Review, Quality Advancement Branch, 275 East Main Street, 2 E-O, Frankfort, Kentucky 40621.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DCC-600, Employee Child Care Assistance Partnership Application and Contract", ~~11/23[09/22]~~; and

(b) "DCC-605, Employee Child Care Assistance Partnership Notice of Action", ~~11/23[01/23]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 27, 2023

FILED WITH LRC: November 13, 2023 at 1:25 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by January 12, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the Employee Child Care Assistance Partnership (ECCAP) program. This administrative regulation establishes the processes, requirements, and eligibility relating to the program to the extent that funding is available, pursuant to KRS 199.881 to 199.888.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the required actions of a program applicant and participant.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 199.884 requires the cabinet to promulgate administrative regulations to effectuate the provisions of KRS 199.881 to 199.888, the Employee Child Care Assistance Partnership.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the administration of the statutes by establishing the required processes, eligibility, and assistance amounts consistent with KRS 199.881 to 199.888.

(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 adds an employee residing in Kentucky as one of the priority criteria for participation in the program and clarifies that child care providers may terminate the contract as well, pursuant to House Bill 165 from the 2023 Regular Session, codified as KRS 199.887. Materials incorporated by administrative regulation, program forms, are also being amended for ease of use, to make clarifications, to reflect that more than one child care provider may be involved in each contract, and to adjust for electronic utilization in the future.

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

House Bill 165 from the 2023 Regular Session of the General Assembly amended KRS 199.887 to specify that in addition to the employer and employee, a child care provider also had the authority to terminate a contract established through this program at any time. This has been reflected in Section 7 of the administrative regulation. Clarification was also necessary just for continued operation of the program.

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

The amendment conforms to KRS 199.887, amended in the 2023 Regular Session.

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

This administrative regulation assists in the administration of the statutes by establishing the required processes, eligibility, and assistance amounts consistent with KRS 199.881 to 199.888.

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

As of September 2023, there were 1,782 licensed child care providers and 205 certified child care providers. Of these, 1,765 participated in the All STARS rating system, which is required for participation in this program. Also, as of September 2023, there were 83 families (115 children) participating in the program. This is the first year of operation of the program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

There are no additional requirements in this amendment. The amendment clarifies that child care providers may also terminate the contract, consistent with state law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no cost associated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Participating entities have greater flexibility to modify or terminate the contract.

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

(a) Initially:

There are no costs associated with the amendment.

(b) On a continuing basis:

There are no costs associated.

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

The Executive Branch budget bill from the 2022 Regular Session, House Bill 1, appropriated \$15,000,000 for the operation of this program in fiscal year 2023-2024. KRS 199.885(9) includes that five percent (5%) of the total fund shall be distributed to the cabinet to administer the program in fiscal year 2022-2023 and three percent (3%) of the total fund shall be distributed to the cabinet to administer the program in every fiscal year thereafter.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

An increase in fees or funding is not necessary.

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

This administrative regulation does not establish or increase fees.

(9) TIERING: Is tiering applied?

The amount of state match contributed towards an employee's child care cost is based upon the employee's household income and is tiered consistent with state law.

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 administers this program. Government entities are not an allowed employer pursuant to KRS 199.882.

(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), 199.884, 199.8994.

(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 not generate additional revenue.

(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 not generate additional revenue.

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

This program is funded by General Funds appropriated by the General Assembly. The Executive Branch budget bill from the 2022 Regular Session, House Bill 1, appropriated \$15,000,000 to this program for fiscal year 2023-2024. KRS 199.885(9) includes that five percent (5%) of the total fund shall be distributed to the cabinet to administer the program in fiscal year 2022-2023 and three percent (3%) of the total fund shall be distributed to the cabinet to administer the program in every fiscal year thereafter. House Bill 1 G.8.(30) included a seven percent (7%) cap on administrative costs for the oversight of this program.

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

This program will be administered within appropriated funding. In the absence of funding, this program will not continue.

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?

This administrative regulation does not generate cost savings for regulated entities, but does provide financial assistance available to eligible families towards their child care costs.

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

This administrative regulation creates child care cost savings for families employed by an employer who participates.

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

There are no required costs. Employers determine how much funding to contribute towards their employee's child care costs.

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

There are no required costs. Employers determine how much funding to contribute towards their employee's child care costs.

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 administrative regulation does not have a major economic impact in an overall negative or adverse manner.