Technical Amendment
March 11, 2024

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, 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, 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 registered relative child care provider;

(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 obtaining a background check 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 a check of the:

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

2. National Sex Offender Public Web site; 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) 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 in accordance with this section and Section 5 of this administrative regulation, the cabinet:

(a) Within forty-five (45) days, 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 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, send a copy of a KSP 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 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 a prospective child care staff member resides in or has resided in another state within the last five (5) years, the cabinet, in accordance with 45 C.F.R 98.43(b)(3), shall:

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

1. A state criminal records check by means of fingerprints for the state of residence unless the state participates in the FBI National Fingerprint File Program;

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.

(2) In accordance with KRS 336.220, an employer 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) If another state fails to respond to a check submitted in accordance with subsection (1) of this section within forty-five (45) calendar days from the date of the background

check request, 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) A child abuse and neglect central registry check in accordance with 922 KAR 1:470 may be requested by:

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

(b) Another state's child care licensing agency.

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 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, child-care provider's 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 cabinet shall notify each prospective or current child care staff member of:

(a) 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. Any disqualifying felony or misdemeanor offense related to abuse, neglect, or exploitation of a child;
4. Registration as a sex offender under federal law or under the law of any state;
5. A sex or violent crime as defined by KRS 17.165; or
6. 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 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 TAm eff. 3-11-2024.)