

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

(Amendment)

922 KAR 1:490. Background checks for foster and adoptive parents and relative and fictive kin caregivers.

RELATES TO: KRS 17.500-17.580, 27A.090, 194A.005(1), 199.011(6), (9), (14), 199.462(1), 199.470(4), 211.684, 600.020(7), (28), (40), (61), (62), 605.090(1)(b), (6), 605.120, 605.130, 620.050(5), Chapter 625, 45 C.F.R. 1356.30, 42 U.S.C. 247d, 671(a)(20), 5106a, 5141

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(5), 199.640(5), 605.120(5), (6), 605.130(7), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.462(5) requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household, or a relative or fictive kin caregiver. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS 605.130(7), by which the cabinet shall perform such other services as may be deemed necessary for the protection of children. KRS 199.640(5) authorizes the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. 45 C.F.R. 1356.30 requires criminal record checks be conducted for prospective foster and adoptive parents. This administrative regulation establishes background check requirements for relative and fictive kin caregivers, ~~for~~ applicants seeking to provide foster or adoptive services, or individuals seeking an independent adoption. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

Section 1. Definitions.

- (1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.
- (2) "Administrative review" means that the status of the individual subject to the child abuse and neglect check is pending the outcome of an:
 - (a) Investigation or assessment in accordance with 922 KAR 1:330; or
 - (b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.
- (3) "Adolescent member of the household" means a youth who:
 - (a) Resides in the home of:
 1. An individual who applies for approval or has been approved to provide foster or adoptive services; or
 2. A relative or fictive kin caregiver;

- (b) Is age twelve (12) through age seventeen (17); and
- (c) Is not placed in the home by a state agency.
- (4) "Adult member of the household" means an adult who:
 - (a) Resides in the home of:
 - 1. An individual who applies for approval or has been approved to provide foster or adoptive services;~~[or]~~
 - 2. A relative or fictive kin caregiver; or
 - 3. An individual applying for an independent non-relative adoption as defined in 922 KAR 1:010 or an independent relative adoption petitioner who is exempt as defined in KRS 199.470(4); and
 - (b) Is eighteen (18) years of age or older.
- (5) "Applicant" means an individual who applies for approval as a foster or adoptive parent of a child ~~[in the custody of the state]~~ under:
 - (a) 922 KAR 1:350, Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers;~~[or]~~
 - (b) 922 KAR 1:310, Standards for child-placing agencies placing children who are in the custody of a state agency;
 - (c) 922 KAR 1:315, Standards for child-placing agencies placing children who are not in the custody of a state agency; or
 - (d) 922 KAR 1:010, Independent non-relative adoptions.
- (6) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).
- (7) "Child fatality" is defined by KRS 211.684.
- (8) "Child-placing agency" is defined by KRS 199.011(6).
- (9) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).
- (10) "KARES system" means the cabinet's secure, web-based application used to access abuse and neglect registries and facilitate fingerprint-supported state and national criminal background checks for authorized users of the system.
- (11) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190.
- (12) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).
- (13) "Rap back system" is defined by KRS 199.011(14).
- (14) "Relative caregiver" means a relative with whom the child is, or shall be, placed by the cabinet.
- (15) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.
- (16) "Sexual abuse" is defined by KRS 600.020(61).
- (17) "Sexual exploitation" is defined by KRS 600.020(62).

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants.

- (1) An applicant pursuant to 922 KAR 1:310 or 922 KAR 1:350, and each adult member of the household, shall submit to a background check in accordance with Section 4 of this administrative regulation, which shall include:
 - (a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:
 - 1. Kentucky Justice and Public Safety Cabinet; or
 - 2. Administrative Office of the Courts;
 - (b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years;
 - (c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and
 - (d) An address check of the Sex Offender Registry.

(2) Prior to approval of an applicant pursuant to ~~922 KAR 1:310 or 922 KAR 1:350~~, each adolescent member of the household shall complete a DPP-157, Background Check Request for Foster or Adoptive Applicants and Adolescent or Adult Household Members, and submit to a child abuse or neglect check conducted by the cabinet.

(3) If a household member of the applicant is bedridden, homebound, or medically unable to appear for fingerprints, the agency shall submit a memo to designated cabinet staff.

Section 3. Background Checks for Foster or Adoptive Applicants Who Will Accept Placement of a Child Not in the Custody of the Cabinet.

(1) An individual applying to accept placement of a child not in the custody of or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, pursuant to ~~922 KAR 1:315~~~~[922 KAR 1:310]~~, shall be exempt from enrollment in KARES and subject to the requirements established in Section ~~2(3)~~~~[8(3)]~~ of this administrative regulation.

(2) An applicant pursuant to ~~922 KAR 1:315~~~~[922 KAR 1:310]~~ and each adult and adolescent member of the household shall complete a separate DPP-157 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or
2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet pursuant to 922 KAR 1:470;

(c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and

(d) An address check of the Sex Offender Registry.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has:

(a) Been found by the cabinet to have:

1. Committed sexual abuse or sexual exploitation of a child;
2. Been responsible for a child fatality or near fatality related to abuse or neglect;
3. Abused or neglected a child within the seven (7) year period immediately prior to the application; or
4. Had parental rights terminated; or

(b) A matter pending administrative review.

(4) An applicant shall not be approved if:

(a) A criminal records check reveals that the applicant, or adult member of the household, has a:

1. Felony conviction involving:

- a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a) (20); or
- b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application;

2. Criminal conviction relating to child abuse or neglect; or

3. Civil judicial determination related to child abuse or neglect;

(b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or

- (c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.
- (5) An individual identified in accordance with subsection (3) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 4. Fingerprint-Based Background Checks.

- (1) Fingerprint-based background checks shall be conducted for the following individuals through the Kentucky National Background Check Program pursuant to 906 KAR 1:190, using the KARES system:
 - (a) An applicant ~~pursuant to 922 KAR 1:310 or 922 KAR 1:350~~ and each adult member of the household;
 - (b) A relative or fictive kin caregiver who has lived outside of the state of Kentucky within the last five (5) years; and
 - (c) An applicant who was approved under the waiver for fingerprint-based background checks during the declared national emergency caused by the COVID-19 pandemic, with only a name-based criminal background check.
- (2) An individual meeting the criteria of subsection (1) of this section shall provide to the cabinet or child-placing agency:
 - (a) A copy of his or her driver's license or other government-issued photo identification for verification that the photograph and name clearly match the individual submitting to the check; and
 - (b) A completed and signed:
 - 1. DPP-162, Applicant Waiver Agreement and Statement; and
 - 2. DPP-163, Disclosures to be Provided to and Signed by the Applicant and Adult Household Members.
- (3) Cabinet or child-placing agency staff shall log on to the NBCP portal and enter the individual's information for a check of the:
 - (a) Child abuse and neglect central registry pursuant to 922 KAR 1:470;
 - (b) National Crime Information Center's National Sex Offender Registry in accordance with 34 U.S.C. 20921; and
 - (c) Sex Offender Registry in accordance with KRS 17.500 through 17.580.
- (4)
 - (a) In accordance with KRS 199.462(2) and 42 U.S.C. 671(a)(20), the cabinet or child-placing agency 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 an applicant's rap back has not expired, a new fingerprint check shall not be required.
 - (b) A child-placing agency enrolled in the 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 for each applicant.
- (5)
 - ~~[(a)] [Upon submission of payment in accordance with subsection (4) of this section, cabinet or child-placing agency staff shall print a copy of the DPP-164, Applicant Live Scan Fingerprinting Form, from the NBCP portal and provide the form to the applicant, adult member of the household, or relative or fictive kin caregiver.]~~
 - ~~[(b)]~~ Cabinet or child-placing agency staff shall have~~[-]~~
 - ~~[1.] [Have]~~ no more than ninety (90) calendar days from the date of payment pursuant to subsection (4) of this section to submit the applicant's fingerprints at an authorized collection site for NBCP~~[- and]~~

~~[2.] [Instruct the applicant or other individual to present the completed DPP-164 and copy of driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission].~~

(6) Upon completion of the background check required by this section,~~for~~ Section 6, or Section 7 of this administrative regulation, the cabinet shall provide notice to the requesting agency that the applicant or individual is:

(a) Approved; or

(b) Not approved due to a disqualifying background check result pursuant to subsection (7) of this section.

(7) An applicant or individual shall not be approved if the results of the background check indicate a:

(a) Felony conviction involving:

1. A spouse, a child, sexual violence, or death as established in 42 U.S.C. 671(a)(20); or

2. Physical abuse, battery, drugs, or alcohol within the five (5) year period prior to application;

(b) Criminal conviction relating to child abuse or neglect;

(c) Civil judicial determination related to child abuse or neglect;

(d) Result of a child abuse or neglect check in which the applicant, relative or fictive kin caregiver, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily pursuant to KRS 625.050 through 625.120 or another state's laws; or

(e) Result of an address check in the Sex Offender Registry and supporting documentation that a sex offender resides at the applicant's or individual's home address.

(8) An applicant or individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 5. Request for a Child Abuse or Neglect Check from Another State.

(1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) if a:

(a) Completed DPP-157 or DPP-159, Background Check Request for Relative and Fictive Kin Caregivers, or Adolescent and Adult Household Members, is submitted to the cabinet; or

(b) Request is received on agency letterhead and includes two (2) numeric identifiers.

(2) The cabinet shall:

(a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and

(b) Waive the fee specified in 922 KAR 1:470.

Section 6. Background Checks Required for a Relative or Fictive Kin Caregiver.

(1) A relative or fictive kin caregiver, and each adult member of the household, shall complete a DPP-159 and submit to:

(a) An in-state criminal records check, (a) conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet; and

(c) An address check of the Sex Offender Registry conducted by the cabinet;

(2) A relative or fictive kin caregiver, and each adult member of the household, who has lived outside the state of Kentucky during the past five (5) years shall complete a ~~and~~

~~[(d)] [A]~~ fingerprint-based background check conducted through the NBCPF, beginning July 1, 2021, if the relative or fictive kin caregiver, or adult household member, has lived outside the state of Kentucky during the past five (5) years].

(3) ~~[(2)]~~ An adolescent member of a relative or fictive kin caregiver's household shall complete a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet.

(4) ~~[(3)]~~ A child abuse or neglect check conducted by the cabinet shall identify the name of each applicant and adolescent and adult member of the household and include any finding consistent with Section 4(7) of this administrative regulation.

(5) ~~[(4)]~~ A relative or fictive kin caregiver shall not be approved if a criminal records check, a child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 4(7) of this administrative regulation.

(6) ~~[(5)]~~ An individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 7. Background Check Requirements for an Independent Relative or Non-Relative Adoption.

(1) An individual applying for an independent non-relative adoption pursuant to 922 KAR 1:010 or an independent relative adoption petitioner who is exempt as defined in KRS 199.470(4), and each adult member of the household, shall submit to a background check, which shall include:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years; and

(c) An address check of the Sex Offender Registry conducted by the cabinet.

(2) An applicant, and each adult member of the household, who has lived outside the state of Kentucky during the past five (5) years shall complete a criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation.

(3) Prior to approval of an individual, each adolescent member of the household shall complete a DPP-157 and submit to a child abuse or neglect check conducted by the cabinet.

Section 8. ~~[Section 7.]~~ Approval.

(1) Except for the provisions of Section 4(7) or ~~6(5)[6(4)]~~ of this administrative regulation, approval of an applicant, including an applicant for an independent adoption, fictive kin, or relative caregiver who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 4(7) or ~~6(5)[6(4)]~~ of this administrative regulation, an applicant, fictive kin, or relative caregiver may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

(a) An adolescent member of the household has:

1. Been found by the cabinet to have abused or neglected a child; or

2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or

- (b) An adult member of the household has:
1. Been convicted of a nonviolent felony or misdemeanor;
 2. Been found to have abused or neglected a child; or
 3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 9. ~~[Section 8.]~~ Reevaluation.

(1) Once enrolled in KARES, an approved foster or adoptive parent and each adult member of the household shall maintain enrollment in KARES.

(2)

(a) An approved foster or adoptive parent and each adult member of the household enrolled in KARES shall annually, prior to or during the anniversary month of initial KARES determination, undergo:

1. A child abuse or neglect check conducted by the cabinet; and

2. An address check of the Sex Offender Registry conducted by the cabinet.

(b) An active foster or adoptive home shall be closed if an individual undergoing an annual check pursuant to this subsection has a disqualifying background check result established in Section 4(7) of this administrative regulation.

~~(3)~~ An approved foster or adoptive parent and each adult member of the household not already enrolled in KARES, with the exception of individuals specified in ~~Sections~~Section 3 and 7 of this administrative regulation, shall submit to a fingerprint-based background check required by Section 4 of this administrative regulation prior to or during the anniversary month of initial approval.

~~(4)~~ ~~{(3)}~~ An applicant specified in Section 3 of this administrative regulation and not enrolled in KARES shall submit annually, prior to or during the anniversary month of initial approval, to:

(a) A criminal records check as described in Section 2(1)(a) of this administrative regulation;

(b) A child abuse or neglect check conducted by the cabinet; and

(c) An address check of the Sex Offender Registry.

~~(5)~~ ~~{(4)}~~

(a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 4 of this administrative regulation.

(b) If an adult becomes a new member of a relative or fictive kin caregiver's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 6 of this administrative regulation.

~~(6)~~ ~~{(5)}~~ If an adolescent becomes a new member of an approved foster or adoptive parent or a relative or fictive kin caregiver's household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 2(2) or 6(2) of this administrative regulation, respectively.

Section 10. ~~[Section 9.]~~ Maintenance of Records.

(1) A child-placing agency shall maintain the approval status of each foster and adoptive applicant who has submitted to a fingerprint-based criminal background check by reporting the status in the NBCP web-based system.

(2) A completed copy of each DPP-157 submitted pursuant to Section 2(2), 3(2), or 5 of this administrative regulation shall be maintained by the child-placing agency.

(3) A completed copy of each DPP-159 submitted and criminal records check conducted pursuant to Section 5 or 6 of this administrative regulation shall be maintained.

Section 11. ~~[Section 10.]~~ Communications. This administrative regulation shall not limit the cabinet's ability to discuss the qualifications or fitness of an applicant or an existing foster or adoptive parent with a child-placing agency in accordance with:

- (1) KRS 620.050(5); or
- (2) The terms and conditions of:
 - (a) A release of information signed by the applicant or foster or adoptive parent; or
 - (b) The agreement between the cabinet and the child-placing agency.

Section 12. ~~[Section 11.]~~ Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "DPP-157, Background Check Request for Foster or Adoptive Applicants and Adolescent or Adult Household Members", 07/21;
 - (b) "DPP-159, Background Check Request for Relative and Fictive Kin Caregivers, or Adolescent and Adult Household Members", 06/21;
 - (c) "DPP-162, Applicant Waiver Agreement and Statement", 07/21; and
 - (d) "DPP-163, Disclosures to be Provided to and Signed by the Applicant and Adult Household Members", 06/21~~[- and]~~
 - ~~[(c)] ["DPP-164, Applicant Live Scan Fingerprinting Form", 06/21].~~
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family 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: July 2, 2024

FILED WITH LRC: July 11, 2024 at 11:30 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 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 September 16, 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 September 30, 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 background check requirements for relative and fictive kin caregivers, applicants seeking to provide foster or adoptive services, or individuals who wish to complete an independent adoption.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish requirements for background checks for foster and adoptive applicants and parents and relative and fictive kin caregivers.

(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 background check requirements for caretaker relatives, fictive kin, prospective foster or adoptive parents, and other household members.

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

This administrative regulation assists in the effective administration of the statutes through its establishment of background check requirements for foster and adoptive applicants, relative and fictive kin caregivers, and household members to ensure the safety of children.

(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:

This amendment includes background check provisions for independent non-relative adoptions and independent relative adoptions and includes that foster and adoptive applicants already in KARES shall undergo a child abuse or neglect check and sex offender check conducted by the cabinet every year. The amendment to this administrative regulation also increases the administrative fee for the KARES fingerprint-based background check from up to twenty-five (25) dollars to up to thirty (30) dollars due to an increase from the contracted third party, IDEMIA Identify & Security USA. The DPP-164 form is no longer used in obtaining fingerprint-based background checks and is being deleted from the administrative regulation.

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

This amendment is necessary to ensure protections for all fostered or adopted Kentucky children. 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 raised their rates per fingerprint check. The cabinet has been covering the cost of this rate increase for over a year, this amendment is necessary in order for private providers to pay the actual cost of the check.

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

KRS 199.462(5) requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or

adoptive parent applicant, an adult member of the applicant's household, or a relative or fictive kin caregiver. The amendment conforms to the content of the authorizing statutes through its establishment of background check requirements for caretaker relatives and fictive kin, prospective foster or adoptive parents, and other household members.

(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 of children.

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

As of June 2, 2024, there were a total of 8,170 children that were placed outside of their home of origin, including foster or adoptive placements and children being cared for by relative and fictive kin caregivers. Of these, over 1,000 are placed with non-foster home relative or fictive kin caregivers, over 2,700 are placed in all types of public (DCBS) foster homes, and over 2,900 are placed in private agency foster homes. There are currently 2,616 private agency foster homes (107 private child-placing agencies) and 1,939 public foster homes subject to the background checks required by this administrative regulation. In 2023, 5,205 public foster and adoptive applicants underwent fingerprint-based background checks paid for by the cabinet and 4,088 private foster and adoptive applicants underwent fingerprint-based background checks paid for by 36 private agencies. Pursuant to this amendment, individuals seeking an independent adoption will also be subject to a background check.

(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:

An individual applying for an independent non-relative adoption or an independent relative adoption petitioner, and each adult member of the household, shall undergo an in-state criminal records check, a child abuse or neglect check, and a sex offender registry check.

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

Applicants subject to these background check requirements have their background check costs borne by the cabinet or a private child-placing agency in the course of the agency's business practices. The administrative cost of the background check has increased. Per state law, the cabinet cannot charge more than the actual cost of processing the background check.

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

The further protection of children in the care of foster or adopted parents or relative or fictive kin caregivers.

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

(a) Initially:

The cabinet is already paying the increased administrative costs of KARES and the amendment will be enacted through practices and contacts that are already a part of

existing services provision so that there will be no additional costs to the administrative body.

(b) On a continuing basis:

This amendment does not result in additional costs to the cabinet.

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

Federal Title IV-E (of the Social Security Act), Temporary Assistance for Needy Families Block Grant funds, and State General Funds are the sources of funding to implement and enforce 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. The cabinet has been covering the cost of this price increase.

(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 to up to thirty (30) dollars. The cabinet is currently covering this cost increase for providers until this amendment is implemented. 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.

(9) TIERING: Is tiering applied?

Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

45 C.F.R. 1356.30, 42 U.S.C. 247d, 671(a)(20), 5106a, 5141

(2) State compliance standards.

KRS 194A.050(1), 199.462(5), 199.640(5), 605.120(5), (6), 605.130(7), 605.150

(3) Minimum or uniform standards contained in the federal mandate.

45 C.F.R. 1356.30 requires criminal record checks be conducted for prospective foster and adoptive parents.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

Existing standards do impose stricter requirements than the federal mandate because the cabinet requires the denial of an applicant if: (1) A criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) A child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily. These standards are currently in place.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

The additional restrictions noted in this analysis were added as additional safeguards for children in out-of-home care. The federal law does not prohibit the addition of these restrictions.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 194a.050(1), 199.462(5), 199.640(5), 605.120(5), (6), 605.130(7), 605.150, 45 C.F.R. 1356.30

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The Cabinet for Health and Family Services, the Kentucky State Police, and the Administrative Office of the Courts will be impacted by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures:No expenditures are expected.

Revenues:This administrative regulation does not generate revenue. The cost of fingerprint-based background checks cannot exceed the cabinet's cost; therefore, revenue is not generated.

Cost Savings:No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The amendment to this administrative regulation will not generate revenue in subsequent years. Fees charged by law enforcement, judicial agencies, or the state for criminal background checks cannot exceed the actual costs of conducting the checks.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

(a) Estimate the following for the first year:

Expenditures:No expenditures are expected.

Revenues:This administrative regulation does not generate revenue.

Cost Savings:No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

This is not expected to differ over subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3):

Private child-placing agencies will pay the cost of the background check increase, which is \$2 per check. In 2023, 36 private agencies paid for the background check of 4,088 private foster and adoptive applicants. The cabinet paid this cost for 5,205 public foster and adoptive applicants. This administrative regulation will generate no revenue. Fees passed along to regulated entities are not allowed to exceed the actual cost of the check. This increase is necessary due to a recent IDEMIA rate increase.

(a) Estimate the following for the first year:

Expenditures:Not applicable.

Revenues:Not applicable.

Cost Savings:Not applicable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

Not applicable.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

This administrative regulation does not have a fiscal impact.

(b) Methodology and resources used to determine the fiscal impact:

There is not a fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

This administrative regulation will not have an overall negative or adverse major economic impact to entities.

(b) The methodology and resources used to reach this conclusion:

This regulatory amendment will not have a major economic impact on child-placing agencies that participate in the National Background Check Program. The cost of conducting a national fingerprint-based background check has increased for the first time, but this is a minimal increase that will be implemented at a later date.