

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:470. Central registry.

RELATES TO: KRS 17.165(6), 61.876, 160.151, 160.380, 194A.380-194A.383, 199.466, 199.896(19), 199.8982(1)(a), 211.684(1)(a), 403.352, 600.020(1), (40), ~~[(61),]~~ (62), 620.050, 620.051, 625.050-625.120, 42 U.S.C. 671(a)(20), 5106a(b), 9858f

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(7), 605.150(1), 620.051(2)

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 the programs and fulfill the responsibilities vested in the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(7), which authorizes the cabinet to perform services necessary for the protection of children. KRS 620.051(2) requires the cabinet to promulgate administrative regulations to establish the central registry and the process for a background check of the cabinet's child abuse and neglect records. This administrative regulation establishes the procedure by which the cabinet shall conduct a child abuse or neglect check using information in the central registry.

Section 1. Definitions.

- (1) "Abused or neglected child" is defined by KRS 600.020(1).
- (2) "Administrative review" means that the status of the individual subject to the central registry 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) "Child fatality" is defined by KRS 211.684(1)(a).
- (4) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).
- (5) "Sexual abuse" is defined by KRS 600.020(~~62~~)(~~61~~).
- (6) "Sexual exploitation" is defined by KRS 600.020(~~63~~)(~~62~~).

Section 2. Central Registry.

- (1) The central registry shall include the name of each individual:
 - (a) Who has been found by the cabinet to have abused or neglected a child on or after October 1, 1998; and
 - (b)
 1. Who waived the right to appeal a substantiated finding of child abuse or neglect in accordance with:
 - a. 922 KAR 1:480;
 - b. 922 KAR 1:320; or
 - c. 922 KAR 1:330, Section 11; or
 2. Whose substantiated incident was upheld upon appeal.
- (2) Each name shall:
 - (a) Remain on the central registry for a period of at least seven (7) years; and
 - (b) Be removed from the central registry after a period of seven (7) years if:
 1. No additional incident of child abuse or neglect has been substantiated by the cabinet since the time of the incident for which the individual's name was placed on the registry; and

2. Cabinet records indicate that the incident for which the individual's name was placed on the registry did not relate to:

- a. Sexual abuse or sexual exploitation of a child;
- b. A child fatality related to abuse or neglect;
- c. A near fatality related to abuse or neglect; or
- d. Involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.

(3) This administrative regulation shall not apply to cabinet background checks required by 922 KAR 1:490.

(4) This administrative regulation shall not limit the cabinet's ability to disclose information in accordance with KRS 620.050 and 42 U.S.C. 5106a(b)(2)(B)(viii), (ix), or (x).

Section 3. Procedure for Requesting a Central Registry Check.

(1) If information from the central registry is required or authorized by law, a request for a central registry check may be made by an:

- (a) Individual;
- (b) Organization; or
- (c) Other entity.

(2) The cabinet shall conduct a check of the central registry for each individual who:

- (a) Submits a request for a check of the central registry in accordance with subsection (4) of this section; and

(b)

1. Applies for initial licensure;
2. Is considered for hire, hired by, or volunteers with ~~the~~ an entity required by law to obtain information contained in the central registry; or
3. Is considered for hire, hired by, or volunteers with ~~the~~ an entity that may require a central registry check as a condition for working with children on a regular basis.

(3) An individual who is not required or authorized by law to obtain information contained in the central registry shall not receive a completed check and may instead submit an open records request in accordance with 922 KAR 1:510.

(4) A request for a central registry check shall be made:

- (a) By electronically submitting to the cabinet through the Kentucky Online Gateway:
 - 1.

- a. A completed DCC-374, Child Care Central Registry Check, for an individual in child care as specified by 42 U.S.C. 9858f, KRS 199.466, or 922 KAR 2:280; or
- b. A completed DPP-156, Central Registry Check, for an individual required by a law not specified in clause a. of this subparagraph no later than five (5) working days after:

- (i) The date of employment of an individual required by law to submit to a central registry check; or
- (ii) A volunteer's first day, if the volunteer is required by law to submit to a central registry check; and

2. A nonrefundable fee of ten (10) dollars paid by credit or debit card; or

(b) Through another cabinet system, including the Kentucky National Background Check Program established by 906 KAR 1:190.

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

(6) A state requesting a child abuse or neglect check from the cabinet as required by 42 U.S.C. 671(a)(20) shall follow the procedures described in 922 KAR 1:490, Section 5.

Section 4. Administrative Review.

- (1) The cabinet shall indicate on a central registry check if the individual is pending administrative review by the cabinet.
- (2) An individual subject to administrative review in accordance with this section may submit a request for the disclosure of records in accordance with 922 KAR 1:510 to be fulfilled once the administrative review process is complete.

Section 5. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "DPP-156, Central Registry Check," ~~8/2024~~^{4/2022}; and
 - (b) "DCC-374, Child Care Central Registry Check," 4/2022.
- (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: August 2, 2024

FILED WITH LRC: August 14, 2024 at 2:10 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 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 October 14, 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 October 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: Amy Smith or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the procedures by which the cabinet shall conduct a child abuse and neglect check using information in the central registry.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish cabinet procedures for child abuse and neglect checks of the central registry.

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

This administrative regulation conforms to the content of the authorizing statutes by establishing cabinet procedures for conducting child abuse and neglect checks of the central registry, as required by KRS 620.051(2).

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

This administrative regulation currently assists in the effective administration of the statutes through its establishment of cabinet procedures for child abuse and neglect checks of the central registry.

(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 checking the central registry for prospective employees and updates the DPP-156 registry check request form as a result of the passage of Senate Bill 145 (2024 Regular Session of the General Assembly), which included that health facilities and health care providers enrolled in Medicaid may request a check of the child abuse or neglect registry for a prospective or current employee to ensure that the employee has not been the subject of a child abuse or neglect substantiation.

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

This amendment is needed for compliance with Senate Bill 145 (2024 Regular Session), codified as KRS 216.2955.

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

KRS 620.051(2) requires the cabinet to promulgate administrative regulations to establish the central registry and the process for a check of the cabinet's child abuse and neglect records. This amendment further outlines this process consistent with passed legislation.

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

This amendment clarifies the process of requesting a check of the central registry and amends the incorporated form consistent with passed legislation.

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

There are 9,097 health facilities licensed or surveyed by the Office of the Inspector General and approximately 46,000 health care providers enrolled in Medicaid. These

facilities will have the ability to submit a prospective or current employee to a child abuse or neglect central registry 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:

It is not mandatory, but health facilities and health care providers enrolled in Medicaid will be able to submit a current or prospective employee to a check of the child abuse or neglect registry to ensure that the employee has not been the subject of a child abuse or neglect substantiation.

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

Each check of the central registry costs \$10.

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

This is optional, but these facilities will have more assurance that their prospective or current employee has not had a child abuse or neglect substantiation that would result in them being listed on the registry.

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

(a) Initially:

There is no cost associated.

(b) On a continuing basis:

There is no cost associated.

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

N/A

(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:

The administrative regulation includes a fee established by the General Assembly and codified in KRS 620.051(1). The fee is unchanged through this amendment.

(9) TIERING: Is tiering applied?

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

42 U.S.C. 671(a)(20), 5106a(b), 9858f

(2) State compliance standards.

KRS 194A.050(1), 605.130(7), 605.150(1), 620.051(2)

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

42 U.S.C. 671(a)(20), 5106a(b), 9858f

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

The administrative regulation does not impose stricter requirements, or 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.

The administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

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), 605.130(7), 605.150(1), 620.051(2), 42 U.S.C. 671(a)(20), 5106a(b), 9858f.

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

The Cabinet for Health and Family Services, Department for Community Based Services.

(a) Estimate the following for the first year:

Expenditures:None.

Revenues:None.

Cost Savings:None.

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

The amendment does not alter expenditures, revenues, or cost savings.

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

No affected local entities have been identified.

(a) Estimate the following for the first year:

Expenditures:None.

Revenues:None.

Cost Savings:None.

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

No change is expected.

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

Health facilities as defined in KRS 216B.015 and health care providers enrolled in Medicaid will be able to request checks of the central registry once this amendment is effective, but this is optional.

(a) Estimate the following for the first year:

Expenditures:There will only be expenditures if the facilities choose to request central registry checks of prospective or current employees.

Revenues:None.

Cost Savings:None.

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

No change is expected.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

This amendment does not have a fiscal impact. There is only a \$10 charge per check if a check of the registry is requested and this is not mandatory.

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

This amendment implements SB 145 (2024 Regular Session), which authorized but did not require central registry checks.

(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)

No, this administrative regulation does not have a negative or adverse economic impact.

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

This amendment authorizes other facilities to request a check of the central registry for prospective or current employees, but it is not mandatory.