

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
(Amendment)

906 KAR 1:190. Kentucky National Background Check Program (NBCP).

RELATES TO: KRS Chapter 13B, 209.020, Chapter 216B, 42 U.S.C. 1320 a-7I, 42 U.S.C. 5119a(a)(1), 42 U.S.C. 5119c

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1320a-7I

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. 42 U.S.C. 1320a-7I directs the secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. The Cabinet for Health and Family Services, Office of Inspector General, is charged with responsibility to oversee and coordinate Kentucky's fingerprint-supported NBCP initiative. This administrative regulation establishes procedures for the implementation of Kentucky's NBCP as a voluntary program. The conditions set forth in this administrative regulation for voluntary KARES system participants are in addition to the name-based, state only background check requirements of KRS 216.533, 216.712(2), 216.787, and 216.789.

Section 1. Definitions.

- (1) "Applicant" means an individual who:
 - (a) Applies for employment with an employer identified in subsection (6) of this section; or
 - (b) Is subject to background screening by a professional licensing board that enrolls contingent upon approval by the Federal Bureau of Investigation and Department of Kentucky State Police in the Kentucky NBCP.
- (2) "Cabinet" means the Cabinet for Health and Family Services.
- (3) "Criminal background check" means 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) and includes a comparison of the applicant's fingerprints with any fingerprints that may be on file with KSP or the FBI.
- (4) "Disqualifying offense" means:
 - (a) A conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to:
 1. A misdemeanor offense related to:
 - a. Abuse, neglect, or exploitation of an adult as defined by KRS 209.020(4);
 - b. Abuse, neglect, or exploitation of a child;
 - c. A sexual offense;
 - d. Assault occurring less than seven (7) years from the date of the criminal background check;
 - e. Stalking occurring less than seven (7) years from the date of the criminal background check;
 - f. Theft occurring less than seven (7) years from the date of the criminal background check, excluding KRS 514.040;
 - g. Fraud occurring less than seven (7) years from the date of the criminal background check;

- h. Unlawfully possessing or trafficking in a legend drug or controlled substance occurring less than seven (7) years from the date of the criminal background check;
- i. KRS 525.130, Cruelty to animals in the second degree – Exemptions – Offense involving equines;
- j. KRS 525.135, Torture of dog or cat; or
- k. Any other misdemeanor offense relating to abuse, neglect, or exploitation that is not listed in this subsection and occurred less than seven (7) years from the date of the criminal background check;
- 2. A criminal offense against a victim who is a minor, as defined in KRS 17.500(3);
- 3. A felony offense involving a child victim;
- 4. A felony offense under:
 - a. KRS Chapter 209, protection of adults;
 - b. KRS 217.182, Sale, distribution, administration, prescription, or possession of legend drugs – Penalty;
 - c. KRS Chapter 218A, controlled substances;
 - d. KRS 506.120, Engaging in organized crime;
 - e. KRS Chapter 434, offenses against property by fraud;
 - f. KRS Chapter 507, criminal homicide;
 - g. KRS Chapter 507A, fetal homicide;
 - h. KRS Chapter 508, assault and related offenses;
 - i. KRS Chapter 509, kidnapping and related offenses;
 - j. KRS Chapter 510, sexual offenses;
 - k. KRS Chapter 511, burglary and related offenses;
 - l. KRS Chapter 512, criminal damage to property;
 - m. KRS Chapter 513, arson and related offenses;
 - n. KRS Chapter 514, theft and related offenses, excluding KRS 514.040;
 - o. KRS Chapter 515, robbery;
 - p. KRS Chapter 516, forgery and related offenses;
 - q. KRS Chapter 517, business and commercial frauds;
 - r. KRS Chapter 520, escape and other offenses related to custody;
 - s. KRS Chapter 525, riot, disorderly conduct, and related offenses;
 - t. KRS Chapter 527, offenses relating to firearms and weapons;
 - u. KRS Chapter 529, prostitution offenses;
 - v. KRS Chapter 530, family offenses, excluding KRS 530.050;
 - w. KRS Chapter 531, pornography; or
 - x. Any other felony offense relating to abuse, neglect, exploitation, drugs, theft, or fraud not listed in this subsection;
- 5. An offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph; or
- 6. A crime described in 42 U.S.C. 1320a-7;
- (b) A pending charge or an outstanding warrant for a criminal offense related to:
 - 1. A sex crime as defined by KRS 17.500(8);
 - 2. KRS Chapter 209, protection of adults;
 - 3. KRS 218A.1412, Trafficking in controlled substance in first degree - Penalties;
 - 4. KRS Chapter 507, Criminal homicide;
 - 5. KRS Chapter 508, Assault and related offenses;
 - 6. KRS Chapter 509, Kidnapping and related offenses;
 - 7. KRS Chapter 510, Sexual offenses;
 - 8. KRS Chapter 513, Arson and related offenses;
 - 9. KRS Chapter 515, Robbery;
 - 10. KRS Chapter 516, Forgery; or

11. KRS Chapter 531, Pornography;

- (c) An out-of-state or federal charge that is pending or any outstanding warrant from another state or jurisdiction that is similar to an offense specified in subsection (b) of this section;
 - (d) A substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 U.S.C. 1395i-3 or 1396r;
 - (e) Registration as a sex offender under federal law or under the law of any state; or
 - (f) Being listed on a registry as defined in subsection (10) of this section.
- (5) "Employee" means an individual who:
- (a)
 - 1. Is hired directly or through contract by an employer defined in subsection (6) of this section, and has duties that involve or may involve one-on-one contact with a patient, resident, or client; or
 - 2. Unless excluded pursuant to Section 2(3)(c) through (e) of this administrative regulation, is a volunteer who has duties that are equivalent to the duties of an employee providing direct services and the duties involve, or may involve, one-on-one contact with a patient, resident, or client; and
 - (b) Has access to the personal belongings or funds of a patient, resident, or client.
- (6) "Employer" means:
- (a) A long-term care facility as defined in KRS 216.510;
 - (b) A nursing pool as defined in subsection (9) of this section providing staff to a long-term care facility or provider;
 - (c) An adult day health care program as defined in KRS 216B.0441;
 - (d) An assisted living-community as defined in KRS 194A.700(5);
 - (e) A home health agency as defined in KRS 216.935;
 - (f) A provider of hospice care as defined in 42 U.S.C. 1395x(dd)(1) and licensed pursuant to KRS Chapter 216B;
 - (g) A personal services agency as defined in KRS 216.710(10);
 - (h) A long-term care hospital as defined in 42 U.S.C. 1395ww(d)(1)(B)(iv);
 - (i) A provider of home and community-based services authorized under KRS Chapter 205;
 - (j) A staffing agency with a contracted relationship to provide one (1) or more employers as listed in this subsection with staff whose duties are equivalent to duties performed by an employee pursuant to subsection (5) of this section; or
 - (k) Any other provider licensed by the cabinet for which a state and national background check is required as a condition of employment.
- (7) "KARES system" means the cabinet's secure, web-based application used to facilitate abuse registry and fingerprint-supported state and national criminal background checks for authorized users of the system.
- (8) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the Cabinet for Health and Family Services, Office of Inspector General to facilitate registry and fingerprint-supported state and national criminal history background checks conducted by the Department of Kentucky State Police and the Federal Bureau of Investigation for the following:
- (a) Prospective employees of any employer identified in subsection (6)(a) through (j) of this section that participates voluntarily in the Kentucky National Background Check Program;
 - (b) Any other individuals required by state law or administrative regulation to submit to a state and national background check as a condition of:
 - 1. Employment; or

2. Licensure, certification, or registration by a professional licensing board that enrolls contingent upon approval by the Federal Bureau of Investigation and Department of Kentucky State Police in the Kentucky NBCP; and
- (c) May include individuals seeking approval as a kinship caregiver or foster or adoptive parent.
- (9) "Nursing pool" means a person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in or with a long-term care facility or provider for medical personnel, including nurses, nursing assistants, nursing aides, and orderlies.
- (10) "Registry" means the:
- (a) Nurse aide abuse registry maintained pursuant to 906 KAR 1:100 and 42 C.F.R. 483.156;
 - (b) Child abuse and neglect registry maintained pursuant to 922 KAR 1:470 and required by 42 U.S.C. 671(a)(20);
 - (c) List of Excluded Individuals and Entities maintained by the United States Department of Health and Human Services, Office of Inspector General pursuant to 42 U.S.C. 1320a-7;
 - (d) Caregiver misconduct registry required by KRS 209.032; and
 - (e) Any available abuse registry, including the abuse and neglect registries of another state if an applicant resided or worked in that state.
- (11) "State" is defined by KRS 446.010(40).
- (12) "Violent offender" is defined by KRS 439.3401(1).

Section 2. Applicability and Exceptions.

- (1) This administrative regulation shall establish requirements for registry and criminal background checks of prospective employees seeking employment with a:
- (a) State-owned or operated health facility licensed pursuant to KRS Chapter 216B; or
 - (b) Private long-term care employer that participates voluntarily in Kentucky's NBCP.
- (2) This administrative regulation shall not apply to current employees of any employer that participates voluntarily in the Kentucky National Background Check program.
- (3) A prospective employee shall not include:
- (a) An individual who independently contracts with a KARES-participating employer to provide utility, construction, communications, or other services if the contracted services are not directly related to the provision of services to a resident, patient, or client of the employer;
 - (b) A physician, surgeon, dentist, psychologist, psychiatrist, podiatrist, audiologist, ophthalmologist, optometrist, dietician, therapist, phlebotomist, or any health care practitioner who is licensed to practice in Kentucky and is under contract with a participating employer in which a background check is required as a condition of professional licensure;
 - (c) A member of a community-based or faith-based organization that provides volunteer services that do not involve unsupervised interaction with a patient or resident;
 - (d) A student participating in an internship program; or
 - (e) A family member or friend visiting a patient or resident.

Section 3. Continuous Assessment.

- (1) To ensure that the information remains current in the KARES system, the cabinet shall collaborate with the Department of Kentucky State Police (KSP) to implement a mechanism for continuous assessment in which KSP:
- (a) Retains the fingerprints of an individual screened under the Kentucky NBCP:
 - 1. For a minimum period of five (5) years from the date of fingerprint submission; and

2. On a five (5) year renewal basis thereafter; and
 - (b) Facilitates the retention of the fingerprints by the FBI upon approval to participate in the FBI's Next Generation Identification (NGI) rap back service.
- (2) Upon implementation of the process for continuous assessment, the Department of Kentucky State Police may provide notification to the cabinet of triggering events for each applicant after initial processing of the applicant's criminal background check, subject to any applicable administrative regulations of the Department of Kentucky State Police and the FBI.

Section 4. Enrolling in the Kentucky NBCP. To enroll in the Kentucky NBCP, an employer or a participating professional licensing board shall:

- (1) Log on to the KARES portal; and
- (2) Confirm acceptance of the terms and conditions for using the KARES system.

Section 5. Registry and Criminal Background Checks: Procedures and Payment.

(1) To initiate the process for obtaining a background check on a prospective employee or licensee, the employer or participating professional licensing board shall:

- (a) Request that the applicant provide a copy of his or her driver's license or other government-issued photo identification and verify that the photograph clearly matches the applicant;
 - (b) Request that the applicant sign the OIG 1:190-1, Disclosures to be Provided to and Signed by Applicant for Employment or Licensure;
 - (c) Request that the applicant complete the OIG 1:190-2, Waiver Agreement and Statement; and
 - (d) Log on to the KARES portal, which shall be a secure web-based system maintained by the cabinet, and enter the applicant's demographic information for a check of:
 1. Each registry as defined by Section 1(10) of this administrative regulation; and
 2. Available databases maintained separately by the Kentucky Board of Medical Licensure, Kentucky Board of Nursing, Kentucky Board of Physical Therapy, and any other available professional licensing board with oversight of health care professionals, including behavioral health professionals, to validate the applicant's professional licensure status, if applicable.
- (2) If an applicant is cleared for hire after a check of the registries and databases identified in subsection (1)(d) of this section, the participating entity shall submit payment via credit or debit card for the criminal background check.

(3)

(a) A participating entity enrolled in the Kentucky NBCP shall pay a non-refundable fee not to exceed thirty (30)~~twenty-five (25)~~ dollars to cover the cabinet's administrative cost for facilitating a criminal background check in addition to any fees charged by the Department of Kentucky State Police and the FBI for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing continuous assessment services as described in Section 3(2) of this administrative regulation.

(b) If an applicant's continuous assessment period identified under Section 3 of this administrative regulation has not expired, a fee of twenty (20) dollars shall be charged to view the applicant's current fitness determination and process a new application, in which case a new fingerprint check is not needed.

(4)

(a) Upon submission of payment pursuant to subsection (3) of this section, the employer or other participating entity shall print a copy of the Live Scan Fingerprinting Form from the KARES portal and provide the form to the applicant.

(b) The applicant shall:

1. Have thirty (30) calendar days from the date of payment pursuant to subsection (2) of this section to submit his or her fingerprints at an authorized collection site; and
 2. Present the Live Scan Fingerprinting Form and 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 criminal background check, the cabinet:
- (a) Shall provide notice to the employer that the applicant is:
 1. Eligible for hire; or
 2. Not eligible for hire if the applicant is found by the cabinet to have a disqualifying offense as identified in Section 1(4) 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 employer or entity listed on the OIG 1:190-2, Waiver Agreement and Statement incorporated by reference in Section 14 of this administrative regulation; and
 - (c) Shall, upon receipt of a written request from an applicant, send a copy if any of a KSP or FBI criminal history report to the applicant by certified mail, restricted delivery service. The applicant shall show proof of identity and sign to receive his or her criminal history report from the local post office.
- (6) An employer 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.

Section 6. Provisional Employment.

- (1) If an applicant is not found on a registry and the individual's license has been validated, if applicable, an employer may hire the applicant for a period of provisional employment pending completion of the criminal background check.
- (2) The period of provisional employment shall:
 - (a) Not commence prior to the date the applicant submitted his or her fingerprints; and
 - (b) Not exceed sixty (60) calendar days from the date of fingerprint collection.
- (3) During the period of provisional employment, the individual shall not have supervisory or disciplinary power or routine contact with patients, residents, or clients without supervision on-site and immediately available to the individual.

Section 7. Individuals Ineligible to be Hired. An employer participating in the KARES program or a state-owned or operated health facility shall not employ, contract with, or permit to work as an employee any applicant that submits to a background check if one (1) or more of the following are met:

- (1) The applicant refuses to provide photo identification or complete the Disclosures Form or Waiver Agreement and Statement Form required by Section 5(1) (b) and (c) of this administrative regulation;
- (2) The applicant is found on a registry as defined by Section 1(10) of this administrative regulation;
- (3) The applicant's professional license is not in good standing, if applicable;
- (4) The applicant fails to submit his or her fingerprints at an authorized collection site within thirty (30) calendar days of payment submitted pursuant to Section 5(3) of this administrative regulation; or
- (5) Upon completion of the initial criminal background check for an applicant, or subsequent to the initial fingerprint check on a current employee, the employer, cabinet agency, or state-owned or operated health facility receives notice from the cabinet that the applicant is not eligible for hire based on a cabinet determination that the individual has been found to have a disqualifying offense.

Section 8. Notice of a Disqualifying Offense and Appeals.

- (1) The cabinet shall notify each applicant or current employee determined to have a disqualifying offense.
- (2) In addition to the cabinet's notification required by subsection (1) of this section, an employer that receives notice from the cabinet that an individual has been determined to have a disqualifying offense shall notify the individual of the cabinet's determination within three (3) business days of receipt of the notice.
- (3) An applicant or current employee who receives notice of a disqualifying offense may:
 - (a) Challenge the accuracy of the cabinet's determination regarding a disqualifying offense by submitting a written request for informal review, including any information the applicant wishes to be considered, to the Office of Inspector General, Cabinet for Health and Family Services, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, within ten (10) calendar days of the date of notice of the disqualifying offense; or
 - (b) Request a rehabilitation review pursuant to Section 10(2) of this administrative regulation.
- (4) Upon completion of an informal review if requested pursuant to subsection (3)(a) of this section, the Office of Inspector General shall within ten (10) calendar days of receipt of the request provide written notice to the applicant or employee of the cabinet's decision to uphold or rescind the notice of the disqualifying offense.
- (5) An applicant or current employee may appeal the results of an informal review or a rehabilitation review conducted in accordance with Section 10 of this administrative regulation by submitting a written request for an administrative hearing within thirty (30) calendar days from the date of notice of the decision from an informal review or rehabilitation review.
- (6)
 - (a) A written request for an administrative hearing shall be mailed to the Office of Ombudsman, Cabinet for Health and Family Services, 275 East Main Street, 1E-B, Frankfort, Kentucky 40621.
 - (b) The administrative hearing shall be held no later than forty-five (45) calendar days from the date that the request is received by the Office of Ombudsman unless the applicant or employee agrees to a later date.
 - (c) The issues considered at the hearing shall be limited to the issues directly raised and considered during the informal review or rehabilitation review.
 - (d) The administrative hearing shall be conducted pursuant to KRS 13B.080.
 - (e) The hearing officer shall issue a recommended order pursuant to KRS 13B.110.
 - (f) The secretary or designee shall issue a final order pursuant to KRS 13B.120.
- (7) If an applicant or current employee 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.
- (8) If an applicant or current employee challenges the finding that he or she is the true subject of the results from a registry check, the cabinet shall refer the individual to the agency responsible for maintaining the registry.

Section 9. Termination of an Employee Upon Receipt of Notice of a Disqualifying Offense.

- (1) If a provisional employee or current employee has not requested an informal review or a rehabilitation review pursuant to Section 8(3) of this administrative regulation, the employer shall:
 - (a) Terminate the employee no later than fifteen (15) calendar days after receipt of notice of the disqualifying offense; and
 - (b) Use the KARES system to provide electronic notification to the cabinet affirming the employee's dismissal within three (3) business days of termination.
- (2)

(a) If a provisional employee or current employee requests an informal review or a rehabilitation review pursuant to Section 8(3) of this administrative regulation, the employer:

1. May retain the employee pending resolution of the employee's informal review or rehabilitation review; and
2. Shall ensure that the employee is:
 - a. Subject to direct, on-site supervision; or
 - b. Reassigned to duties that do not involve one-on-one contact with a resident, patient, or client of the employer.

(b) An employer shall terminate the employee if the:

1. Informal review upholds the cabinet's determination of a disqualifying offense or the rehabilitation review committee does not grant a waiver; and
2. The employee does not request an administrative hearing in accordance with Section 8(5) of this administrative regulation, in which case the employer shall terminate the employee no later than the thirty-first calendar day following written notice of the results of the informal review or rehabilitation review.

(c) If an employee requests an administrative hearing to appeal the decision from an informal review or rehabilitation review, the employer:

1. May retain the employee pending resolution of the appeal if the employee:
 - a. Remains subject to direct, on-site supervision; or
 - b. Is reassigned to duties that do not involve one-on-one contact with a resident, patient, or client; and
2. Shall terminate the employee as soon as practicable upon issuance of a final order if the employee does not prevail.

(d) Using the KARES system, the employer shall provide electronic notification to the cabinet affirming the individual's dismissal within three (3) business days of termination.

Section 10. Rehabilitation Review.

(1)

(a) An applicant or employee found to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying offense under the rehabilitation review process described in this section shall not apply to:

1. A disqualifying felony offense that occurred less than seven (7) years prior to the date of the criminal background check;
2. Any disqualifying felony or misdemeanor offense related to abuse, neglect, or exploitation of an adult defined by KRS 209.020(4) or child, or a sexual offense;
3. Registration as a sex offender under federal law or under the law of any state;
4. Any person who is a violent offender as defined by Section 1(12) of this administrative regulation; or
5. A pending charge or an outstanding warrant for a criminal offense described in Section 1(4)(b) of this administrative regulation.

(2)

(a) An applicant or employee may submit a written request for a rehabilitation 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 8(1) of this administrative regulation regarding a determination of a disqualifying offense.

(b) If an applicant or employee requests a rehabilitation review, the employee may be retained on staff and shall be subject to termination in accordance with Section 9(2) of this administrative regulation.

- (3) The request for a rehabilitation review shall include the following information:
- (a) A written explanation of each disqualifying offense, including:
 - 1. A description of the events related to the disqualifying offense;
 - 2. The number of years since the occurrence of the disqualifying offense;
 - 3. The age of the offender at the time of the disqualifying offense; and
 - 4. Any other circumstances surrounding the offense;
 - (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; and
 - (d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.
- (4) A rehabilitation review shall be conducted by a committee of three (3) employees of the cabinet, none of whom:
- (a) Is an employee of the Office of Inspector General; or
 - (b) Was responsible for determining that the individual has a disqualifying offense.
- (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 offense;
 - (b) The lack of a relationship between the disqualifying offense and the position for which the individual has applied; and
 - (c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the disqualifying offense.
- (6) No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the Office of Inspector General shall send the committee's determination on the rehabilitation waiver to the applicant.
- (7) The decision of the committee shall be subject to appeal in accordance with Section 8(5) and (6) of this administrative regulation.
- (8) An employer shall not be obligated to employ or offer employment to an individual who is granted a waiver pursuant to this section.

Section 11. Pardons and Expungement. An applicant who has received a pardon for a disqualifying offense or has had the record expunged may be employed.

Section 12. Status of Employment. An employer participating in KARES shall maintain the employment status of each employee who has submitted to a fingerprint-supported criminal background check by reporting the status using the KARES web-based system.

Section 13. Kentucky National Background Check Fund.

- (1)
 - (a) The cabinet shall establish a trust and agency fund called the Kentucky National Background Check fund to be administered by the Finance and Administration Cabinet.
 - (b) The fund shall be funded with moneys collected under Section 5(3) of this administrative regulation.
- (2) Moneys in the fund shall be used solely to operate the Kentucky National Background Check program.

Section 14. Termination of Participation. The cabinet shall terminate a voluntarily participating employer's participation in the Kentucky NBCP for a period of no less than ninety (90) days if there has been substantial failure by the employer to comply with the provisions of this administrative regulation.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) OIG 1:190-1, "Disclosures to be Provided to and Signed by Applicant for Employment or Licensure", September 2016;

(b) OIG 1:190-2, "Waiver Agreement and Statement", September 2016; and

(c) OIG 1:190-D, "Live Scan Fingerprinting Form", May 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 28, 2023

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

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 27, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 16, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes procedures and requirements for the Kentucky National Background Check Program (NBCP). Under Kentucky's NBCP, a secure, web-based application called the KARES system is used to facilitate abuse registry and fingerprint-supported state and FBI criminal background checks for authorized employers.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish procedures and requirements for Kentucky's NBCP.

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

42 U.S.C. 1320a-7I directs the secretary of the United States Department of Health and Human Services (DHHS) to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. KRS 216.789, KRS 216.787, and KRS 216.712 authorize the secretary of the Cabinet for Health and Family Services to establish procedures for criminal background checks for employees of certain entities that provide direct services to the elderly or individuals with disabilities. This administrative regulation conforms to the content of the authorizing statutes by establishing procedures and requirements for implementation of the cabinet's comprehensive state and national background check program for voluntarily participating long-term care entities.

(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 by establishing procedures and requirements for Kentucky's NBCP.

(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 increases the maximum cost of the state and FBI fingerprint check fee by up to \$5 per check.

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

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 by \$2 per fingerprint check and additional increases are expected. This amendment is necessary to establish a maximum fee that will offset IDEMIA's rate increase. In accordance with Section 5(3) of this administrative regulation, the fee shall not exceed actual costs.

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

This amendment conforms to the content of the authorizing statutes by establishing procedures and requirements for Kentucky's NBCP.

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

This amendment assists in the effective administration of the statutes by establishing procedures and requirements to facilitate fingerprint-supported state and FBI background checks requested under Kentucky's NBCP.

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

This amendment impacts the 441 long-term care entities that voluntarily participate in Kentucky's NBCP. The total number of participating facilities and services by category are as follows: adult day health care centers (39), cabinet-operated facility (1), community mental health centers (8), home health agencies (79), hospice (14), intermediate care facilities for individuals with intellectual or developmental disabilities (5), Michelle P waiver providers (5), long-term care providers (196), personal services agencies (40), supports for community living waiver providers (54).

(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:

KARES system users will be required to pay up to an additional \$5 per fingerprint check.

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

Long-term care entities that use the KARES system to request background checks on prospective employees will incur an additional cost of \$2 per fingerprint check, up to \$5 per check if Idemia further increases their fee.

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

Comprehensive state and FBI fingerprint checks have a wide range of benefits that include reducing the rate of resident or patient abuse, neglect, and theft through more informed hiring practices and increasing applicant quality.

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

(a) Initially:

There are no additional costs to the Cabinet for Health and Family Services for implementation of this amendment.

(b) On a continuing basis:

There are no additional costs to the Cabinet for Health and Family Services for implementation of this amendment on a continuing basis.

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

Kentucky's NBCP is funded by revenue generated from background check fees. In accordance with Section 5(3) of this administrative regulation, the fee shall not exceed actual costs.

(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:

This amendment seeks to increase the state and FBI fingerprint check fee by up to \$5 per check to offset recent and future rate increases by IDEMIA Identity & Security

USA. In accordance with Section 5(3) of this administrative regulation, the fee shall not exceed actual costs.

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

This administrative regulation establishes fees necessary to sustain program operations.

(9) TIERING: Is tiering applied?

Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

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?

This amendment impacts the Cabinet for Health and Family Services, Office of Inspector General, and long-term care entities that voluntarily participate in Kentucky's NBCP.

(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), 42 U.S.C. 1320a-7I, 42 U.S.C. 5119a(a)(1), KRS 216.712, KRS 216.787, KRS 216.789

(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 amendment will generate up to an additional \$5 per state and FBI fingerprint check to offset IDEMIA's recent rate increase and allow for a future IDEMIA increase. In accordance with Section 5(3) of this administrative regulation, the fee shall not exceed actual costs.

(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 amendment will generate up to an additional \$5 per state and FBI fingerprint check to offset IDEMIA's recent rate increase and allow for a future IDEMIA increase.

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

There are no additional costs to the Cabinet for Health and Family Services for implementation of this amendment.

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

There are no additional costs to the Cabinet for Health and Family Services for implementation of this amendment during subsequent years.

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 amendment will not generate cost savings for long-term care entities that voluntarily participate in Kentucky's NBCP during the first year.

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

This amendment will not generate cost savings for long-term care entities that voluntarily participate in Kentucky's NBCP during subsequent years.

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

Voluntarily participating long-term care entities will incur an additional cost of \$2 per fingerprint check currently, up to a \$5 increase if Idemia increases the amount they charge.

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

Voluntarily participating long-term care entities will incur an additional cost of \$2 per fingerprint check currently, but it could increase up to a total of \$5 per check if IDEMIA increases fees in the future. In accordance with Section 5(3) of this administrative regulation, the fee shall not exceed actual 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 amendment will not have a major economic impact on long-term care entities that voluntarily participate in Kentucky's NBCP.