



1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Office of Inspector General

3 (Amendment)

4 906 KAR 1:190. Kentucky National Background Check [Applicant Registry and  
5 Employment Screening] Program.

6 RELATES TO: 42 U.S.C. 1320 a-7I, 42 U.S.C. 5119a(a)(1), 42 U.S.C. 5119c

7 STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1320a-7I, 42 U.S.C.  
8 5119a(a)(1), KRS 216.712, KRS 216.787, KRS 216.789

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the  
10 secretary of the Cabinet for Health and Family Services to promulgate administrative  
11 regulations necessary to operate programs and fulfill the responsibilities vested in the  
12 cabinet, qualify for the receipt of federal funds, and cooperate with other state and  
13 federal agencies for the proper administration of the cabinet and its programs. 42  
14 U.S.C. 1320a-7I directs the secretary of the United States Department of Health and  
15 Human Services to establish a program to identify efficient, effective, and economical  
16 procedures for long-term care facilities or providers to conduct background checks on  
17 prospective direct patient access employees on a nationwide basis. 42 U.S.C.  
18 5119a(a)(1) authorizes states to have in effect procedures, established by state statute  
19 or regulation, that require qualified entities designated by the state to contact an  
20 authorized agency of the state to request a nationwide background check for the  
21 purpose of determining whether a provider has been convicted of a crime that bears

1 upon the provider's fitness to have responsibility for the safety and well-being of  
2 children, the elderly, or individuals with disabilities. KRS 216.789, KRS 216.787 and  
3 KRS 216.712 authorize the secretary of the Cabinet for Health and Family Services to  
4 establish procedures for criminal background checks for employees of certain entities  
5 which provide direct services to the elderly or individuals with disabilities. This  
6 administrative regulation establishes requirements for implementation of the Kentucky  
7 National Background Check Program (NBCP). A key component of the Kentucky  
8 NBCP is a secure, web-based system, called the KARES system, used to facilitate  
9 registry and fingerprint-supported state and national criminal background checks [On  
10 ~~May 20, 2011, the Commonwealth of Kentucky was the twelfth state to receive a~~  
11 ~~National Background Check Program (NBCP) grant awarded by the Centers for~~  
12 ~~Medicare and Medicaid Services under 42 U.S.C. 1320a-7l. On the date this amended~~  
13 ~~after comments administrative regulation was filed with the Legislative Research~~  
14 ~~Commission, twenty four states and territories had received an NBCP grant. The~~  
15 ~~Cabinet for Health and Family Services, Office of Inspector General is charged with~~  
16 ~~responsibility to oversee and coordinate Kentucky's fingerprint-supported NBCP grant~~  
17 ~~initiative, called the KARES "Kentucky Applicant Registry and Employment Screening"~~  
18 ~~Program. This administrative regulation establishes procedures for the implementation~~  
19 ~~of KARES as a voluntary program. The Cabinet for Health and Family Services~~  
20 ~~encourages long term care facilities and providers to participate in KARES as the grant~~  
21 ~~program provides employers with an enhanced pre-employment screening mechanism~~  
22 ~~intended to help protect elderly and vulnerable adults from potential abuse, neglect, and~~  
23 ~~exploitation. The conditions set forth in this administrative regulation for voluntary~~

1 ~~KARES program participants are in addition to the name-based, state-only background~~  
2 ~~check requirements of KRS 216.533, 216.712(2), 216.787, and 216.789].~~

3 Section 1. Definitions. (1) "Applicant" means an individual who:

4 (a) Applies for employment with a care provider ~~[an employer]~~ identified in  
5 subsection (3) ~~[(6)]~~ of this section; or

6 (b) Is subject to background screening by a professional licensing board enrolled in  
7 the Kentucky NBCP.

8 (2) "Cabinet" means the Cabinet for Health and Family Services.

9 (3) "Care provider" means:

10 (a) A long-term-care facility as defined in KRS 216.510, excluding:

11 1. Family care homes; and

12 2. Acute-care facilities performing long-term-care services or hospice services at the  
13 same location as the acute-care facilities;

14 (b) A nursing pool, as defined in KRS 216.785(4), providing staff to a long-term-  
15 care facility or other care provider as defined in this subsection;

16 (c) An adult day health care program as defined in KRS 216B.0441;

17 (d) An assisted-living community as defined in KRS 194A.700;

18 (e) A home health agency as defined in KRS 216.935;

19 (f) A provider of hospice care as defined in 42 U.S.C. sec. 1395x(dd)(1) and  
20 licensed pursuant to KRS Chapter 216B;

21 (g) A personal services agency as defined in KRS 216.710;

22 (h) Providers of home and community-based services authorized under KRS  
23 Chapter 205;

1 (i) A staffing agency with a contracted relationship to provide one (1) or more  
2 employers as listed in this subsection with staff whose duties are equivalent to duties  
3 performed by an employee defined by subsection (6) of this section; or

4 (j) Any other provider licensed by the cabinet in which a state and national  
5 background check is required as a condition of employment.

6 (4) "Criminal background check" means a state and national fingerprint-supported  
7 criminal history background check performed by the Department of Kentucky State  
8 Police and the Federal Bureau of Investigation.

9 (5) [(4)] "Disqualifying offense" means:

10 (a) An arrest, a conviction of, [or] a plea of guilty, an Alford plea, or a plea of nolo  
11 contendere to:

12 1. A misdemeanor offense related to:

13 a. Abuse, neglect, or exploitation of an adult as defined by KRS 209.020(4);

14 b. Abuse, neglect, or exploitation of a [or] child[or];

15 c. A sexual offense;

16 d. Assault occurring less than seven (7) years from the date of the criminal  
17 background check;

18 e. Domestic violence occurring less than seven (7) years from the date of the  
19 criminal background check;

20 f. Theft occurring less than seven (7) years from the date of the criminal background  
21 check;

22 g. Fraud occurring less than seven (7) years from the date of the criminal  
23 background check; or

- 1        h. Possessing or trafficking in a controlled substance occurring less than seven (7)  
2 years from the date of the criminal background check;
- 3        2. A criminal offense against a victim who is a minor, as defined in KRS 17.500;
- 4        3. A felony offense involving a child victim;
- 5        4. A felony offense under:
- 6        a. KRS Chapter 209, protection of adults;
- 7        b. KRS Chapter 218A, controlled substances;
- 8        c. KRS Chapter 507, criminal homicide [507.020];
- 9        d. KRS Chapter 507A, fetal homicide [507.030];
- 10       e. [~~KRS 507.040; f.~~] KRS Chapter 508, assault and related offenses;
- 11       f. [~~g.~~] KRS Chapter 509, kidnapping and related offenses;
- 12       g. [~~h.~~] KRS Chapter 510, sexual offenses;
- 13       h. [~~i.~~] KRS Chapter 511, burglary and related offenses;
- 14       i. [~~j.~~] KRS Chapter 512, criminal damage to property;
- 15       j. KRS Chapter 513, arson and related offenses;
- 16       k. KRS Chapter 514, theft and related offenses [514.030];
- 17       l. KRS Chapter 515, robbery;
- 18       m. KRS Chapter 516, forgery and related offenses;
- 19       n. KRS Chapter 517, business and commercial frauds;
- 20       o. KRS Chapter 525, riot, disorderly conduct, and related offenses;
- 21       p. KRS Chapter 527, offenses relating to firearms and weapons;
- 22       q. KRS Chapter 529, prostitution offenses;
- 23       r. KRS Chapter 530, family offenses;

1 s. KRS Chapter 531, pornography; or

2 t. Any other felony offense relating to abuse, neglect, exploitation, drugs, theft, or  
3 fraud not listed in this subsection [529.100;

4 n. KRS 529.110;

5 o. KRS Chapter 530; and

6 p. KRS Chapter 531];

7 5. An offense under a criminal statute of the United States or of another state similar  
8 to an offense specified in this paragraph; or

9 6. A crime described in 42 U.S.C. 1320a-7;

10 (b) A substantiated finding of neglect, abuse, or misappropriation of property by a  
11 state or federal agency pursuant to an investigation conducted in accordance with 42  
12 U.S.C. 1395i-3 or 1396r;

13 (c) Registration as a sex offender under federal law or under the law of any state; or

14 (d) Being listed on a registry as defined in subsection (8) [(9)] of this section.

15 (6) [(5)] "Employee" means an individual who:

16 (a)1. Is hired directly or through contract by a care provider [an employer] defined in  
17 subsection (3) [(6)] of this section, and has duties that involve [or may involve] one-on-  
18 one contact with a patient, resident, or client; or

19 2. Unless excluded pursuant to Section 2(3)(c) through (d) of this administrative  
20 regulation, is a volunteer who has duties that are equivalent to the duties of an  
21 employee providing direct services and the duties involve, or may involve, one-on-one  
22 contact with a patient, resident, or client; and

23 (b) Has access to the personal belongings or funds of a patient, resident, or client.

1 (7) "Kentucky National Background Check Program" or "NBCP" means a  
2 background screening program administered by the cabinet to facilitate registry and  
3 fingerprint-supported state and national criminal history background checks conducted  
4 by the Department of Kentucky State Police and the Federal Bureau of Investigation for:

5 (a) Prospective employees of any care provider as identified in subsection (3) of this  
6 section; and

7 (b) Any other individuals required by state law or administrative regulation to submit  
8 to a state and national background check as a condition of:

9 1. Employment; or

10 2. Licensure, certification, or registration by a professional licensing board.

11 ~~[(6) "Employer" means:~~

12 ~~(a) A long-term care facility as defined in KRS 216.510;~~

13 ~~(b) A nursing pool as defined in subsection (7) of this section providing staff to a~~  
14 ~~long-term care facility or provider;~~

15 ~~(c) An adult day health care program as defined in KRS 216B.0441;~~

16 ~~(d) An assisted living community as defined in KRS 194A.700;~~

17 ~~(e) A home health agency as defined in KRS 216.935;~~

18 ~~(f) A provider of hospice care as defined in 42 U.S.C. 1395x(dd)(1) and licensed~~  
19 ~~pursuant to KRS Chapter 216B;~~

20 ~~(g) A personal services agency as defined in KRS 216.710;~~

21 ~~(h) A long-term care hospital as defined in 42 U.S.C. 1395ww(d)(1)(B)(iv);~~

22 ~~(i) A provider of home and community-based services authorized under KRS~~  
23 ~~Chapter 205;~~

1 ~~(j) A staffing agency with a contracted relationship to provide one (1) or more~~  
2 ~~employers as listed in this subsection with staff whose duties are equivalent to duties~~  
3 ~~performed by an employee pursuant to subsection (5) of this section; or~~

4 ~~(k) Any other health facility or service licensed pursuant to KRS Chapter 216B that~~  
5 ~~applies to participate voluntarily in the KARES program.~~

6 ~~(7) "Nursing pool" means a person, firm, corporation, partnership, or association~~  
7 ~~engaged for hire in the business of providing or procuring temporary employment in or~~  
8 ~~with a long-term care facility or provider for medical personnel, including nurses, nursing~~  
9 ~~assistants, nursing aides, and orderlies.]~~

10 (8) "Registry" means the:

11 (a) Nurse aide abuse registry maintained pursuant to 906 KAR 1:100 and 42 C.F.R.  
12 483.156;

13 (b) Child abuse and neglect registry maintained pursuant to 922 KAR 1:470 and  
14 required by 42 U.S.C. 671(a)(20);

15 (c) List of Excluded Individuals and Entities maintained by the United States  
16 Department of Health and Human Services, Office of Inspector General pursuant to 42  
17 U.S.C. 1320a-7; [and]

18 (d) Caregiver misconduct registry required by KRS 209.032; and

19 (e) Any available abuse registry, including the abuse and neglect registries of  
20 another state if an applicant resided or worked in that state.

21 (9) "State" is defined by KRS 446.010(40).

22 (10) "Violent crime" means a conviction of, or a plea of guilty, an Alford plea, or a  
23 plea of nolo contendere to a capital offense, Class A felony, or Class B felony involving

1 the death of the victim, rape in the first degree or sodomy in the first degree of the  
2 victim, sexual abuse in the first degree, or serious physical injury to a victim.

3 Section 2. Applicability and Exceptions. (1) As a condition of employment, the  
4 following individuals shall submit to a check of the registries identified in Section 1(8) of  
5 this administrative regulation and a fingerprint-supported state and national criminal  
6 background check [~~This administrative regulation shall apply to~~]:

7 (a) Prospective cabinet staff [~~hired on or after the effective date of this administrative~~  
8 ~~regulation~~] whose duties include conducting inspections of care providers[:

9 1. ~~Health facilities and services licensed pursuant to KRS Chapter 216B; or~~

10 2. ~~Services regulated pursuant to KRS 194A.700 through 194A.720, or KRS~~  
11 ~~216.710 through 216.714];~~

12 (b) Prospective employees [~~hired on or after the effective date of this administrative~~  
13 ~~regulation~~] of state-owned or operated health facilities licensed pursuant to KRS  
14 Chapter 216B;

15 (c) Prospective cabinet staff [~~hired on or after the effective date of this administrative~~  
16 ~~regulation~~] who have or may have one-on-one contact with a patient or resident of a  
17 care provider [~~an employer defined by Section 1(6) of this administrative regulation~~];

18 and

19 (d) Prospective employees seeking employment with a care provider [~~private~~  
20 ~~employer that participates voluntarily in the KARES Program hired on or after the~~  
21 ~~effective date of this administrative regulation~~].

22 (2) Nothing in this administrative regulation shall be construed to limit a care  
23 provider from requiring a fingerprint-supported state and national criminal background

1 check on the provider's current employees if the provider elects to screen existing  
2 employees [~~not apply to current cabinet staff or current employees of any employer that~~  
3 ~~participates voluntarily in the KARES program that are employed before the effective~~  
4 ~~date of this administrative regulation~~].

5 (3) A prospective employee shall not include:

6 (a) An individual who independently contracts with a care provider [~~KARES-~~  
7 ~~participating employer~~] to provide utility, construction, communications, or other services  
8 if the contracted services are not directly related to the provision of services to a  
9 resident, patient, or client of the provider [~~employer~~]; [~~or~~]

10 (b) A board certified physician, surgeon, or dentist under contract with a care  
11 provider [~~KARES participating employer~~];

12 (c) A member of a community-based or faith-based organization which provides  
13 volunteer services that do not involve unsupervised interaction with a patient or  
14 resident;

15 (d) A student participating in an internship program; or

16 (e) A family member or friend visiting a patient or resident.

17 (4) Effective January 1, 2016, a care provider not currently participating in  
18 Kentucky's NBCP:

19 (a) Shall enroll in the Kentucky NBCP:

20 1. As a condition of the provider's initial licensure, certification, or registration  
21 renewal; or

22 2. Prior to the effective date of renewal of the provider's licensure, certification, or  
23 registration; and

1 (b) May contract with one (1) or more vendors approved by the cabinet and  
2 Department of Kentucky State Police in accordance with subsection (6) of this section to  
3 perform all or part of the electronic fingerprinting. The care provider's contract shall  
4 ensure that the owners and personnel of the vendor performing the electronic  
5 fingerprinting are qualified and will ensure the integrity and security of all personal  
6 information pursuant to subsection (6) of this section.

7 (5) Nothing in this administrative regulation shall be construed to limit a care  
8 provider from enrolling in the Kentucky NBCP at any time prior to annual licensure,  
9 certification, or registration renewal.

10 (6) To be approved as a vendor that submits fingerprints on behalf of care  
11 providers, the vendor shall comply with the following minimum requirements:

12 (a) Enter into an agreement with the cabinet and the Department of Kentucky State  
13 Police that obligates the vendor to comply with specified standards established by the  
14 Department of Kentucky State Police and the Federal Bureau of Investigation (FBI) to  
15 ensure that all individuals having direct or indirect responsibility for verifying  
16 identification, taking fingerprints, and electronically submitting fingerprints are qualified  
17 to do so and the integrity and security of all personal information gathered from the  
18 individuals whose fingerprints are submitted;

19 (b) Meet the Department of Kentucky State Police and the FBI's technical  
20 standards for the electronic submission of fingerprints; and

21 (c) Have the ability to communicate electronically with the cabinet.

22 Section 3. Continuous Assessment.

23 (1) To ensure that the information remains current in the KARES system, the

1 Department of the Kentucky State Police shall:

2 (a) Retain the fingerprints of an individual screened under the Kentucky NBCP:

3 1. For a minimum period of five (5) years from the date of fingerprint submission;

4 and

5 2. On a five (5) year renewal basis thereafter; and

6 (b) Facilitate the retention of the fingerprints by the FBI upon approval to participate  
7 in the FBI's Next Generation Identification (NGI) rap back service.

8 (2) The Department of Kentucky State Police and the FBI shall provide notification  
9 to the cabinet of triggering events for individuals after the initial processing of the  
10 criminal background checks when such service becomes available and subject to any  
11 applicable regulations of the Department of Kentucky State Police and the FBI.

12 Section 4. Enrolling in the Kentucky NBCP. To enroll in the Kentucky NBCP, a care  
13 provider, other employer required by law to conduct background screening of  
14 employees, or a professional licensing board required by law to conduct background  
15 screening of licensees shall:

16 (1) Log on to the KARES portal; and

17 (2) Confirm acceptance of the terms and conditions for using the KARES system

18 ~~[Agreement to Participate. An employer that elects to participate in KARES voluntarily~~  
19 ~~shall complete and submit an Agreement to Participate in the KARES Program].~~

20 Section 5. Required Notice to Applicant.

21 (1) Prior to initiating a background check facilitated by the KARES system, a

22 care provider shall provide the applicant with an application form which

23 conspicuously states the following: "FOR THIS TYPE OF EMPLOYMENT STATE

1 AND FEDERAL LAW REQUIRE A STATE AND NATIONAL CRIMINAL  
2 BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT.”.

3 (2) An entity participating in the Kentucky NBCP shall provide notice to the  
4 applicant that the applicant’s responsibilities include the following:

5 (a) The applicant shall provide a set of fingerprints; and

6 (b) The applicant shall provide his or her name, social security number, address,  
7 and date of birth as appear on a document commonly accepted for the purpose of  
8 identification.

9 Section 6 [4]. Registry and Criminal Background Checks: Procedures and Payment.

10 (1) To initiate the process for obtaining a background check on a prospective  
11 employee or licensee, the care provider, other employer enrolled in the Kentucky  
12 NBCP, or professional licensing board shall:

13 (a) Request that the applicant provide a copy of his or her driver’s license or  
14 government-issued photo identification and verify that the photograph clearly matches  
15 the applicant;

16 (b) Request that the applicant sign a form entitled “Disclosures to be Provided to  
17 and Signed by Applicant for Employment or Licensure”;

18 (c) Request that the applicant complete a Waiver Agreement and Statement; and]:  
19 ~~1. Disclosure Form; and 2. Consent and Release Form; and]~~

20 (d) [(e)] Log on to the KARES portal, which shall be a secure web-based system  
21 maintained by the cabinet, and enter the applicant’s demographic information for a  
22 check of:

23 1. Each registry as defined by Section 1(8) of this administrative regulation; and

1        2. Databases maintained separately by the Kentucky Board of Medical Licensure,  
2 Kentucky Board of Nursing, ~~[and] Kentucky Board of Physical Therapy,~~ and any other  
3 available professional licensing board with oversight of a health care profession,  
4 including behavioral health profession, to validate the applicant's professional licensure  
5 status, if applicable.

6        (2) ~~[An applicant who is found on the child abuse and neglect central registry~~  
7 ~~maintained pursuant to 922 KAR 1:470 may request a rehabilitation review pursuant to~~  
8 ~~Section 9 of this administrative regulation.~~

9        ~~(3)(a)]~~ If an applicant is cleared for hire after a check of the registries and databases  
10 identified in subsection (1)(c) of this section, the participating entity [employer] shall  
11 submit payment via credit or debit card for the criminal background check.

12        ~~(3)(a) [(b)1. Effective until May 19, 2014, or]~~ Until NBCP grant funds are depleted,  
13 care providers identified in Section 1(3)(a) through (i) of this administrative regulation  
14 shall pay a fee of twenty (20) dollars for a fingerprint-supported state and national  
15 criminal background check, which includes the cost of the Kentucky NBCP and the fees  
16 of the Department of Kentucky State Police and the FBI.

17        (b) A participating entity enrolled in the Kentucky NBCP and not identified in Section  
18 1(3)(a) through (i) of this administrative regulation shall pay a fee of twenty (20) dollars  
19 in addition to any fees charged by the Department of Kentucky State Police and the FBI  
20 for the actual cost of processing a fingerprint-supported state and national criminal  
21 background check.

22        (c) If an applicant's continuous assessment period identified under Section 3 of this  
23 administrative regulation has not expired, a fee of twenty (20) dollars shall be charged

1 to view the applicant's current fitness determination and process a new application, in  
2 which case a new fingerprint check is not needed.

3 (d)1. After NBCP grant funds are depleted, the total cost of a fingerprint-supported  
4 state and national criminal background check charged to a care provider shall not  
5 exceed actual costs of the Kentucky NBCP and the fees charged by the Department of  
6 Kentucky State Police and the FBI.

7 2. If an applicant has not been previously fingerprinted under the Kentucky NBCP or  
8 if the applicant's continuous assessment period has expired, a fee not to exceed twenty  
9 (20) dollars in addition to any fees charged by the Department of Kentucky State Police  
10 and the FBI for a fingerprint-supported state and national criminal background check  
11 shall be charged to the care provider for the cost of a criminal background check.

12 ~~[whichever date is later, employers shall pay the twenty (20) dollar fee charged by the~~  
13 ~~Justice and Public Safety Cabinet pursuant to paragraph (d)1. of this subsection.~~

14 ~~2. Effective until May 10, 2014, or until NBCP grant funds are depleted, whichever~~  
15 ~~date is later, grant monies shall be used to subsidize:~~

16 ~~a. The cost of the national criminal background check charged by the Federal~~  
17 ~~Bureau of Investigation pursuant to paragraph (d)2. of this subsection; and~~

18 ~~b. The administrative cost charged by the cabinet pursuant to paragraph (d)3. of this~~  
19 ~~subsection.~~

20 ~~(e) Effective until May 10, 2014, or until NBCP grant funds are depleted, whichever~~  
21 ~~date is later, the cabinet shall pay all costs identified in paragraph (d) of this subsection~~  
22 ~~if a criminal background check is conducted on behalf of a prospective provider of home~~  
23 ~~and community based services authorized under KRS Chapter 205. This exemption for~~

1 ~~providers of home and community based services is a condition of the NBCP grant.~~

2 ~~(d) After May 19, 2014, or after NBCP grant funds are depleted, whichever date is~~  
3 ~~later, the total cost of a criminal background check charged to employers shall be sixty-~~  
4 ~~three (63) dollars, divided into the following components:~~

5 ~~1. A fee of twenty (20) dollars charged by the Justice and Public Safety Cabinet;~~

6 ~~2. A fee of sixteen (16) dollars and fifty (50) cents charged by the Federal Bureau of~~  
7 ~~Investigation; and~~

8 ~~3. A fee of twenty-six (26) dollars and fifty (50) cents charged by the cabinet to cover~~  
9 ~~the cost of facilitating the criminal background check.]~~

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

13 (b) The applicant shall:

14 1. Have thirty (30) calendar days from the date of payment pursuant to subsection  
15 (3) of this section to submit his or her fingerprints at an authorized collection site; and

16 2. Present the Live Scan Fingerprinting Form and driver's license or government-  
17 issued photo identification to the designated agent at an [the] authorized collection site  
18 prior to fingerprint submission.

19 (5) Upon completion of a criminal background check, the cabinet shall[-(a)] provide  
20 notice to the care provider or other employer enrolled in the Kentucky NBCP that the  
21 applicant is:

22 (a) Clear to hire;[r] or

23 (b) Not clear to hire if the applicant is found by the cabinet to have a disqualifying

1 offense as identified in Section 1(5) of this administrative regulation~~;~~ ~~and (b) Not~~  
2 ~~disclose the applicant's criminal history to the employer~~].

3 (6) A care provider is not obligated to employ or offer employment to an individual  
4 who has been found by the cabinet to be clear for hire pursuant to subsection (5)(a) of  
5 this section.

6 Section 7 ~~[6]~~. Provisional Employment. (1) If an applicant is not found on a registry  
7 and the individual's license has been validated, if applicable, a care provider ~~[an~~  
8 ~~employer]~~ may hire the applicant for a period of provisional employment pending  
9 completion of the criminal background check.

10 (2) The period of provisional employment shall:

11 (a) Not commence prior to the date the applicant submitted his or her fingerprints;

12 and

13 (b) Not exceed sixty (60) days from the date of fingerprint collection.

14 (3) During the period of provisional employment, the individual shall not have  
15 supervisory or disciplinary power or routine contact with patients, residents, or clients  
16 without supervision on-site and immediately available to the individual.

17 Section 8 ~~[6]~~. Individuals Ineligible to be Hired. A care provider ~~[An employer~~  
18 ~~participating in the KARES program]~~, an agency within the cabinet responsible for  
19 conducting inspections of any care provider ~~[employer]~~, or a state-owned or operated  
20 health facility shall not employ, contract with, or permit to work as an employee any  
21 applicant that submits to a background check if one (1) or more of the following are met:

22 (1) The applicant refuses to provide photo identification or complete the Disclosures  
23 ~~[Disclosure]~~ Form or Waiver Agreement and Statement ~~[Consent and Release Form]~~

1 required by Section 6[4](1)(a) and (b) of this administrative regulation;

2 (2) The applicant is found on a registry as defined by Section 1(8) of this  
3 administrative regulation;

4 (3) The applicant's professional license is not in good standing, if applicable;

5 (4) The applicant fails to submit his or her fingerprints at an authorized collection site  
6 within thirty (30) calendar days of payment submitted pursuant to Section 5[4](3) of this  
7 administrative regulation; or

8 (5) Upon completion of the initial criminal background check for an applicant or  
9 subsequent to the initial fingerprint check on a current employee, the care provider  
10 [employer], cabinet agency, or state-owned or operated health facility receives notice  
11 from the cabinet that the applicant is ineligible [~~not clear~~] for hire based on a cabinet  
12 determination that the individual has been found to have a disqualifying offense[; ~~or~~

13 ~~(6) Final disposition of a criminal charge related to a disqualifying offense is not~~  
14 ~~provided to the cabinet within sixty (60) days of fingerprint submission].~~

15 Section 9 [7]. Notice of a Disqualifying Offense and Appeals. (1) The cabinet shall  
16 notify each applicant or if applicable, current employee determined to have a  
17 disqualifying offense.

18 (2) In addition to the cabinet's notification required by subsection (1) of this section,  
19 a care provider [~~an employer~~] that receives notice from the cabinet that an individual  
20 has been determined to have a disqualifying offense shall notify the individual of the  
21 cabinet's determination within three (3) business days of receipt of the notice.

22 (3) An applicant who receives notice of a disqualifying offense may:

23 (a) Request a rehabilitation review pursuant to Section 10[9] of this administrative

1 regulation; or

2 (b) Challenge the accuracy of the cabinet's determination regarding a disqualifying  
3 offense by submitting a written request to the cabinet for an informal review of the  
4 cabinet's determination, or file an appeal under KRS Chapter 13B within ten (10) days  
5 of the date of the notice of the disqualifying offense. An applicant or if applicable,  
6 current employee may appeal the results of an informal review by submitting a written  
7 request to the cabinet for appeal under KRS Chapter 13B within five (5) days of notice  
8 of the decision from an informal review.

9 (4) A current employee who has submitted to a criminal background check under  
10 the Kentucky NBCP and whose fingerprints are retained pursuant to Section 3 of this  
11 administrative regulation may challenge the accuracy of the cabinet's determination of a  
12 disqualifying offense pursuant to subsection (3)(b) of this section.

13 (5) If an applicant or, if applicable, current employee wishes to obtain information  
14 concerning the disqualifying offense or challenge the accuracy of a criminal background  
15 check, the cabinet shall refer the individual to the appropriate state or federal law  
16 enforcement agency.

17 (6) ~~(5)~~ If an applicant or, if applicable, current employee challenges the finding that  
18 he or she is the true subject of the results from a registry check, the cabinet shall refer  
19 the individual to the agency responsible for maintaining the registry.

20 Section 10 [8]. Termination of an ~~[a Provisional]~~ Employee Upon Receipt of Notice  
21 of a Disqualifying Offense. (1) If a provisional employee or, if applicable, current  
22 employee has not requested an informal review or an appeal pursuant to Section  
23 ~~8[7]~~(3)(b) of this administrative regulation, the care provider ~~[employer]~~ shall:

1 (a) Terminate the employee no later than fourteen (14) ~~[six (6)]~~ business days after  
2 receipt of notice of the disqualifying offense; and

3 (b) Use the KARES system to provide electronic notification ~~[Submit a written~~  
4 ~~attestation statement]~~ to the cabinet affirming the employee's dismissal within three (3)  
5 business days of termination.

6 (2) If a provisional employee or, if applicable, current employee requests an informal  
7 review or an appeal pursuant to Section 8[7](3)(b) of this administrative regulation, the  
8 care provider~~[employer]~~ may retain the employee pending resolution of the employee's  
9 informal review or appeal under the following conditions:

10 (a) The employee shall be subject to direct, on-site supervision, or reassigned to  
11 duties that do not involve one-on-one contact with a resident, patient, or client of the  
12 employer;

13 (b) The care provider ~~[employer]~~ shall inform the employee that termination shall be  
14 immediate if the informal review upholds the cabinet's determination regarding a  
15 disqualifying offense, or the employee does not prevail in an appeal requested pursuant  
16 to Section 8[7](3)(b) of this administrative regulation;

17 (c) The care provider ~~[employer]~~ shall immediately terminate an employee if the  
18 informal review upholds the accuracy of the cabinet's determination regarding a  
19 disqualifying offense or the employee does not prevail in an appeal requested pursuant  
20 to Section 8[7](3)(b) of this administrative regulation upon completion of the appeal; and

21 (d) Using the KARES system, the care provider ~~[employer]~~ shall provide electronic  
22 notification ~~[submit a written attestation statement]~~ to the cabinet affirming the  
23 individual's dismissal within three (3) business days of termination.

1 Section 11 [9]. Rehabilitation Review. (1)(a) An applicant found [~~on the child abuse~~  
2 ~~and neglect central registry maintained pursuant to 922 KAR 1:470, or found~~] to have a  
3 disqualifying offense upon completion of the criminal background check shall be eligible  
4 for consideration of rehabilitation under an independent review process.

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

7 1. A disqualifying felony offense that occurred less than ten (10) [~~seven (7)~~] years  
8 prior to the date of the criminal background check;

9 2. A disqualifying misdemeanor offense related to assault, domestic violence, theft,  
10 fraud, or possessing or trafficking in a controlled substance that occurred less than  
11 seven (7) years prior to the date of the criminal background check;

12 3. Any disqualifying felony or misdemeanor offense [~~A criminal conviction~~] related to  
13 abuse, neglect, or exploitation of an adult or child, or a sexual offense;

14 4. [~~3.~~] Registration as a sex offender under federal law or under the law of any state;  
15 or

16 5. [~~4.~~] A conviction for a violent crime.

17 (2) An applicant may submit a written request for a rehabilitation review to the  
18 cabinet no later than fourteen (14) calendar days from the date of the notice of the  
19 cabinet's determination issued pursuant to Section 8[~~7~~](1) of this administrative  
20 regulation regarding a [~~finding on the child abuse and neglect central registry of~~]  
21 determination of a disqualifying offense.

22 (3) The request for a rehabilitation review shall include the following information:

23 (a) A written explanation of each [~~finding on the child abuse and neglect central~~

1 ~~registry or each~~] disqualifying offense, including:

2 1. A description of the events related to the ~~[registry finding or]~~ disqualifying offense;

3 2. The number of years since the occurrence of the ~~[registry finding or]~~ disqualifying  
4 offense;

5 3. ~~[The identification of any other individuals involved in the offense;~~

6 4.] The age of the offender at the time of the ~~[registry finding or]~~ disqualifying  
7 offense; and

8 4. ~~[5.]~~ Any other circumstances surrounding the ~~[registry finding or]~~ offense;

9 (b) Official documentation showing that all fines, including court-imposed fines or  
10 restitution, have been paid or documentation showing adherence to a payment  
11 schedule, if applicable;

12 (c) The date probation or parole was satisfactorily completed, if applicable; and

13 (d) Employment and character references, including any other evidence  
14 demonstrating the ability of the individual to perform the employment responsibilities  
15 and duties competently.

16 (4) A rehabilitation review shall be conducted by a committee of three (3) employees  
17 of the cabinet, none of whom:

18 (a) Is an employee of the Office of Inspector General; or

19 (b) Was responsible for determining [each of whom was not responsible for  
20 ~~determining: (a) The finding of child abuse or neglect that placed the individual on the~~  
21 ~~central registry; or (b)] that the individual has a disqualifying offense.~~

22 (5) The committee shall consider the information required under subsection (3) of  
23 this section, and shall also consider mitigating circumstances including:

1 (a) The amount of time that has elapsed since the [~~child abuse and neglect central~~  
2 ~~registry finding or~~] disqualifying offense[~~, which shall not be less than seven (7) years in~~  
3 ~~the case of a disqualifying offense~~];

4 (b) The lack of a relationship between the [~~registry finding or~~] disqualifying offense  
5 and the position for which the individual has applied; and

6 (c) Evidence that the applicant has pursued or achieved rehabilitation with regard to  
7 the [~~registry finding or~~] disqualifying offense. The committee shall make a  
8 recommendation to the secretary or designee, who shall be responsible for making the  
9 final decision.

10 (6) The secretary or designee may grant a waiver from the prohibition against  
11 employment of an applicant with a [~~child abuse and neglect finding or a~~] disqualifying  
12 offense upon consideration of the information required under subsection (3) of this  
13 section and the committee's recommendation of subsection (5) of this section.

14 (7) No later than thirty (30) calendar days from receipt of the written request for the  
15 rehabilitation review, the secretary or designee shall send a written determination on the  
16 rehabilitation waiver to the applicant.

17 (8) The decision of the secretary or designee pursuant to subsection (7) of this  
18 section shall be subject to appeal under KRS Chapter 13B.

19 (9) An individual with a [~~finding on the child abuse and neglect central registry or a~~]  
20 disqualifying offense shall not be employed by an employer until the employer receives  
21 notification from the cabinet that the individual has been granted a waiver.

22 (10) A care provider [~~An employer~~] is not obligated to employ or offer employment to  
23 an individual who is granted a waiver pursuant to this section.

1 Section 12[10]. Pardons and Expungement. An applicant who has received a  
2 pardon for a disqualifying offense or has had the record expunged may be employed.

3 Section 13 [11]. Status of Employment. Each care provider [~~An employer~~  
4 ~~participating in KARES~~] shall maintain the employment status of each employee who  
5 has submitted to a fingerprint-supported criminal background check by reporting the  
6 status using the KARES web-based system.

7 Section 14 [12]. Kentucky National Background Check [~~Applicant Registry and~~  
8 ~~Employment Screening~~] Fund. (1)(a) The Cabinet shall establish a trust and agency  
9 fund called the Kentucky National Background Check [~~Applicant Registry and~~  
10 ~~Employment Screening~~] fund to be administered by the Finance and Administration  
11 Cabinet.

12 (b) The fund shall be funded with moneys collected under Section 5(2) [~~4(3)~~] of this  
13 administrative regulation.

14 (2) Moneys in the fund shall be used solely to operate the Kentucky National  
15 Background Check [KARES] program.

16 Section 15 [13]. Adverse Action. In accordance with KRS 216B.105 or KRS  
17 194A.707(1), the cabinet shall take action to deny or revoke a care provider's license,  
18 certification, or registration for failure to demonstrate compliance with Sections 2  
19 through 12 of this administrative regulation.

20 Section 16 [15]. Incorporation by Reference. (1) The following material is  
21 incorporated by reference:

22 (a) OIG 1:190-1, "Disclosures to be Provided to and Signed by Applicant for  
23 Employment or Licensure", November 2015;

1        (b) OIG 1:190-2, "Waiver Agreement and Statement", November 2015; [OIG 1:190-  
2        A, "Agreement to Participate in the KARES Program", May 2013;  
3        (b) OIG 1:190-B, "Disclosure Form", May 2013;  
4        (c) OIG 1:190-C, "Consent and Release Form", May 2013;] and  
5        (c) [(d)] OIG 1:190-D, "Live Scan Fingerprinting Form", May 2013.

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

Maryellen B. Mynear 11/17/15  
Maryellen B. Mynear Date  
Inspector General  
Office of Inspector General

APPROVED:

Audrey Tayse Haynes 11/17/15  
Audrey Tayse Haynes Date  
Secretary

## **PUBLIC HEARING AND PUBIC COMMENT PERIOD**

A public hearing on this administrative regulation shall, if requested, be held on January 21, 2016, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 2016, 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. The hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business February 1, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40621, (502) 564-7905, Fax: (502) 564-7573, email address: [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov)

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 906 KAR 1:190  
Contact Person: Stephanie Brammer-Barnes, Internal Policy Analyst  
Office of Inspector General  
502-564-2888

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures and requirements for implementation of the Kentucky National Background Check Program (NBCP). Under the Kentucky NBCP, a secure, web-based application called the KARES system is used to facilitate registry and fingerprint-supported state and FBI criminal background checks for prospective employees in long-term care and other settings required by law to conduct background screening of employees, as well as professional licensing boards required by law to conduct background check screening on licensees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures and requirements for implementation of the Kentucky NBCP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: As stated in the Necessity, Function, and Conformity paragraph of this administrative regulation, 42 U.S.C. 1320a-7l 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. 42 U.S.C. 5119a(a)(1) authorizes states to have in effect procedures, established by state statute or regulation, that require qualified entities designated by the state to contact an authorized agency of the state to request a nationwide background check for the purpose of determining whether an individual has been convicted of a crime that bears upon that individual's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities. KRS 216.789, KRS 216.787 and KRS 216.712 authorizes the secretary of the Cabinet for Health and Family Services to establish procedures for criminal background checks for employees of certain entities which provide direct services to the elderly or individuals with disabilities. Therefore, this administrative regulation conforms to the content of the authorizing statutes by establishing procedures and requirements for implementation of a comprehensive, Cabinet-administered state and national background check program called the Kentucky NBCP.

(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 implementation of the Kentucky 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: In

accordance with the initially adopted version of this administrative regulation, the Kentucky NBCP was rolled out as a voluntary program in May 2014. Under this amendment, fingerprint-supported state and national background checks will be required as a condition of employment for new hires in long-term care facilities and other settings as defined by Section 1(3) of this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to require more comprehensive background checks in order to reduce a current gap in state law and enhance efforts to help protect elderly and vulnerable adults from potential abuse, neglect, and exploitation.

(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 implementation of the Kentucky NBCP.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing procedures and requirements for implementation of the Kentucky NBCP to provide fingerprint-supported state and national background checks.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Employers required by this administrative regulation to secure a fingerprint-supported state and national criminal record check on new hires include the following: long-term care facilities (491) (except for family care homes and acute-care facilities performing long-term-care services or hospice services at the same location as the acute care facility); nursing pools and staffing agencies which provide staff to long-term care facilities (68); adult day health programs (107); assisted living facilities (110); home health agencies (114); hospice providers (24), including residential hospice (9); personal services agencies (158); providers of home and community based services (over 250); or any other licensed health facility that applies to participate in the Kentucky NBCP. Additionally, new Cabinet staff whose duties include inspecting long-term care employers or who have one-on-one contact with patients or residents, and new Cabinet staff who work in state-run health facilities are subject to a background check under this administrative regulation.

(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: Upon data entry of an applicant's information, the NBCP performs an automated database search of all available abuse registries and verifies the applicant's professional licensure status, if applicable. "Hits" on an abuse registry or confirmation that an individual's professional license is not in good standing results in disqualification of the individual from employment, thereby eliminating the need for a criminal background check and the costs associated with such checks. If cleared as a result of the registry check and professional licensure verification, applicants are subject to a fingerprint-supported state and national background check.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred initially as employers will continue to pay the \$20 fee they are currently accustomed to paying for name based, state-only criminal background checks. However, upon depletion of NBCP grant monies, the fee for a fingerprint-supported state and national background check will not exceed actual costs, estimated to be no more than \$20 imposed by the Kentucky NBCP plus actual fees charged by the Department of Kentucky State Police and the FBI. Additionally, if an applicant has been previously fingerprinted and his or her "continuous assessment period" as identified under Section 3 of this administrative regulation has not expired, a fee of \$20 will be charged to the employer to view the applicant's current fitness determination and process a new application, in which case a new fingerprint check and the associated cost is not needed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employers identified under Section 1(3) of this administrative regulation, professional licensing boards, and other entities authorized to use the system will benefit from a comprehensive screening mechanism intended to limit the ability of "bad actors" to hide any criminal or abusive actions committed in other states, and a reduction in costs as applicants previously fingerprinted move from one employer to another.

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

(a) Initially: This administrative regulation is funded by NBCP grant monies until May 2016 and subject to a one-year extension upon approval by the Centers for Medicare and Medicaid Services (CMS).

(b) On a continuing basis: Upon depletion of grant monies, the Kentucky NBCP will be supported by fees collected. The fee for a fingerprint-supported state and national background check will not exceed actual costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As stated previously, federal NBCP grant funds are currently used to implement this administrative regulation. Upon depletion of grant monies, continued funding to support the Kentucky NBCP will be from fees.

(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: Upon depletion of grant monies, the cost of fingerprint-supported state and FBI checks will not exceed actual costs.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees necessary to sustain operation of the Kentucky NBCP.

**(9) TIERING: Is tiering applied? (explain why or why not) Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.**

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 906 KAR 1:190

Contact Person: Stephanie Brammer-Barnes  
(502) 564 - 2888

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? Employers required by this administrative regulation to secure a fingerprint-supported state and FBI criminal record check on new hires include the following: long-term care facilities (except for family care homes and acute-care facilities performing long-term-care services or hospice services at the same location as the acute care facility), nursing pools and staffing agencies which provide staff to long-term care facilities, adult day health programs, assisted living facilities, home health agencies, hospice providers, including residential hospice, personal services agencies, providers of home and community based services, or any other licensed health facility that applies to participate in the Kentucky NBCP. Additionally, new Cabinet staff whose duties include inspecting long-term care employers or who have one-on-one contact with patients or residents, and new Cabinet staff who work in state-run health facilities are subject to a background check under this administrative regulation.

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. 1320 a-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? The current charge for a name-based, state only criminal record check is \$20. Under this administrative regulation, the charge for a fingerprint-supported state and FBI criminal background check will remain \$20 initially. However, upon depletion of NBCP grant funds, the revenue generated in fees will not exceed the 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? During subsequent years, revenue will be based upon fees charged to use the KARES system, not to exceed actual costs.

(c) How much will it cost to administer this program for the first year? This administrative regulation is funded by NBCP grant monies until May 2016 and subject to a one-year extension upon approval by CMS.

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

NBCP grant funds are currently used to implement this administrative regulation. Upon depletion of grant monies, continued funding to support the Kentucky NBCP will be from fees collected to process fingerprint-supported state and FBI checks, not to exceed actual costs.

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

## FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 906 KAR 1:190

Agency Contact: Stephanie  
Brammer-Barnes

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 1320 a-7l and 42 U.S.C. 5119a(a)(1)

2. State compliance standards.

KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

KRS 216.789, KRS 216.787, and KRS 216.712 authorizes the secretary of the Cabinet for Health and Family Services to establish procedures for criminal background checks for employees of certain entities which provide direct services to the elderly or individuals with disabilities.

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

42 U.S.C. 1320 a-7l 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. As of this date, Kentucky is one of 26 states to receive a National Background Check Program (NBCP) grant awarded by the Centers for Medicare and Medicaid Services under 42 U.S.C. 1320 a-7l.

42 U.S.C. 5119a(a)(1) authorizes states to have in effect procedures, established by state statute or regulation, that require qualified entities designated by the state to contact an authorized agency of the state to request a nationwide background check for the purpose of determining whether an individual has been convicted of a crime that bears upon the individual's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.

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

This administrative regulation does not impose stricter requirements than those required by 42 U.S.C. 1320 a-7l or 42 U.S.C. 5119a(a)(1).

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

Not applicable.

**COMMONWEALTH OF KENTUCKY  
CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Inspector General**

906 KAR 1:190, Kentucky National Background Check Program.

**Summary of Material Incorporated by Reference**

1. The OIG 1:190-1, "Disclosures to be Provided to and Signed by Applicant for Employment or Licensure", November 2015, is a form given by a KARES system user to an applicant prior to initiating a background check under the Kentucky NBCP. This form, which must be signed by the applicant, serves as notice of the procedures for securing a fingerprint-supported State and FBI criminal background check as well as the applicant's right to request and inspect his or her criminal history record, and to request correction of any inaccurate information. This form contains one (1) page.
  
2. The OIG 1:190-2, "Waiver Agreement and Statement", November 2015, is a form given by a KARES system user to an applicant prior to initiating a background check under the Kentucky NBCP. This form, which must be signed by the applicant, serves as authorization by the applicant for submission of his or her fingerprints for completion of a State and FBI criminal background check, and this form also provides the applicant with an opportunity to self-disclose any criminal offenses prior to the background check. This form contains one (1) page.

The total number of pages incorporated by reference for this administrative regulation is two (2) pages.

DISCLOSURES TO BE PROVIDED TO AND SIGNED BY APPLICANT FOR EMPLOYMENT OR LICENSURE  
Kentucky National Background Check Program (KY-NBCP)  
Office of Inspector General, Cabinet for Health and Family Services

FOR THIS TYPE OF EMPLOYMENT OR LICENSURE, STATE AND FEDERAL LAW REQUIRE A STATE AND NATIONAL CRIMINAL  
BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT

By signing this notice of required disclosures, the applicant for employment, volunteer services, or professional licensure, has the responsibility to be aware of the following:

- (1) A set of the applicant's fingerprints will be required to complete a background check under the Kentucky National Background Check Program (KY-NBCP).
- (2) The applicant must complete and sign the Waiver Agreement and Statement (OIG 1:190-2), and provide a commonly accepted form of identification containing the applicant's photograph (such as a valid driver's license).
- (3) A background check facilitated by the KY-NBCP shall include a:
  - (a) Check of required abuse registries;
  - (b) Check of licensing board data, if applicable, to validate licensure status; and
  - (c) Fingerprint-supported state and Federal Bureau of Investigation (FBI) criminal background check, which includes a comparison of the applicant's fingerprints with any latent fingerprints that may be on file with the Department of Kentucky State Police (KSP) or the FBI. The fingerprint images will be used for all criminal justice purposes.
- (4) The applicant's fingerprint images, and associated information, will be retained by KSP and the FBI in their databases, and will be used to determine if the applicant has any criminal history information on file with the Federal and State criminal history repositories. KSP or the FBI will process future searches, including latent fingerprint searches, against the applicant's fingerprints and make full use of them in any criminal prosecution under state or federal law, as well as notify the Cabinet for Health and Family Services of subsequent arrests and convictions indicated in the criminal history repositories concerning the applicant.
- (5) Upon submission by the applicant to the fingerprint-supported State and FBI criminal background check, a care provider *may* choose to hire the applicant provisionally while the background check is processed.
- (6) The applicant's Social Security Account Number is needed in order to keep records accurate pursuant to the Federal Privacy Act Statement, which may be downloaded at: <http://www.fbi.gov/about-us/cjis/cc/library/privacy-act-statement-1>
- (7) All information provided to the KY-NBCP, Office of Inspector General, Cabinet for Health and Family Services, shall be kept confidential in compliance with applicable state and federal laws and regulations.
- (8) The applicant has the right to request and inspect his or her criminal history record and to request correction of any inaccurate information. If the applicant does not exercise his or her right to inspect criminal history information, the Commonwealth shall not be responsible for the dissemination of inaccurate information, or liable for damages resulting from its determination of the applicant's eligibility for employment.

I HAVE READ, AND UNDERSTAND, THE FOREGOING DISCLOSURES.

Printed Name of Applicant: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Last Four Digits of SSN: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Kentucky National Background Check Program (KY-NBCP)  
Office of Inspector General, Cabinet for Health and Family Services

WAIVER AGREEMENT AND STATEMENT  
Volunteer and Employee Criminal History Service (VECHS)

Pursuant to the National Child Protection Act of 1993, as amended by the Volunteers for Children Act (NCPA/VCA), or any other applicable state or federal laws or regulations, including 906 KAR 1:190, this form must be completed and signed by every prospective or current employee, volunteer, licensee, and contractor/vendor for whom fingerprint-based criminal history records are requested by a qualified entity.

I, the undersigned applicant, hereby authorize \_\_\_\_\_ (hereinafter "qualified entity") to request submission of a set of my fingerprints to the Department of Kentucky State Police and Federal Bureau of Investigation (FBI) for the purpose of accessing and reviewing state and national criminal history records that may pertain to me. I understand that I would be able to receive any Kentucky record from the Department of Kentucky State Police, and any national criminal history record from the FBI pursuant to 28 CFR Sections 16.30-34, and that I could then freely disclose any such information to whomever I chose. By signing this Waiver Agreement and Statement, it is my intent to authorize the dissemination of any Kentucky and national criminal history record that may pertain to me to the Kentucky Cabinet for Health and Family Services, Office of Inspector General, for the purpose of determining whether I am eligible for employment, licensing, serving as a volunteer, or working as a contractor/vendor, under NCPA/VCA.

I understand that, until the criminal history background check is completed, the qualified entity may choose to hire me provisionally and deny me unsupervised access to children, the elderly, or individuals with disabilities. I further understand that, upon request, I will be provided with a copy of the criminal history background report, if any, received on me and that I am entitled to challenge the accuracy and completeness of any information contained in any such report. I may obtain a prompt determination as to the validity of my challenge before a final decision is made about my status as an employee, volunteer, licensee, or contractor/vendor.

**Yes, I have** been convicted of, pled guilty to, entered an Alford plea or a plea of nolo contendere to, or am under indictment for, a crime.

**No, I have not** been convicted of, pled guilty to, entered an Alford plea or a plea of nolo contendere to, and am not under indictment for, a crime.

If yes, please describe the crime(s) and the particulars: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I am a current or prospective (check one):  Employee  Licensee  Volunteer  Contractor/Vendor

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Applicant Printed Name: \_\_\_\_\_

Applicant Date of Birth: \_\_\_\_\_ Applicant Social Security Number: \_\_\_\_\_

Applicant Address: \_\_\_\_\_

TO BE COMPLETED BY THE QUALIFIED ENTITY:

ENTITY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

ENTITY ASSIGNED OCA: \_\_\_\_\_

KEEP FOR YOUR RECORDS