

State of Kansas

Department of Health and Environment

Notice of Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Division of Public Health, Bureau of Family Health, will conduct a public hearing at 10:00 a.m. Tuesday, October 16, 2018, in Room 530, Curtis State Office Building, 1000 SW Jackson, Topeka, Kansas, to consider the adoption of proposed new maternal and child health regulation K.A.R. 28-4-95, regarding a fee for fingerprint-based background checks for required individuals working, residing, or regularly volunteering in child care facilities.

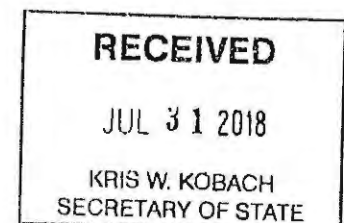
A summary of the proposed regulation and estimated economic impact follows:

Summary of Regulation:

K.A.R. 28-4-95. Fee for fingerprint-based background checks. This regulation creates a fee fund for fingerprint-based background checks for required individuals in child care facilities and complies with KSA 65-516, as amended by 2018 HB 2639, and the background check requirements of the federal Child Care and Development Block Grant Act of 2014.

Economic Impact:

Cost to the agency: The provisions of 2018 HB 2639 establish a child care criminal background and fingerprinting fund administered by KDHE. Fees submitted by applicants and licensees and KDHE's payments for the background checks will be processed through that fund. The KDHE Child Care Licensing and Registration Information System (CLARIS) will interface with the Kansas Department of Aging and Disability Services (KDADS) KanCheck system to enable KDHE to receive the results of the required background checks. Costs to KDHE include



establishing the fee fund and the policies and procedures. Costs will be absorbed in the ongoing KDHE budget.

Cost to licensees: The proposed regulation requires applicants and licensees to submit a non-refundable fee to KDHE for each individual who is required to complete a fingerprint-based background check. The fingerprint check will be completed for each individual initially and once every five years thereafter. Currently, the cost for each individual will be \$48 based on the fees charged by the Kansas Bureau of Investigation (KBI), the Federal Bureau of Investigation (FBI), and the KDADS KanCheck system maintenance fee. In the final rules of the federal block grant, 45 CFR 98.43(f) states that "Fees that a State, Territory, or Tribe may charge for the costs of processing applications and administering a criminal background check as required by this section shall not exceed the actual costs for the processing and administration."

Costs to other governmental agencies or units: The KBI and FBI will have ongoing costs for processing fingerprint-based background checks. KDADS will have ongoing costs for maintenance of KanCheck, an integrated system for requesting and receiving results of fingerprint-based background checks. As with all licensees, local units of government, including cities, counties, and unified school districts that operate a licensed child care facility, will be required to submit a nonrefundable fee for each individual required to complete a fingerprint-based background check.

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulation. All interested parties may submit written comments prior to 5:00 p.m. on the day of the hearing to Mary Murphy, Kansas Department of Health and Environment, Bureau of Family Health, Administration and Policy, 1000 SW Jackson, Suite 200,

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Topeka, KS 66612-1274, by email to Mary.Murphy@ks.gov, or by fax to 785-559-4244. During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulation as well as an opportunity to submit their written comments. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Complete copies of the proposed regulation and the corresponding economic impact statement may be obtained from the KDHE Child Care Licensing website, at <http://www.kdheks.gov/bcclr/index.html> or by contacting Mary Murphy at Mary.Murphy@ks.gov, 785-296-1270, or fax 785-559-4244. Questions pertaining to the proposed regulation should be directed to Mary Murphy at the contact information above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and the economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Mary Murphy.

Jeff Andersen
Secretary

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K.A.R. 28-4-95. Fee for fingerprint-based background checks. Each applicant, applicant with a temporary permit, and licensee shall submit a nonrefundable fee of \$48 to the department for the cost of each required fingerprint-based background check, as follows:

- (a) For each day care home, group day care home, child care center, and preschool, each individual specified in K.A.R. 28-4-125;
- (b) for each school-age program, each individual specified in K.A.R. 28-4-584; and
- (c) for each drop-in program, each individual specified in K.A.R. 28-4-705. (Authorized by and implementing K.S.A. 2017 Supp. 65-516, as amended by L. 2018, ch. 47, sec. 1; effective P-_____.)

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**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Kansas Department of Health and Environment
Agency

Susan Vogel
Agency Contact

785-296-1291
Contact Phone Number

K.A.R. 28-4-95
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to: Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

K.A.R. 28-4-95, Fees for fingerprint-based background checks, applies to day care homes, group day care homes, child care centers, preschools, school-age programs, and drop-in programs. The regulation requires each applicant and each licensee to submit to KDHE a fee of \$48 for each individual who is required to have a fingerprint-based background check.

The individuals requiring fingerprint-based background checks are described in the following regulations:

- K.A.R. 28-4-125 – Day care homes, group day care homes, child care centers, and preschools;
- K.A.R. 28-4-584 – School age programs; and
- K.A.R. 28-4-705 – Drop-in programs.

These regulations have been amended to meet the Child Care and Development Block Grant Act of 2014 (Pub. L. 113-186). They became effective 06-07-2018.

The Notice of Hearing for the proposed new regulation, was originally published in the *Kansas Register* on June 7, 2018 and the public hearing was scheduled for August 22, 2018. KDHE has cancelled this public hearing and will publish notification of a new hearing. Notice of the cancellation and the notice of the rescheduled public hearing, once published in the *Kansas Register*, will be sent to licensees, those individuals that had previously provided comment, and to the League of Kansas Municipalities, Kansas Association of Counties, and the Kansas Association of School Boards. Additionally, the information will be posted on the KDHE, Bureau of Family Health, Child Care Licensing Program website.

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II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)

The proposed regulation is needed to meet the comprehensive fingerprint-based background check requirements of the federal Child Care and Development Block Grant Act of 2014 (Pub. L. 113-186) and to comply with the provisions of 2018 HB 2639, amending K.S.A. 65-516. The federal block grant reauthorization final rules (45 CFR Part 98) identify background checks, including fingerprint-based checks, as a key element in improving the safety of children in child care settings. The Kansas Department for Children and Families (DCF) is the lead agency for administration of the block grant. The child care regulations serve as the health and safety standards for children in care and for meeting CCDF requirements. The proposed regulation was developed cooperatively with DCF.

HB 2639 authorizes KDHE to create a fee fund to receive and disperse fees for fingerprint-based background checks for those individuals required by the federal rule to have fingerprint-based checks.

The four contiguous states, Colorado, Oklahoma, Missouri, and Nebraska, are all in various stages of implementing the Federal background check requirements. Colorado and Oklahoma currently conduct fingerprint-based background checks. Colorado charges \$35 per individual. Oklahoma has conducted fingerprint-based background checks since 2013 using a third-party vendor to collect and process requests. The vendor's fee is \$53 per individual. Missouri has background check regulations under development and anticipates the charge will be \$50-\$55 per person based on the current Missouri Highway Patrol and the Missouri Family Care Safety Registry fees. Nebraska is waiting for legislative approval and anticipates that the NE Highway Patrol will charge about \$45.25 (the current fee for fingerprinting foster parents).

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

K.S.A. 65-516 requires a background check for each individual residing, working or regularly volunteering in a licensed child care facility. Comprehensive fingerprint-based background checks are an enhancement to the current name-based Kansas adult criminal and juvenile records checks. Background check requirements are protections intended to reduce the risk of abuse or neglect for children in regulated out-of-home child care settings. Parents need to be confident that individuals caring for their children do not have prior records of behavior that could endanger children. Safe and secure regulated child care settings support Kansas business and industry. When working parents feel confident that their children are in a safe regulated care setting they are more likely to be productive at work.

Having the additional information provided by comprehensive fingerprint-based background checks is also a benefit to the regulated community. The information will assist licensees in making hiring decisions based on program needs.

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KDHE recognizes that the initial costs will be difficult for some currently licensed facilities and may be a deterrent to persons considering applying for a license to operate a child care facility. Please see Section III. E. below for a description of the agency's gradual implementation of the fingerprint-based background child process and subsequent fee, designed to minimize the impact on current licensed facilities.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

The proposed regulation will have implementation and compliance costs for owners of licensed child care facilities. Depending on the type of child care program, facility ownership may range from sole proprietorships, limited liability companies, corporations and nonprofit corporations to local units of government including cities, counties and unified school districts. These costs may be passed on to parents of children in care. There are no implementation and compliance costs for utility ratepayers.

The cost for a fingerprint-based background check will be \$48 for each individual, based on charges by the following:

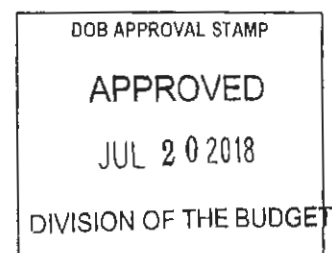
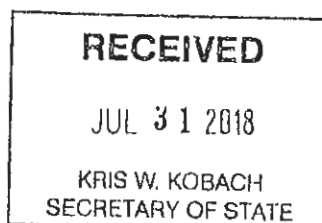
(1) Kansas Bureau of Investigation (KBI)	\$35
(2) Federal Bureau of Investigation (FBI)	\$12
(3) Kansas Department of Aging and Disability Services (KDADS) KanCheck system maintenance fee	\$ 1

For each individual, a fingerprint-based background check will be completed initially and once every five years thereafter. Individuals affiliated with more than one licensed facility would not be reprinted for each facility. Individuals changing employment would not be reprinted unless there was a break of more than 90 days.

KDHE itself is not assessing a fee for any part of the process. A fee fund is being created to receive and disperse the \$48 fees for fingerprint-based background checks for those individuals required by the federal rule to have fingerprint-based checks. The fee fund and requirement to adopt a fee regulation were established through 2018 HB 2639.

C. Businesses that would be directly affected by the proposed rule and regulation;

As of June 30, 2018, there were 5,269 licensed child care facilities with the capacity to serve 137,814 children and youth that will be directly affected by this proposed regulation.



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A breakdown of program types is as follows:

Program Type	Total Facilities	Total Capacity
Building Based School Age Program	343	29,222
Child Care Center	615	49,419
Drop-In Program for School Age Children & Youth	46	9,067
Group Day Care Home	1,328	15,918
Head Start Child Care Center	51	1,969
Licensed Day Care Home	2,704	27,031
Outdoor Summer Camp-School Age Program	25	1,859
Preschool	157	3,329
Total Licensed Child Care Facilities	5,269	137,814

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

K.S.A. 65-516 requires a background check for each individual residing, working or regularly volunteering in a licensed child care facility. The proposed regulation sets the fee for processing fingerprint-based background checks. Background check requirements are protections intended to reduce the risk of abuse or neglect for children in regulated out-of-home child care facilities. Fingerprint-based checks are an enhancement of the current name-based search of the Kansas adult criminal and juvenile records. Reducing the potential risk of harm to children in regulated child care, including the potential long-term emotional and economic effects of trauma to a victimized child outweighs the cost of \$48 per individual.

Parents of children in care benefit from knowing that individuals caring for their children do not have prior records of behavior that could endanger children. Safe and secure regulated child care settings support Kansas business and industry. When working parents feel confident that their children are in a safe regulated care setting they are more likely to be productive at work.

Having the additional information provided by comprehensive fingerprint-based background checks is also a benefit to the regulated community. The information will assist licensees in making hiring decisions based on program needs. Additionally, licensees will benefit from having KDHE as the single point of contact for all transactions related to child care licensing requirements.

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Licenseses may pass on the cost of \$48 per individual fingerprint-based background check to parents of children in care as part of increases in fees. For example, the initial cost for a licensed day care home with 3 individuals requiring fingerprinting (licensee, 1 resident at least 18 years of age and a substitute care provider) would be \$144 or about \$0.56 per day (\$144/12 months/21.5 days per month). A licensed day care home may care for up to 10 children, making the cost passed to parents approximately \$0.06 per day (\$0.56 per day/10 children). For a child care center with a licensed capacity of 157 children infants – school age and 19 employees the initial cost would be \$912 or about \$3.53 per day (\$912/12 months/21.5 days per month). The anticipated cost passed on to parents of children enrolled would be approximately \$0.02 per day. Note: Actual costs will vary depending on enrollment and number of employees.

It is important to note that the \$48 per individual is paid initially, and then every five years thereafter at which time re-printing is required. Averaging the cost over a five-year period rather than annually significantly reduces the amount that might be passed on to parents of children in care.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

The cost to licensees for fingerprint-based background checks is fixed at \$48, based on the actual costs of the FBI, KBI, and KDADS. (See Section III. B.) KDHE is only charging the amount required for those actual costs and is not charging any additional fees for the agency's processes. KDHE's costs related to receiving and dispersing the fees will be absorbed in the existing budget.

KDHE has taken several steps to minimize the cost and impact of the proposed regulation:

- To allow licensees time to plan, KDHE has regularly communicated the changes in the federal rules and related changes to Kansas regulations to licensees. Beginning in the summer of 2015 Child Care Licensing Program staff presented at child care professional development events and meetings, offered webinars at a variety of times (evenings, weekends and during the workday), provided updates to licensees via email and posted current information on the Child Care Licensing Program website.
- For initial applicants for a license, information about background checks and the proposed fee for fingerprint-based checks has been available during applicant orientation trainings and on the Child Care Licensing website. Implementation of the new requirements for initial applicants, originally set for August 2018, has been set back until December of 2018 to allow time for KDHE is republish the Notice of Hearing and to allow for applicants to prepare for the new requirement.
- For current licensees, information about the background checks and the proposed fee for fingerprint-based checks has been available on the Child Care Licensing website. To allow time for licensees to plan for the expenses, licensees were sent an implementation letter on May 23, 2018. Implementation will be gradual over a year's time. They will submit the information and fees at the time of license renewal. Current licensees will be able to operate as normal until the fingerprint-based background checks are processed for those individuals affiliated with their facility at the

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time of renewal. Implementation for existing licensees was originally to begin in October. To allow time for KDHE to republish the Notice of Hearing and to allow licensees more time to prepare, implementation will now begin with December 2018 renewals.

- Fingerprint-based background checks are not an annual requirement. For each individual, a fingerprint-based background check will be completed initially and once every five years thereafter.
- If an individual has a completed fingerprint-based background check, quits working or volunteering at one licensed child care facility, and is hired at another licensed child care facility within 90 days, a new fingerprint-based background check is not required.

F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$1,011,590

An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

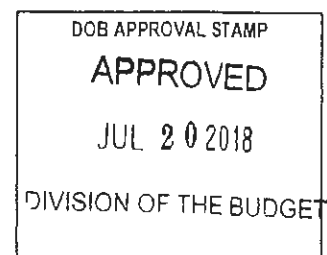
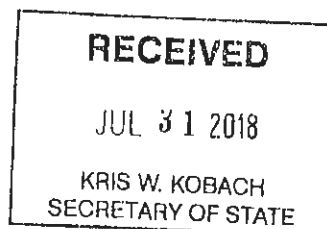
\$5,057,950 over 5 years

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES ☐ NO ☒

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

Data was obtained from the Child Care Licensing and Registration Information System (CLARIS). Comprehensive fingerprint-based background checks are required initially and then every 5 years thereafter. There are approximately 36,318 unique persons at least 18 years of age and older currently affiliated with licensed child care facilities. During the last fiscal year, approximately 17,264 unique persons name-based checks were conducted for either new individuals or for existing individuals newly affiliated with a licensed facility. The fingerprint-based background check fee of \$48 per person is the only associated cost to be incurred or passed along to licensees. As described in Section III. B., child care facility ownership types include sole proprietorships, limited liability companies, corporations, nonprofit corporations and local units of government (cities, counties or unified school districts). Examples of how these costs might be passed on to parents of children in care may be found in Section III. D. Estimates were calculated as follows:



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Estimate of Total Annual Implementation Costs Passed Along				
	# of unique person 18 + years	Cost per individual	Subsequent years	Total Cost
Initial year	36,318	\$48		\$1,743,264
Subsequent years	17,264	\$48	4	\$3,314,688
Total cost all years				\$5,057,952
Annual implementation cost				\$1,011,590

Estimate of Total Implementation Costs Passed Along				
	# of unique person 18 + years	Cost per individual	Subsequent years	Total Cost
Initial year	36,318	\$48		\$1,743,264
Subsequent years	17,264	\$48	4	\$3,314,688
Total cost all years				\$5,057,952

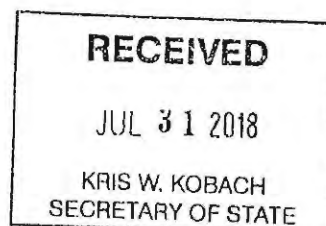
Estimate of Total Annual Implementation Costs Over Any Two-Year Period				
	# of unique person 18 + years	Cost per individual	Subsequent years	Total Cost
Initial year	36,318	\$48		\$1,743,264
Year 2	17,264	\$48		\$828,672
Total cost two-year period				\$2,571,936

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES ☐ NO ☒

As described above the total costs will not exceed \$3.0 million over any two-year period. While a public hearing was not held, KDHE has made every effort to actively engage the regulated community through meetings, webinars, mass mailings and information on the Child Care Licensing Program website.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the



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state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

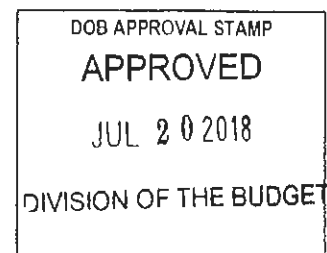
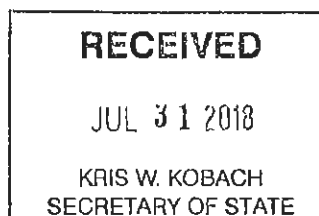
The proposed regulation will impact those local units of government including cities, counties and unified school districts that operate a licensed child care facility. There are approximately 209 facilities operated by local units of government/school districts. Representing about 4% of the total number of licensed facilities, these programs are primarily child care centers, preschools, head start centers, building based school age programs, outdoor summer programs for school age children and drop-in programs for school age children. As with other types of ownerships, it is anticipated that the cost for fingerprinting will be passed on to parents of children in care.

On June 13, 2018, following the initial publication of the Notice of Hearing, emails were sent to the three entities notifying them of the proposed new regulation and information about submitting oral or written comment. Each email had as attachments the proposed new regulation, the original Economic Impact Statement, and the original Notice of Hearing posted in the *Kansas Register* on June 7, 2018. KDHE will notify the three entities when the original public hearing is cancelled and once a new hearing date has been published.

H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

KDHE has made every effort to keep the regulated community informed and to obtain information as part of the development of regulations related to the new federal rules. In 2015, shortly after the federal rules changed, KDHE staff members began making presentations at child care professional development events, to educate and informally solicit input. Additionally, in 2016, KDHE staff members conducted seven “town hall” meetings in various locations across the state and conducted four webinars. A total of 1,178 individuals participated in either a town hall meeting or a webinar, including the regulated community and other entities such as the Child Care Aware Providers Coalition of Kansas, Kansas Association for the Education of Young Children, and the Head Start Association. Information on the federal rules and the agency’s implementation steps have been prominently displayed on the agency’s Child Care Licensing website, including details of earlier regulation changes made necessary by the federal changes.

Information on the proposed new regulation has been posted on the Child Care Licensing website, including the original Notice of Hearing, proposed new regulation, original Economic Impact Statement, and information on submitting comments. When the original Notice of Hearing was published in the *Kansas Register*, on June 7, 2018, KDHE notified current licensees by email. KDHE will notify licensees and those individuals that have previously submitted comments on the proposed regulation when the original hearing is cancelled and once a new hearing date has been published. Additionally, the information will be posted on the KDHE, Bureau of Family Health, Child Care Licensing Program website.



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- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

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