

Proposed

**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. Wednesday, August 22, 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 K.S.A. 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.

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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.

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, 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

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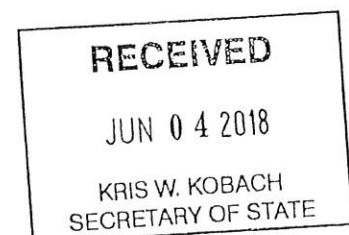
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hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

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
Kansas Department of Health and Environment



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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 2018 HB 2639, sec. 1; effective P-_____.)



APPROVED
MAY 31 2018
ATTORNEY GENERAL

APPROVED
MAY 30 2018
DEPT. OF ADMINISTRATION

June 1, 2018

Kansas Department of Health and Environment
Economic Impact Statement

Pursuant to the requirements of K.S.A. 77-416, and amendments thereto, the Kansas Department of Health and Environment (KDHE) submits the following economic impact statement concerning a new regulation pertaining to licensing requirements for child care facilities. 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 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. 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 a fingerprint-based check. The bill also requires KDHE to adopt rules and regulations to fix a fee to reimburse KDHE for the costs. The costs for the fingerprint-based background checks are the actual costs to KDHE.

Currently, name-based background checks are required for individuals working, residing, or regularly volunteering in a child care facility. KDHE is updating the requirements and processes to include fingerprint-based background checks for required individuals affiliated with child care facilities. In addition to this proposed new fee regulation, amendments are being made to other regulations to clarify which individuals will be required to complete either name-based or fingerprint-based background checks.

1. **Proposed new regulation:**

K.A.R. 28-4-95. Fee for fingerprint-based background checks.

2. **Brief description of each regulation and what is intended to be accomplished by adoption.**

The proposed new regulation 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 the fee for each individual who is required to have a fingerprint-based background check.

3. **Are these regulations mandated by federal law as a requirement for participating or implementing a federally subsidized or assisted program?**

Yes X

No

If yes, please explain.

Comprehensive fingerprint-based background checks are required by the federal Child Care and Development Block Grant Act. The Kansas Department for Children and

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Families (DCF) is the lead agency for administration of the block grant. The child care licensing regulations serve as the health and safety standards for children in care and for the purpose of meeting CCDF requirements. This proposed new regulation was developed cooperatively with DCF.

Background check requirements are protections intended to reduce the risk of abuse or neglect for children in regulated out-of-home child care settings. Background checks also provide a basic level of assurance to parents that individuals caring for children do not have prior records of behavior that could endanger the children in care.

4. **Do the proposed regulations exceed the requirements of applicable federal law?**

Yes _____ No X

5. **Description of Costs:**

(a) **Cost to the agency:**

HB 2639 establishes in the state treasury a child care criminal background and fingerprinting fund, to be administered by KDHE. The fees submitted by applicants and licensees and KDHE's payments for the background checks will be processed through that account. Costs to KDHE include those of establishing the fee fund and establishing policies and procedures. Costs will be absorbed in the ongoing KDHE budget.

(b) **Cost to persons who will bear the costs and those who will be affected (i.e.) private citizens and consumers of the products or services) and are subject to the proposed rules and regulations or the enforcement:**

The proposed regulation will require applicants and licensees to submit to KDHE a non-refundable fee for each individual who is required to complete a fingerprint-based background check. The fingerprinting will be completed for each individual initially and once every five years thereafter. The cost for each individual will be \$48, based on the following:

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

This amount may be lowered in time with future technological efficiencies in the processes involved in fingerprint-based background checks, in which case the regulation could be amended.

KDHE has placed information on the agency's website and conducted webinars and public meetings to prepare current licensees for implementation of the CCDF rules. KDHE will hold additional webinars and public meetings to assist licensees in a smooth transition to the new processes.

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The agency recognizes that initial costs will be difficult for some currently licensed facilities and may be a deterrent to persons considering applying for a license. For initial applicants for a license, implementation of the new requirements is scheduled for August 2018. For current licensees, implementation will be gradual over a year's time. They will submit the fingerprint-based checks and fees at the time of license renewal, beginning with October 2018 renewals. This will give them more time to plan for these expenses. Additionally, 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 time of renewal.

NOTE: Included in the final rules of the federal block grant, Rule 45 CFR 98.43(f) states: "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."

(c) Costs to other governmental agencies or units:

KBI and FBI will have ongoing costs for processing fingerprint-based background checks.

KDADS has developed and maintains KanCheck, an integrated system for requesting and receiving results of fingerprint-based background checks. The KDHE Child Care Licensing and Registration Information System (CLARIS) will interface with KanCheck. KDADS will have ongoing costs for maintenance of the KanCheck system.

6. Description of any less costly or less intrusive methods that were considered by the agency for the purpose of the rules and regulations and why such methods were rejected in favor of the proposed rules and regulations.

There are no less costly or less intrusive methods to implement the requirements of CCDF and K.S.A. 65-516. The fee amount is based on the actual costs to complete fingerprint-based background checks.

7. Verification of economic impact statement with League of Kansas Municipalities, Kansas Association of counties, and the Kansas Association of School Boards.

The above mention proposed new regulation was determined as appropriate for consultation as to the economic impact with the League of Kansas Municipalities, Kansas Association of Counties, and the Kansas Association of School Boards, pursuant to K.S.A. 77-416, and amendments thereto.

Yes X

No

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If yes:

Date contacted and by what means (i.e., letter, FAX, etc.): The three organizations will be contacted electronically with attached copies of the proposed new regulation, economic impact statement, and notice of hearing at the time the notice of hearing is published in the *Kansas Register*.

Response and comments received by:

League of Kansas Municipalities:

Kansas Association of Counties;

Kansas Association of School Boards:

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