

922 KAR 2:110. Child-care center provider requirements.

RELATES TO: KRS 17.165, 17.500–17.580, 199.011(2), 199.894(3), 199.895, 199.896, 199.897, 199.898, 214.010, 214.036, 314.011(5), 620.020(8), 620.030, 45 C.F.R. 98.2

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate 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 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. This administrative regulation establishes standards for child-care centers.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.

(2) "Cabinet" is defined by KRS 199.011(2).

(3) "Child care" means care of a child in a center or home which regularly provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(4) "Child-care center" is defined by KRS 199.894(3).

(5) "Director" means an individual who meets the education and training requirements as specified in Section 4 of this administrative regulation.

(6) "Health professional" means a person actively licensed as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner; or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(7) "Infant" means a child who is less than twelve (12) months of age.

(8) "Licensee" means the owner and operator of a child-care center to include:

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education;

2. Private school;

3. Faith based organization;

4. Government agency; or

5. Institution.

(9) "Parent" is defined by 45 C.F.R. 98.2.

(10) "Parental or family participation" means a child-care center's provision of information or inclusion of a child's parent in the child-care center's activities such as:

- (a) Distribution of a newsletter;
- (b) Distribution of a program calendar;
- (c) A conference between the provider and a parent; or
- (d) Other activity designed to engage a parent in the program's activities.

(11) "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(12) "Premises" means the building and contiguous property in which child care is licensed.

(13) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(14) "Qualified substitute" means a person who meets the requirements of a staff person as described in Section 5 of this administrative regulation.

(15) "School-age" means a child attending kindergarten, elementary, or secondary education.

(16) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(17) "Toddler" means a child between the age of twelve (12) months and twenty-four (24) months.

(18) "Type I child-care center" means a child-care center licensed to regularly provide child care services for:

- (a) Four (4) or more children in a nonresidential setting; or
- (b) Thirteen (13) or more children in a residential setting with designated space separate from the primary residence of a licensee.

(19) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. General. (1) A licensee shall be responsible for the operation of the child-care center pursuant to this administrative regulation, 922 KAR 2:090, and 922 KAR 2:120.

(2) Child-care center staff shall be:

- (a) Instructed by the child-care center's director regarding requirements for operation; and
- (b) Provided with a copy of this administrative regulation, 922 KAR 2:090, and 922 KAR 2:120.

(3) Information concerning a child or the child's parent shall be kept in strict confidence by child-care center staff, except as otherwise required by law.

(4) A volunteer or board member shall comply with the policies and procedures of the child-care center.

(5) Program policies and procedures shall:

(a) Be in writing; and

(b) Include:

1. Staff policies;
2. Job descriptions;
3. An organization chart;
4. Chain of command; and
5. Other procedures necessary to ensure implementation of:
 - a. KRS 199.898, Rights for children in child-care programs and their parents, custodians, or guardians - posting and distribution requirements;
 - b. 922 KAR 2:090, Child-care center licensure;
 - c. 922 KAR 2:120, Child-care center health and safety standards; and
 - d. This administrative regulation.

(6) An activity of a person living in a child-care center that is a dwelling unit shall not interfere with the child-care center program.

(7) In addition to the posting requirement of KRS 199.898(3), a child-care center shall post the following in a conspicuous place and make available for public inspection:

(a) Each statement of deficiency and civil penalty notice issued by the cabinet during the current licensure year;

(b) Each plan of correction submitted by the child-care center to the cabinet during the current licensure year;

(c) Information on the Kentucky Consumer Product Safety Program and the program's Web site as specified in KRS 199.897;

(d) A description of services provided by the child-care center, including:

1. Current rates for child care; and

2. Each service charged separately and in addition to the basic rate for child care;

(e) Minimum staff-to-child ratios and group size established in 922 KAR 2:120; and

(f) Daily schedule.

(8) If a director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with a child in care is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the family-in-need-of-services assessment or investigation; and

(b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

Section 3. Records. (1) A child-care center shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;

(b) A written record for each child:

1. Completed and signed by the child's parent;

2. Retained on file on the first day the child attends the child-care center; and

3. To contain:

a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;

b. Contact information to enable a person in charge to contact the child's:

(i) Parent at the parent's home or place of employment;

(ii) Family physician; and

(iii) Preferred hospital;

c. The name of each person who is designated in writing to pick-up the child;

d. The child's general health status and medical history including, if applicable:

(i) Allergies;

(ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and

(iii) Permission from the parent for third-party professional services in the child-care center;

e. The name and phone number of each person to be contacted in an emergency situation involving or impacting the child;

f. Authorization by the parent for the child-care center to seek emergency medical care for the child in the parent's absence; and

g. A permission form for each trip off the premises signed by the child's parent in accordance with 922 KAR 2:120, Section 12;

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the child-care center through the Child Care Assistance Program;

(d) A written schedule of staff working hours;

(e) A current personnel file for each child-care center staff person to include:

1. Name, address, date of birth, and date of employment;

2. Proof of educational qualifications;

3. Record of annual performance evaluation;

4. Written record of training participation to include:

a. The training source;

b. Location;

c. Date; and

d. Number of clock hours completed;

5. Every two (2) years, a:

a. Statement from a health professional that the individual is free of active tuberculosis; or

b. Copy of negative tuberculin results; and

6. For an individual specified in 922 KAR 2:090, Section 6(4), the results of a:

a. Child abuse or neglect check using the central registry in accordance with 922 KAR 1:470;

b. Criminal records check required by KRS 199.896(19);

c. Criminal records check from any previous state of residence completed once if:

(i) The individual resided outside the state of Kentucky in the last five (5) years; and

(ii) No criminal records check has been completed for the individual's previous state of residence; and

d. An address check of the Sex Offender Registry;

(f) A written annual plan for child-care staff professional development;

(g) A written evacuation plan in accordance with 922 KAR 2:090, Section 5, and KRS 199.895;

(h) A written record of quarterly practiced earthquake drills and tornado drills detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;

(i) A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;

(j) A written plan and diagram outlining the course of action in the event of a natural or manmade disaster, posted in a prominent place;

(k) A written record of reports to the cabinet required in Section 6 of this administrative regulation; and

(l) A written record of transportation services provided in accordance with 922 KAR 2:120, Section 12.

(2) A child-care center shall:

(a) Maintain the confidentiality of a child's record;

(b) Maintain all records for five (5) years; and

(c) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030(4).

Section 4. Director Requirements and Responsibilities. (1) Effective with the adoption of this administrative regulation, a director shall:

(a) Be twenty-one (21) years of age;

(b) Have a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity;

(c) Not be employed in a position other than an on-site child care director, or director of multiple facilities, during the hours the child-care center is in operation; and

(d) Ensure:

1. Compliance with 922 KAR 2:090, 922 KAR 2:120, and this administrative regulation; and

2. The designation of one (1) adult staff person in charge to carry out the director's duties if the director is not present in the child-care center during operating hours;

(e) Manage the staff in their individual job descriptions;

(f) Develop child-care center plans, policies, and procedures;

(g) Supervise staff conduct to ensure implementation of program policies and procedures;

(h) Post a schedule of daily activities, to include dates and times of activities to be conducted with the children in each classroom;

(i) Conduct, manage, and document in writing staff meetings;

(j) Assess each staff person's interaction with children in care and classroom performance through an annual written performance evaluation;

(k) Assure that additional staff are available during cooking and cleaning hours, if necessary, to maintain staff-to-child ratios pursuant to 922 KAR 2:120;

(l) Provide for the health, safety, and comfort of each child;

(m) Notify the parent immediately of an accident or incident requiring medical treatment of a child;

(n) Assure that a person acting as a caregiver of a child in care shall not be left alone with a child, if the licensee has not received the results of the background checks as described in Section 3(1)(e)6 of this administrative regulation;

(o) Assure each mandatory record specified in Section 3 of this administrative regulation has not been altered or falsified; and

(p) Coordinate at least one (1) annual activity involving parental or family participation.

(2) The director of a Type I child-care center shall meet one (1) of the following educational requirements:

(a) Master's degree in Early Childhood Education and Development;

(b) Bachelor's degree in Early Childhood Education and Development;

(c) Master's degree or a bachelor's degree in a field other than Early Childhood Education and Development, including a degree in pastoral care and counseling, plus twelve (12) clock hours of child development training;

(d) Associate degree in Early Childhood Education and Development;

(e) Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, and two (2) years of verifiable full-time paid experience working directly with children in;

(f) A Director's Credential in Early Childhood Development and one (1) year of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child care program;

(g) Child development associate plus one (1) year of verifiable paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program (head start); or

3. A licensed or certified child-care program; or

(h) Three (3) years of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program.

(3) The director of a Type II child-care center shall:

(a) Meet the requirements in subsection (2) of this section; or

(b) Meet two (2) of the following:

1. Have twelve (12) hours of orientation and child development training;

2. Have one (1) year of verifiable full-time paid experience working directly with children in:

a. A school-based program following Department of Education guidelines;

b. An early childhood development program, such as Head Start; or

c. A licensed or certified child-care program; or

3. Obtain six (6) additional hours of training in child day care program administration.

Section 5. Staff Requirements. (1) Child-care center staff:

(a) Hired after January 1, 2009, who have supervisory power over a minor and are not enrolled in secondary education, shall have a:

1. High school diploma;

2. GED or qualifying documentation from a comparable educational entity; or

3. Commonwealth Child Care Credential as described in 922 KAR 2:250; and

(b) Shall provide, prior to employment and every two (2) years thereafter:

1. A statement from a health professional that the individual is free of active tuberculosis; or

2. A copy of negative tuberculin results.

(2) A child-care center shall not employ a person:

(a) Convicted of, or who entered an Alford or guilty plea to, a crime pursuant to 922 KAR 2:090, Section 6(6);

(b) Found by the cabinet to have abused or neglected a child, pursuant to 922 KAR 1:470;

(c) Placed on the Sex Offender Registry; or

(d) Determined by a physician to have a health condition that renders the person unable to care for children.

(3) For a child-care center licensed for infant, toddler, or preschool-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:

(a) Infant and child cardiopulmonary resuscitation; and

(b) Infant and child first aid.

(4) For a child-care center licensed for school-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:

(a) Adult cardiopulmonary resuscitation; and

(b) First aid.

(5) Cardiopulmonary resuscitation (CPR) and first aid training shall be in addition to the fifteen (15) clock hours requirement in subsection (14) of this section.

(6) Child-care centers shall have available in case of need:

(a) One (1) qualified substitute staff person for a Type II child-care center; or

(b) Two (2) qualified substitute staff persons for a Type I child-care center.

(7) Each qualified substitute staff person shall:

(a) Meet the staff requirements of this administrative regulation; and

(b) Provide the required documentation to verify compliance with this administrative regulation.

(8) A qualified substitute who works in more than one (1) licensed child-care center shall provide the required documentation to verify compliance with this administrative regulation at the time of employment with each child-care center.

(9) If the operator of a Type II child-care center is unable to provide care in accordance with this administrative regulation, 922 KAR 2:090, or 922 KAR 2:120, the Type II child-care center shall close temporarily until the operator is able to resume compliance.

(10) The minimum number of adult workers in a child-care center shall be sufficient to ensure that:

(a) Minimum staff-to-child ratios in accordance with 922 KAR 2:120 are followed;

(b) Each staff person under eighteen (18) years of age and each student trainee are under the direct supervision of a qualified staff person who meets the requirements of this section; and

(c) Unless providing care with a qualified staff person, a person under the age of eighteen (18) shall not be counted as staff for the staff-to-child ratio.

(11) Except for medication as prescribed by a physician, a controlled substance or alcohol use shall not be permitted on the premises during hours of operation.

(12) Each staff person shall remain awake while on duty except as specified in 922 KAR 2:120, Section 2(11)(f).

(13)(a) For each adult residing at a Type II child-care center, the results of the following shall be maintained on file at the center a:

1. Criminal records check indicating that the adult has not been convicted of, or entered an Alford or guilty plea to, a:

a. Crime pursuant to KRS 17.165; or

b. Drug-related felony, and five (5) years have not lapsed since the person was fully discharged from imprisonment, probation, or parole;

2. Child abuse and neglect check using the central registry in accordance with 922 KAR 1:470, indicating that the adult has not been found by the cabinet to have abused or neglected a child;

3. Criminal records check for any previous state of residence completed once if:

a. The adult resided outside the state of Kentucky in the last five (5) years; and

b. No criminal records check has been completed for the adult's previous state of residence. The check shall indicate that the adult has not been convicted of, or has not entered an Alford plea or a plea of guilty to, an offense under a criminal statute of the United States or of another state similar to an offense specified in subparagraph 1 of this paragraph; and

4. Copy of negative tuberculin results or a health professional's statement documenting that the adult is free of tuberculosis. Every two (2) years, the adult shall provide negative tuberculin results or health professional's statement documenting that the adult is free of tuberculosis.

(b) An address check of the Sex Offender Registry conducted on behalf of the applicant for a Type II child-care center and supporting documentation shall indicate that no individual residing in the household is a registered sex offender.

(14) In accordance with KRS 199.896(15) and (16), a staff person with supervisory authority over a child shall complete the following:

(a) Six (6) hours of cabinet-approved orientation within the first three (3) months of employment;

(b) Nine (9) hours of cabinet-approved early care and education training within the first year of employment, including one and one-half (1 1/2) hours of pediatric abusive head trauma training; and

(c) Fifteen (15) hours of cabinet-approved early care and education training during each subsequent year of employment, including one and one-half (1 1/2) hours of pediatric abusive head trauma training completed once every five (5) years.

(15) A staff person's compliance with the requirement for pediatric abusive head trauma training specified in subsection (14) or other training

requirements of this section may be verified through the cabinet-designated database maintained pursuant to 922 KAR 2:240.

Section 6. Reports. (1) The following shall be reported to the cabinet or designee and other agencies specified in this section within twenty-four (24) hours from the time of discovery:

(a) Communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

(b) An accident or injury to a child that requires medical care;

(c) An incident that results in legal action by or against the child-care center that:

1. Affects a child or staff person; or

2. Includes the center's discontinuation or disqualification from a governmental assistance program due to fraud or abuse;

(d) An incident involving fire or other emergency, including a vehicular accident when the center is transporting a child receiving child care services; or

(e) A report of child abuse or neglect that:

1. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

2. Names a director, employee, volunteer, or person with supervisory or disciplinary control over, or having unsupervised contact with a child in care as the alleged perpetrator.

(2) An incident of child abuse or neglect shall be reported to the cabinet pursuant to KRS 620.030.

(3) A licensee shall report to the cabinet within one (1) week:

(a) Any resignation, termination, or change of director; and

(b) The name of the acting director who satisfies the requirement of Section (4) of this administrative regulation.

(4) Written notification of the following shall be made to the cabinet to allow for approval before implementation:

(a) Change of ownership;

(b) Change of location;

(c) Increase in capacity;

(d) Change in hours of operation;

(e) Change of services in the following categories:

1. Infant;

2. Toddler;

3. Preschool-age;

4. School-age;

5. Nontraditional hours; or

6. Transportation; or

(f) Addition to the square footage a child-care center's premises.

(5) The death of a child in care shall be reported to the cabinet within one (1) hour.

(6) The cabinet and the parent of a child enrolled in a child-care center shall receive notice as soon as practicable, and prior to, a child-care center's temporary or permanent closure. (20 Ky.R. 254; Am. 560; 810; eff. 10-13-93; Recodified from 905 KAR 2:110, 10-30-98; Am. 27 Ky.R. 2929; 28 Ky.R. 113; 401; eff. 8-15-2001; 34 Ky.R. 1256; 2167; eff. 3-19-08; 39 Ky.R. 893; 1720; eff. 3-8-13; 40 Ky.R. 2256; eff. 9-18-2013.)