

STATEMENT OF EMERGENCY
922 KAR 1:520E

This emergency administrative regulation is necessary in order to immediately implement the parenting youth supplement to per diem rates for youth in out of home care that have custody and control of and provide care for their own child. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)2. Federal guidance requires certain conditions be met for claiming federal Title IV-E reimbursement funds. An infant born to a youth residing in out of home care does not meet the federal criteria of an abused or neglected child and therefore should not be taken into the custody of the cabinet. Infants should remain in the care, custody, and control of their parent as long as it is safe for them to do so. Kentucky is at risk of losing federal Title IV-E financial reimbursement of payments made for the provision of out of home care services to children who have been abused, neglected, or made dependent. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Emergency Amendment)

922 KAR 1:520E. Supplements to per diem rates [~~High-risk supplement for resource homes~~].

EFFECTIVE: July 1, 2020

RELATES TO: KRS 2.015, 199.011(4), ~~(10)~~, 200.115(1), 600.020(9), (30) [~~600.020(8)~~], 605.120(2), 610.110(6), 620.020(1), 620.140(1)(d), 42 U.S.C. 672

STATUTORY AUTHORITY: KRS 194A.050(1), 605.120(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 implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.120(2) requires the cabinet to establish a reimbursement system, within existing appropriation amounts, for foster parents that comes as close as possible to meeting the actual cost of caring for foster children, and to address additional costs associated with providing care to children with exceptional needs. In addition, *Olmstead v. L.C. and E.W.*, 119 S. Ct. 2176 (1999), held that unnecessary institutionalization of a person with a disability may be a violation of the Americans with Disabilities Act of 1990, 3 U.S.C. 421 and that, given certain exceptions, services should be delivered in the most integrated setting appropriate to the treatment needs of a person with a disability. This administrative regulation establishes the requirements for a foster [resource] home [parent] to receive a high-risk or parenting youth supplement reimbursement, to the extent funds are available, for extraordinary care the foster home [parent] provides to a child with exceptional needs, or a parenting youth, who is in the custody of the cabinet.

Section 1. Definitions. (1) "Case permanency plan" is defined by KRS 620.020(1).

(2) "Child" means:

(a) A child as [is] defined by KRS 199.011(4)[,] and 600.020(9) [600.020(8), and may include:

~~(a) An extension or reinstatement of commitment];~~

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(c) A person under age twenty-one (21) [(b) A child] who meets the exceptions to the age of majority in accordance with KRS 2.015.

(3) "Crisis" means a factor or set of factors that:

(a) Jeopardizes a child's placement in a [resource] home; and

(b) Creates a risk for removal of the child from the [resource] home to a more restrictive setting, including institutionalization.

(4) "Exceptional needs" means the needs of a child:

(a) As specified in Section 2~~[(1) and](2) or 4~~ of this administrative regulation; and

(b) Reimbursed in accordance with KRS 605.120(2).

(5) "Extraordinary care" means services:

(a) Provided to a child with exceptional needs [and] in the custody of the cabinet; and

(b) That exceed a regular per diem, as established in 922 KAR 1:350, Section 10~~[43]~~.

(6) "Family team meeting" means a meeting convened to develop a child's case permanency plan to successfully attain the desired outcomes for the child and family~~[in accordance with Section 2(1)(d) of this administrative regulation]~~.

(7) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10) and 600.020(30), if referring to a physical structure; or

(b) An individual approved as a foster parent by the cabinet pursuant to 922 KAR 1:310 and 922 KAR 1:350, if referring to an individual.

(8) "High-risk supplement" means a reimbursement to a foster [resource] home [parent] that is necessary to cover an additional expense associated with the provision of extraordinary care.

~~(8) "Resource home" means a home in which a parent is approved by the cabinet in meeting the foster care, adoption, or respite care requirements of 922 KAR 1:350.]~~

(9) "Transition" means the period of a child's adjustment from a more restrictive out-of-home care placement to a foster [resource] home.

Section 2. High-risk Supplement [Eligibility]. (1) To the extent funds are available, the cabinet shall reimburse a foster home for the extraordinary care provided to a child with exceptional needs.

(2) The cabinet shall consider a child eligible for a high-risk supplement if:

(a) 1. Community resources meet the child's needs; and

2. The child requires services consistent with Level IV or [and] Level V care established in 922 KAR 1:360, Section 4;

(b) The child is placed in a medically complex [~~fragile, specialized medically fragile,~~] or care plus foster [resource] home in accordance with 922 KAR 1:350;

(c) A child has a need for extraordinary care due to a:

1. Transition; or

2. Crisis;

(d) A family team meeting is held to:

1. Complete [Develop] a "DPP-111B, High-Risk [Service] Supplement Assessment"; and

2. Include the following individuals:

- a. Designated regional cabinet staff;
 - b. Family members, including the child or a sibling;
 - c. Family friends;
 - d. Community partners;
 - e. Foster [Resource home] parents; or
 - f. Other individuals requested by the family or cabinet staff; and
- (e) The foster [resource] home [parent] agrees to maintain a monthly log of the services provided to the child for the duration [length] of the high-risk supplement.
- (3)[(2)] If a child is eligible for [approved to receive] the high-risk supplement:
- (a) Designated regional cabinet staff shall develop an addendum to the child's case permanency plan that includes specific services and their timeframes for the child; and
 - (b) The child's foster [resource] home [parent] shall complete monthly logs of the child's extraordinary care.
- (4) The high-risk supplement shall be:
- (a) A standardized amount added to the per diem specified in contract between an approved foster home and the cabinet; and
 - (b) Provided to a foster home for a period of up to six (6) months if the requirements established in this section are met.
- (5) Extensions to the high-risk supplement may be granted in six (6) month intervals if:
- (a) The child is reassessed by the cabinet pursuant to Section 3 of this administrative regulation and continues to meet the eligibility requirements established in subsection (2) of this section; and
 - (b) The family team meeting is held prior to granting each extension in order to:
 - 1. Review progress made in the child's current case permanency plan addendum, which shall include a review of the foster home's monthly log of the child's extraordinary care; and
 - 2. Complete a new "DPP-111B, High-Risk Supplement Assessment".
- (6) If a high-risk supplement extension is granted:
- (a) The cabinet shall develop a new addendum to the child's case permanency plan that includes the specific services and their timeframes to be provided through the period of the extension granted; and
 - (b) The foster home shall continue to complete monthly logs of the child's extraordinary care.

Section 3. Reassessment for High-Risk Supplement. (1) If a foster home receives a high-risk supplement, the child shall be reassessed when the supplement expires to determine if the eligibility requirements established in Section 2 of this administrative regulation are met.

(2) If a child eligible for the high-risk supplement is relocated to another foster home or out-of-home placement, the cabinet:

- (a) Shall cease reimbursement of the high-risk supplement to the foster home; and
- (b) May redetermine the child to be eligible for the high-risk supplement if the requirements established in Section 2(2) of this administrative regulation are met.

Section 4. Parenting Youth Supplement. (1) To the extent funds are available, the cabinet shall reimburse a foster home or approved provider pursuant to 922 KAR 1:300, 922 KAR 1:310, or 922 KAR 1:340 for the extraordinary care provided to a child who is a parenting youth.

(2) The cabinet shall consider a child eligible for a parenting youth supplement if:

(a) The child is placed in:

- 1. A cabinet-approved foster home as established by 922 KAR 1:350;

2. An independent living setting approved in accordance with 922 KAR 1:340;
3. A private child-placing agency foster home approved in accordance with 922 KAR 1:310;

or

4. An approved private child-caring facility in accordance with 922 KAR 1:300.

(b) The child:

1. Is in the custody of the cabinet;
2. Has custody and control of their own child or children; and
3. Physically resides in the same location as the child or children; and

(c) A "DPP-116, Parenting Youth Supplement" is completed.

(3) A parenting youth supplement shall be:

(a) A standardized amount per child of the parenting youth added to the per diem of the parenting youth;

(b) Effective for the duration of the placement in which the youth in the custody of the cabinet and their child or children reside together; and

(c) Specified in a contract between an approved foster home or provider established in subsection (2)(a) of this section and the cabinet.

(4) If a child deemed eligible for the parenting youth supplement is relocated to another foster home or provider established in subsection (2)(a) of this section, the cabinet:

(a) Shall cease reimbursement of the parenting youth supplement to the child's prior foster home or provider; and

(b) May redetermine the child to be eligible for the parenting youth supplement if the requirements of subsection (2) of this section are met. [~~Per Diem. To the extent funds are available, the cabinet shall reimburse a resource home parent for the extraordinary care provided to a child with exceptional needs.~~

(1) A high-risk supplement shall be:

(a) A standardized per diem specified in a contract between an approved resource home parent and the cabinet; and

(b) Made to a resource home parent for a period up to six (6) months if criteria in Section 2 of this administrative regulation are met.

(2) Extensions to the high-risk supplement may be granted, in six (6) month intervals, if:

(a) The child is reassessed by the cabinet or its agent and meets the eligibility requirements of Section 2(1)(a) through (c), and (e) of this administrative regulation; and

(b) A family team meeting is held prior to the extension to:

1. Review progress made in the child's current case permanency plan addendum, to include a review of the resource home parent's monthly log of the child's extraordinary care; and

2. Complete a new "DPP-111B, Service Supplement Assessment".

(3) If the child's high-risk supplement is extended:

(a) Designated regional cabinet staff shall develop a new addendum to the child's case permanency plan that includes:

1. Specific services and their timeframes for the child; and

2. Services through the period of the extension granted; and

(b) The child's resource home parent shall complete monthly logs of the child's extraordinary care.

(4) Respite care shall be based on the individual needs of the child, in accordance with 922 KAR 1:350, Section 13(5).

Section 4. Reassessment. (1) If a resource home parent cares for a child with exceptional needs and currently receives a foster care services supplement, the child shall be reassessed:

(a) When the current foster care services supplement expires; and

~~(b) To determine if the eligibility requirements are met in accordance with Section 2 of this administrative regulation.~~

~~(2) If the child or resource home parent does not meet eligibility requirements in accordance with Section 2 of this administrative regulation, designated regional cabinet staff may provide supportive services to the child and resource home parent.~~

~~(3) If a child deemed eligible for the high-risk supplement is relocated to another resource home or out-of-home placement, the cabinet:~~

~~(a) Shall cease reimbursement of the high-risk supplement to the child's previous resource home parent; and~~

~~(b) May reconsider the child for the high-risk supplement, if criteria outlined in Section 2 of this administrative regulation are met.~~

~~Section 5. Record-keeping. Designated cabinet staff shall:~~

~~(1) Track a recipient receiving a high-risk supplement; and~~

~~(2) Notify the designated regional cabinet staff of an impending contract expiration one (1) month prior to the expiration of the supplement.]~~

~~Section 5.[6.] Service Appeals. A foster [resource] home [parent] may request an appeal in accordance with 922 KAR 1:320.~~

~~Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "DPP-111B, High-Risk [Service] Supplement Assessment", 07/20; and~~

~~(b) "DPP-116, Parenting Youth Supplement", 07/20 [edition 09/05, is incorporated by reference].~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 1, 2020

FILED WITH LRC: July 1, 2020 at 10 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria and application process for supplements to foster homes for caring for high-risk and parenting youth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process by which a foster home or parenting youth may be reimbursed for extraordinary care in meeting the needs of children in out of home care.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 605.120(2) requires the cabinet to establish a reimbursement system, within existing appropriation amounts, for foster parents that comes as close as possible to meeting the actual cost of caring for foster children, and to address additional costs associated with providing care

to children with exceptional needs. This administrative regulation adds a supplement to foster care per diem for caring for youth in the cabinet's custody who require high-risk care or who are parenting youth.

(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 through the establishment of the high-risk and parenting youth supplement to current per diem rates.

(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: The amendment to this administrative regulation establishes a parenting youth supplement that will be paid to a foster home or approved provider to aid in providing for the needs of the parenting youth's child or children. The amendment also updates language and processes and complies with recent amendments made to KRS Chapter 13A, as the current version of this administration regulation is outdated.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish the parenting youth supplement as an addition to the per diem rate paid to foster parents or approved providers.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through the provision of reimbursement to foster homes that meet the extraordinary needs of children in out of home care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through the provision of reimbursement to foster homes that provide for the extraordinary needs of children in out of home care. Additionally, the amendment will provide financial remuneration to support a parenting youth in meeting the needs of their child while in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 38 parenting youth in the custody of the cabinet. The Department for Community Based Services and approved placement settings for youth in out of home care are affected by the 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: Parenting youth will have to meet the criteria contained in this administrative regulation to be eligible for the new parenting youth supplement. An approved provider will be required to submit the parenting youth supplement form in order to receive reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs to the identified entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Parenting youth will gain the benefit of having parental rights to and custody of their children remain intact. Financial arrangements with the foster care providers are comparable to past arrangements involving the same population. Additionally, the practice changes associated with the new parenting supplement will help the state avoid federal financial penalty and will preserve the safety, permanency, and wellbeing of a child born to the teen parent, benefiting both parent and child.

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

(a) Initially: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include federal Social Security Act Title IV-E funds for foster care maintenance and state general funds.

(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: An increase in fees or funding is not necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 672

2. State compliance standards. KRS 194A.050(1), 605.120(2)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 672

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, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(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? The Cabinet for Health and Family Services, Department for Community Based Services, is impacted by 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), 605.120(2), 42 U.S.C. 672

(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 administrative regulation will not generate any revenue for state or local government.

(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? The administrative regulation will not generate any revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet already provides the high-risk supplement, but the parenting youth supplement in this amendment is new. As the costs are federally-reimbursable, the costs to the administrative body shall be comparable to the costs as if the child entered cabinet custody. Thus, no fiscal impact is expected and costs may be absorbed within existing appropriations. The change in practice associated with the new supplement will help the state avoid federal financial penalty and will preserve the safety, permanency, and wellbeing of the child with their biological teen parent, benefitting both parent and child.

(d) How much will it cost to administer this program for subsequent years? Costs to the administrative body are comparable and absorbable within existing appropriations. The change in practice associated with the new supplement will help the state avoid federal financial penalty and will preserve the safety, permanency, and wellbeing of the child with their biological teen parent, benefitting both parent and child.

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: