

922 KAR 1:050. State funded adoption assistance.

RELATES TO: KRS 199.555, 205.639(17), 216B.450(5), 600.020(21), (54), 620.020(5), Chapter 625

STATUTORY AUTHORITY: KRS 194A.050(1), 199.555(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce those 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 199.555(10) requires the cabinet to establish and promulgate by administrative regulation criteria to be followed for the adoption of special needs children. This administrative regulation establishes guidelines for the implementation of the state-funded adoption assistance program for children who may otherwise grow up in foster care.

Section 1. Definitions.

- (1) "Adoption subsidy" means a payment for a special needs child placed for adoption when an adoption assistance agreement is complete.
- (2) "Extraordinary medical expenses" is defined by KRS 199.555(4).
- (3) "Nonrecurring adoption expenses" is defined by KRS 199.555(3).
- (4) "Secretary" means the Secretary of the Cabinet for Health and Family Services or designee.
- (5) "Special needs child" is defined by KRS 199.555(1).
- (6) "State-funded adoption assistance" is defined by KRS 199.555(2).

Section 2. Adoption Assistance Eligibility Criteria.

- (1) The secretary shall decide whether to pay and provide adoption assistance in accordance with KRS 199.555(5).
- (2) A special needs child shall include a child for whom adoptive placement without financial assistance is unlikely in accordance with KRS 199.555(1), because the child:
 - (a) Has a physical or mental disability;
 - (b) Has an emotional or behavioral disorder;
 - (c) Has a recognized risk of physical, mental, or emotional disorder;
 - (d) Is a member of a sibling group in which the siblings are placed together;
 - (e) Has had previous adoption disruption or multiple placements;
 - (f) Is a member of a racial or ethnic minority and two (2) years old or older; or
 - (g)
 1. Is age seven (7) or older;
 2. Has a significant emotional attachment or psychological tie to his or her foster family; and
 3. The cabinet has determined should remain with the family because it is in the best interest of the child.
- (3) To qualify for state-funded adoption assistance in accordance with KRS 199.555, a special needs child shall:
 - (a) Be committed to the Cabinet for Health and Family Services;
 - (b) Not have a parent with custody or a legal claim to the child;
 - (c) Be under age eighteen (18); and
 - (d) Not be eligible for federal Title IV-E adoption assistance in accordance with 922 KAR 1:060, with the exception of extraordinary medical expenses pursuant to Sections 7(1), 8, and 10(2) of this administrative regulation.

Section 3. Parental Standards. A parent receiving a child eligible for adoption assistance payments shall meet the same standards as those applied to other adoptive applicants in

accordance with:

- (1) 922 KAR 1:350; or
- (2) 922 KAR 1:310.

Section 4. Adoption Placement Agreement.

(1) Prior to placing a child for adoption, the prospective adoptive parent and the cabinet shall review and sign the adoption placement agreement to set forth the terms of a child's placement with the prospective adoptive parent.

(2) The adoption placement agreement shall advise the prospective adoptive parent of the:

- (a) Special needs of the child;
- (b) Cabinet's expectations; and
- (c) Services offered by the cabinet to assist the prospective adoptive parent in the adoption process.

Section 5. Adoption Assistance Agreement. Prior to finalization of the adoption, the prospective adoptive parent and the cabinet shall negotiate and sign an adoption assistance agreement in accordance with KRS 199.555(6) that shall:

- (1) Determine the nature and amount of the adoption subsidy; and
- (2) Remain in effect until suspended or terminated in accordance with Section 6 of this administrative regulation.

Section 6. Adoption Assistance Suspension and Termination.

(1) Except as provided in subsection (2) of this section, the cabinet shall temporarily suspend state-funded adoption assistance payments during the period of time the adopted child:

- (a)
 1. Resides in:
 - a. Foster care as defined by KRS 620.020(5);
 - b. A residential treatment facility as defined by KRS 600.020(54);
 - c. A psychiatric residential treatment facility as defined by KRS 216B.450(5);
 - d. A psychiatric hospital as defined by KRS 205.639(17) beyond thirty (30) consecutive calendar days; or
 - e. Detention:
 - (i) As defined by KRS 600.020(21);
 - (ii) Outside the adoptive home; and
 - (iii) For a period of thirty (30) calendar days or more; or
 2. Is absent from the home of the adoptive parents for a period of thirty (30) consecutive calendar days or more, unless the child is absent due to medical care or school attendance; and

(b) Receives care and support for the child's special needs from a local, state, or federal public agency.

(2) State-funded adoption assistance shall be renegotiated in accordance with 922 KAR 1:530, Section 3(2).

(3) State-funded adoption assistance payments shall be terminated in accordance with KRS 199.555(8) if the:

- (a) Adoptive parent:
 1. Is no longer legally responsible for the special needs child in accordance with KRS Chapter 625;
 2. Becomes deceased; or
 3. Requests discontinuation of the adoption assistance payments; or
- (b) Special needs child:
 1. Becomes deceased;

2. Marries;
3. Gains full-time employment;
4. Is considered an emancipated minor;
5. Is inducted into military service;
6. Reaches age eighteen (18); or
7. If the child is enrolled in high school, reaches:
 - a. Age nineteen (19); or
 - b. The month of the child's high school graduation, if the child's graduation precedes the child's 19th birthday.

Section 7. Adoption Assistance Payments.

- (1) State-funded adoption assistance payments may include:
 - (a) Extraordinary medical expenses in accordance with KRS 199.555;
 - (b) Nonrecurring adoption expenses not to exceed \$1,000 incurred in the adoption of a child who is considered a special needs child; and
 - (c) An adoption subsidy.
- (2) An adoption assistance payment shall begin on the date that the adoption placement agreement and adoption assistance agreement are signed by the adoptive parent and the cabinet.
- (3) The amount of the state-funded adoption assistance payment shall not exceed the amount paid for foster care maintenance for the same child, in accordance with KRS 199.555(7), including medically fragile, specialized medically fragile, and care plus foster care per diem reimbursements established by the Department for Community Based Services.
- (4) A child placed in therapeutic foster care, as described in 922 KAR 1:310, shall not be eligible to receive adoption assistance payments in excess of:
 - (a) A care plus foster care per diem reimbursement established by the Department for Community Based Services; or
 - (b) The therapeutic foster care per diem reimbursed by the child-placing agency on behalf of the child if the:
 1. Dollar amount is necessary to meet the child's needs; and
 2. Commissioner or designee approves.

Section 8. Covered Extraordinary Medical Services.

- (1)
 - (a) Copayments for covered extraordinary medical expenses shall be required using the adopted parent household's adjusted gross income in relation to Kentucky's estimated median household income established by the United States Census Bureau.
 - (b) To the extent state resources allow, the cabinet shall annually adjust the estimated median income used for copayment calculations concurrent with the United States Census Bureau.
 - (c) Unless otherwise noted in this section, copayments shall be as established in this paragraph.
 1. A copayment for extraordinary medical services shall not be required from an adoptive parent whose household's adjusted gross income is at or below 100 percent of Kentucky's estimated median household income.
 2. A ten (10) percent copayment for extraordinary medical services shall be required from an adoptive parent whose household's adjusted gross income is over 100 percent, but less than 150 percent, of Kentucky's estimated median household income.
 3. A fifteen (15) percent copayment for extraordinary medical services shall be required from an adoptive parent whose household's adjusted gross income is over

150 percent, but less than 200 percent, of Kentucky's estimated median household income.

4. A twenty (20) percent copayment for extraordinary medical services shall be required from an adoptive parent whose household's adjusted gross income is over 200 percent of Kentucky's estimated median household income.

(2) A verifiable receipt and service provider contact information shall be submitted prior to reimbursement for services listed in this section.

(3) Copayments shall be deducted from each monthly receipt that is submitted for payment of a covered extraordinary medical service.

(4) Services covered by the extraordinary medical program may include:

(a) Orthodontia with a:

1. Copayment of fifty (50) percent of the cost; and
2. Dentist or physician's verification that the child's medical or dental need existed prior to the adoption finalization;

(b) Transportation if mileage for health treatment needs exceed the yearly mileage for foster care rates;

(c) Child care services:

1. For a full-time or part-time working parent who works a minimum of twenty (20) hours per week;
2. For a non-working parent with documentation from a qualified professional, as defined by KRS 202B.010(12), of the therapeutic need for the service;
3. With fees paid to the child care provider by the adoptive parent and reimbursed by the cabinet only after the cabinet receives a paid receipt as verified from the child care provider;
4. With annual employment verification provided to the cabinet by a working adoptive parent;
5. Reimbursed at a rate based on the age of the child and certification of the provider in accordance with 922 KAR 2:160; and
6. Ending upon the child reaching age thirteen (13), unless documentation from a medical or mental health professional stating the diagnosed need for continuance of the child care is:
 - a. Provided upon the child reaching age thirteen (13); and
 - b. Submitted every six (6) months to the cabinet's social service worker;

(d) Tutoring:

1. Not to exceed twenty-five (25) dollars per hour for no more than two (2) hours per week;
2. Provided by personnel other than immediate family, for which qualifications are verified by a social services worker;
3. For a child:
 - a. With an individual education plan (IEP); and
 - b. Two (2) or more grade level years behind chronological age; and
4. With need and unavailability of services as documented by the child's school;

(e) Respite care:

1. Offered to a child approved for the medically complex or care plus rates prior to adoption finalization, at two (2) respite days per child per month;
2. Offered to a child approved for the specialized medically fragile rate prior to adoption finalization, at three (3) respite days per month per child;
3. That shall not be cumulative; and
4. Submitted monthly for reimbursement; and

(f) Evidence-based or evidence-informed health services after Medicaid and private health insurance have been exhausted, such as:

1. Counseling;

2. Expressive or art therapy;
3. Behavioral therapy;
4. Physical therapy;
5. Occupational therapy;
6. Speech therapy;
7. Medication; or
8. Special equipment.

Section 9. Annual Family Contact.

- (1) Annual contact with the adoptive family shall be made by mail or home visit to determine that the:
 - (a) Child remains in the adoptive home;
 - (b) Parent continues to provide care and support for the child; and
 - (c) Adoption assistance payments continue to meet the special needs of the child.
- (2) The cabinet may conduct a home visit after an adoption assistance annual contact is made by mail:
 - (a) If:
 1. The adoptive parent requests a home visit;
 2. The special needs of the child change, as indicated by the adoptive parent;
 3. Attempts to update information by additional mail or phone contact have failed;or
 4. The cabinet receives information that is contrary to the information verified by the adoptive parent during the annual contact; or
 - (b) In accordance with 922 KAR 1:330.

Section 10. Adoption Assistance Renegotiation.

- (1) Renegotiation of an adoption assistance agreement:
 - (a) May be requested by the cabinet or the adoptive parent before or after the adoption is finalized; and
 - (b) Is contingent on compliance with Sections 2(2), 6, 9, and 12 of this administrative regulation.
- (2) If conditions in KRS 199.555(6) are met, the cabinet shall reimburse extraordinary medical expenses requested by an adoptive parent of a special needs child to prevent disruption of the adoption:
 - (a) After the adoption is final; and
 - (b) Through state funded adoption assistance.
- (3) A move of the special needs child or the adoptive parent of the special needs child out of the state or country shall have no effect on the child's eligibility for state funded adoption assistance payments.
- (4) If an adoption assistance payment is changed through renegotiation, the cabinet and adoptive parent shall sign a new adoption assistance agreement.

Section 11. Service Appeal. An applicant for adoption assistance payments or an adoptive family aggrieved by a cabinet action shall be granted an administrative hearing in accordance with 922 KAR 1:320.

Section 12. Notice of Change.

- (1) Cabinet staff shall provide notice of a reduction, discontinuance, or termination of adoption assistance payments:
 - (a) Ten (10) calendar days in advance; and
 - (b) In accordance with 922 KAR 1:320, Section 6.
- (2) An adoptive parent shall notify the cabinet of any changes in circumstances that would make the adoptive parent ineligible for adoption assistance payments or change the

amount of the adoption assistance payment as described in KRS 199.555(9) and Section 6 of this administrative regulation.

Section 13. State-funded Adoption Assistance Limitation. The number of state-funded adoption assistance cases and the amount of state-funded adoption assistance payments paid per case shall be limited by available funds for the state-funded adoption assistance program.

Section 14. Training. Contingent upon the availability of funding, the Department for Community Based Services shall offer training to adoptive parents receiving state-funded adoption assistance consistent with training offered to foster home parents as specified in 922 KAR 1:495.

(DCW-9; 1 Ky.R. 295; eff. 1-8-1975; 17 Ky.R. 138; eff. 9-13-1990; 20 Ky.R. 2405; eff. 3-23-1994; 25 Ky.R. 1477; 1893; eff. 2-17-1999; Recodified from 905 KAR 1:050, 6-3-1999; 27 Ky.R. 1110; 1499; eff. 12-21-2000; 30 Ky.R. 1659; 2066; 2466; eff. 6-16-2004; TAm eff. 10-27-2004; TAm eff. 1-27-2006; 34 Ky.R. 477; 1063; 1497; eff. 12-17-2007; 35 Ky.R. 1357; eff. 2-6-2009; 45 Ky.R. 1447, 2685; eff. 3-13-2019.)