

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

(Amendment)

922 KAR 1:565. Service array for a relative or fictive kin caregiver.

RELATES TO: KRS 2.015, 45.237-45.241, 156.496, 194A.005(1), ~~[194A.050(1),~~ 199.011, 199.462, 199.470-199.590, 205.211, Chapter 387, 403.270-403.355, 405.024, 527.100, 527.110, 600.020, 605.120, ~~[605.130(7), 605.150(1),~~ 610.110, 620.020(1), 620.090, 620.140, 620.142, 620.170, 42 U.S.C. ~~601-619~~~~[600-619]~~, 671, 673, 675, D.O. v. Glisson, 847 F.3d 374 (6th Cir. 2017), cert. denied, 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017)

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(7), 605.150(1), 620.142(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce 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 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement provisions of the chapter, including KRS 605.130(7), which authorizes the cabinet to perform such other services as may be deemed necessary for the protection of children. KRS 620.142(5) requires the cabinet to promulgate administrative regulations developing custodial, permanency, and service options that shall be available to a relative or fictive kin caregiver. This administrative regulation establishes the service array available to a relative or fictive kin caregiver pursuant to KRS 620.142(1).

Section 1. Definitions.

- (1) "Absent parent search" means cabinet-initiated efforts to locate a biological or legal parent, or a relative.
- (2) "Cabinet" is defined by KRS 194A.005(1), 199.011(3), and 600.020(7).
- (3) "Case permanency plan" is defined by KRS 620.020(1).
- (4) "Child" means a:
 - (a) Child defined by KRS 199.011(4) and 600.020(9);
 - (b) 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)(e);
 - or
 - (c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.
- (5) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families who meet the eligibility requirements with the financial resources to find and afford quality child care, as established in 922 KAR 2:160.
- (6) "Child who is a candidate for foster care" is defined by 42 U.S.C. 675(13).
- (7) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).
- (8) "Kentucky Transitional Assistance Program" or "KTAP"~~["K-TAP"]~~ means Kentucky's Temporary Assistance for Needy Families (TANF) money payment program for a child who is deprived of parental support or care, as established in 921 KAR 2:006.
- (9) "Parent" is defined by 42 U.S.C. 675(2).
- (10) "Relative" means an individual related to a child by blood, marriage, or adoption.

Section 2. Identification of a Relative or Fictive Kin.

- (1) If a relative or fictive kin placement is in the best interest of a child upon removal from the child's home of origin, the cabinet shall:
 - (a) Use an absent parent search in accordance with 922 KAR 1:140, Section 3, to locate a relative;
 - (b) Discuss a prospective relative or fictive kin placement with the:
 1. Child's parent; and
 2. Child, based upon the age and development of the child; or
 - (c) Require the parent or other person exercising custodial control or supervision to provide a list of possible persons to be considered pursuant to KRS 620.140(1)(c).
- (2) Cabinet staff shall make reasonable attempts to:
 - (a) Contact the relative or fictive kin; and
 - (b) Assess the relative's or fictive kin's fitness to serve as a placement resource for the child in accordance with Section 3 of this administrative regulation.
- (3) The cabinet shall:
 - (a) Disclose legal and service options available to a prospective relative or fictive kin:
 1. Who is being assessed as a placement resource; and
 2. Prior to the time a child is placed in the relative's or fictive kin's home; and
 - (b) Obtain written acknowledgement of the disclosure of legal and service options from the relative or fictive kin.

Section 3. Fitness of the Relative or Fictive Kin.

- (1) To support a child's health, safety, and wellbeing in placement with a relative or fictive kin caregiver, based upon the legal option selected by the relative or fictive kin, the cabinet shall:
 - (a) Complete a safety check and review with consideration given to the relative's or fictive kin's:
 1. Willingness and ability to:
 - a. Protect the child from abuse or neglect;
 - b. Participate in the child's case permanency plan;
 - c. Access:
 - (i) Transportation;
 - (ii) Telephone;
 - (iii) Medical and dental services;
 - (iv) First aid supplies; and
 - (v) School;
 - d. Provide full-time care;
 - e. Provide for the child's sleeping and eating;
 - f. Maintain adequate heat and ventilation in the home;
 - g. Use active smoke detectors in the home; and
 - h. Assure the child's inaccessibility to:
 - (i) Medication unless an exception consistent with 922 KAR 1:350, Section 3(12), applies;
 - (ii) Alcoholic beverages;
 - (iii) Poisonous materials;
 - (iv) Firearms or ammunition in accordance with KRS 527.100 and 527.110;
 - (v) Unsupervised contact with the birth parent, if prohibited; and
 - (vi) Cleaning materials unless the materials are age or developmentally appropriate for the child or the child is supervised; and
 2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family; and
 3. Fitness in accordance with 922 KAR 1:490; or

- (b) Conduct a home study and background checks in accordance with 922 KAR 1:350 and 922 KAR 1:490 in consideration of the relative or fictive kin as a prospective foster or adoptive home.
- (2) A relative or fictive kin caregiver who seeks approval as a foster or adoptive parent shall meet the training requirements established in 922 KAR 1:495.
- (3) The cabinet shall:
 - (a) Document in the case file that the fictive kin has completed training on the prevention and recognition of pediatric abusive head trauma in accordance with KRS 199.462; and
 - (b) Provide information to the relative or fictive kin on how to recognize and report child abuse and neglect.
- (4) To the extent funds are available, the cabinet shall make available to a relative or fictive kin caregiver training:
 - (a) For foster parents, adoptive parents, and respite care providers in accordance with 922 KAR 1:495; and
 - (b) Developed to address the needs of relative and fictive kin caregivers, including management of the relationship with the child's parent.
- (5) A relative's or fictive kin's decision to pursue approval as a foster parent shall not guarantee the cabinet's approval.

Section 4. Relative or Fictive Kin Placement Support Benefit.

- (1) To the extent that funds are available, the cabinet shall provide, if requested, a one (1) time relative or fictive kin placement support benefit:
 - (a) To facilitate the cabinet's placement of a child with a nonparental relative or fictive kin~~[as an alternative to the child's placement in foster care];~~
 - (b) If a court of competent jurisdiction has granted temporary custody of the child to the relative, fictive kin, or the cabinet due to:
 - 1. Child abuse or neglect ~~[by the child's biological or adoptive parent];~~ or
 - 2. The death of both parents;
 - (c) That will provide for a child's immediate needs, such as:
 - 1. Clothing;
 - 2. School supplies;
 - 3. Additional furniture; or
 - 4. A deposit for a larger apartment; and
 - (d) That is equal to or does not exceed the amount for the appropriate number of eligible children as follows:

Number of Eligible Children	Payment Amount
1	\$350
2	\$700
3	\$1,050
4	\$1,400
5	\$1,750
6 or more	\$2,100

- (2)
 - (a) The relative or fictive kin placement support benefit shall be issued by check or electronic fund transfer directly to:
 - 1. The relative or fictive kin caregiver with whom the child is placed; or
 - 2. A vendor providing the needed service or item listed in subsection (1)(c) of this section.

(b) Prior to ~~Before~~ the provision of the relative or fictive kin placement support benefit, the relative, fictive kin, or ~~the~~ vendor shall provide tax status and contact information for accounting of the benefit's disbursement.

(3)

(a) In accordance with Kentucky's Title IV-A Temporary Assistance for Needy Families Block Grant state plan, the cabinet shall prioritize a child for the relative placement support benefit if the child is:

1. ~~(a)~~ Placed with a relative whose household income is at or below 200 percent of the federal poverty level as determined annually by the U.S. Department of Health and Human Services; or

2. ~~(b)~~ Determined eligible for KTAP~~[K-TAP]~~ pursuant to 921 KAR 2:006 and 921 KAR 2:016.

(b) Pursuant to 42 U.S.C. 601, Temporary Assistance for Needy Families Block Grant funds shall not be provided to a fictive kin caregiver.

(4) A relative or fictive kin caregiver shall not be eligible for an initial clothing allowance as a foster parent if the relative or fictive kin receives the relative or fictive kin placement support benefit.

Section 5. Legal Options.

(1) The following legal options shall be available to a prospective relative or fictive kin caregiver:

(a) Family-arranged care through:

1. A written~~[prevention]~~ plan in accordance with 922 KAR 1:330;

2. An affidavit to make health care treatment and school-related decisions for the child in accordance with KRS 405.024; or

3. A power of attorney for temporary delegation of parental rights and responsibilities in accordance with KRS 403.352 and 403.353;

(b) Court-ordered custody to the relative or fictive kin caregiver in accordance with KRS 403.270-403.355, 620.090, or 620.140(1)(c);

(c) Court-ordered custody to the cabinet in accordance with KRS 620.090, 620.140(1)(c), or 620.170;

(d) Adoption in accordance with KRS 199.470-199.590 or 922 KAR 1:100; or

(e) Guardianship in accordance with KRS Chapter 387.

(2) Considerations in assessing the legal options for a relative or fictive kin caregiver shall include:

(a) The likelihood of the child's reunification with the child's home of origin, including the child's permanency goal in accordance with 922 KAR 1:140;

(b) The relationship that the relative or fictive kin caregiver has with the child's home of origin or parent;

(c) The ability of the relative or fictive kin caregiver to:

1. Manage parental visitation; and

2. Ensure the child's safety;

(d) The relative or fictive kin caregiver's financial situation and need for additional resources to support the safety, permanency, and wellbeing of the child;

(e) The level of involvement and types of services that will be needed from the cabinet ~~for~~to the caregiver and the child to ensure the safety, permanency, and wellbeing of the child; and

(f) The level of support and types of services that will be needed if:

1. The caregiver assumes legal responsibility for the child; or

2. Reunification with the child's home of origin is not possible for the child.

(3) Permanency services for a child in the custody of the cabinet shall be in accordance with 922 KAR 1:140.

Section 6. Service Options.

(1) The array of monetary supports on behalf of a child placed with a relative or fictive kin caregiver shall include:

- (a) The Relative or Fictive Kin Placement Support Benefit in accordance with Section 4 of this administrative regulation;
- (b) CCAP in accordance with 922 KAR 2:160;
- (c) Child support if application is made or intergovernmental process applies in accordance with 921 KAR 1:380;
- (d) KTAP ~~[K-TAP]~~ if an application is made in accordance with 921 KAR 2:006 and 921 KAR 2:016;
- (e) The Kinship Care Program in accordance with 922 KAR 1:130;
- (f) Health benefits for the child:
 - 1. In accordance with 907 KAR 20:005; or
 - 2. If application is made in accordance with 907 KAR 20:015, 907 KAR 4:020, or 907 KAR 4:030;
- (g) Foster care per diem in accordance with:
 - 1.
 - a. 922 KAR 1:350; or
 - b. D.O. v. Glisson, 847 F.3d 374 (6th Cir. 2017), cert. denied, 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017); and
 - 2. The terms and conditions specified in the individual agreement between the cabinet and the foster parent;
- (h) Adoption assistance in accordance with 922 KAR 1:050 or 922 KAR 1:060;
- (i) To the extent funds are available, post-permanency services, including:
 - 1. Subsidized guardianship under 42 U.S.C. 671 and 673 once the benefit is available; or
 - 2. Post-adoption placement stabilization services in accordance with 922 KAR 1:530; or
- (j) The Supplemental Nutrition Assistance Program if application is made and approved in accordance with 921 KAR 3:030.

(2) To the extent funds are available, effective October 1, 2019, the cabinet shall provide prevention and family services and programs in accordance with 42 U.S.C. 671(e) to a child who is a candidate for foster care, including:

- (a) Mental health and substance abuse prevention and treatment services; or
- (b) In-home parent skill-based programs.

(3) To the extent funds are available, the cabinet or its designee shall provide the following services for a relative or fictive kin caregiver:

- (a) A hotline;
- (b) Online portal;
- (c) Crisis intervention;
- (d) Support group;
- (e) Advocacy;
- (f) Caregiver training;
- (g) Community education; and

~~(h)~~ ~~[(g)]~~ Referral to community resource or provider, such as:

- 1. Family Resource and Youth Service Centers established in accordance with KRS 156.496;
- 2. The Health Access Nurturing Development Services (HANDS) Program in accordance with 902 KAR 4:120;
- 3. The Special Supplemental Nutrition Program for Women, Infants, and Children or "WIC program" in accordance with 902 KAR Chapter 18;

4. Kentucky's Early Intervention Program, First Steps, in accordance with 902 KAR Chapter 30;
 5. Mental health programming; or
 6. Caregiver programming made available through the Department for Aging and Independent Living or its designee.
- (4) The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-45.241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 7. Complaint and Service Appeals.

- (1) A relative or fictive kin caregiver may submit a service complaint or an appeal concerning a protection and permanency service in accordance with 922 KAR 1:320.
 - (2) An appeal concerning CCAP shall be made in accordance with 921 KAR 2:055, 922 KAR 2:020, or 922 KAR 2:260.
 - (3) An appeal regarding ~~KTAP~~~~[K-TAP]~~ shall be made in accordance with 921 KAR 2:055.
 - (4) An appeal concerning the Supplemental Nutrition Assistance Program shall be made in accordance with 921 KAR 3:060 or 921 KAR 3:070.
- (45 Ky.R. 2284, 2942, 3187; eff. 5-31-2019; 46 Ky.R. 773, 1174; eff. 11-1-2019; 48 Ky.R. 1426; eff. 1-13-2022.)

MARTA MIRANDA-STRAUB, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 23, 2021

FILED WITH LRC: September 8, 2021 at 8:00 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the service array for a relative or fictive kin caregiver of a child in the state's custody.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the service array for a relative or fictive kin caregiver required by KRS 620.142(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 620.142(5) requires the cabinet to promulgate administrative regulations developing custodial, permanency, and service options that shall be available to a relative or fictive kin caregiver. This administrative regulation conforms to the content of the authorizing statutes through its establishment of the service array for a relative or fictive kin caregiver.

(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 its establishment of a service array for a relative or fictive kin caregiver.

(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:

This amendment includes that fictive kin caregivers may receive the one-time placement support benefit that was previously available to only relative caregivers, in compliance with the amendment to KRS 620.142(1) accomplished through House Bill 492 (2021 Regular Session). As included in the amendment, federal law prohibits the provision of Temporary Assistance for Needy Families (TANF) Block Grant funds to fictive kin caregivers or reimbursement to the state for this purpose; therefore, this support benefit shall be provided to fictive kin caregivers to the extent that this provision is appropriated through General Funds. The amendment makes other minor technical updates.

(b) The necessity of the amendment to this administrative regulation:

House Bill 492 was passed in the 2021 Regular Session and included that the one-time placement support benefit provided to relative caregivers of children in the state's custody (out of home care) also be available to fictive kin caregivers. Federal TANF funds cannot be provided to a caregiver who is not a relative or reimbursed to the state for this purpose; therefore, this provision must be paid through the General Fund appropriation. One million dollars has been appropriated to this program for each year and the appropriation has been exhausted by relative caregivers alone. The cabinet anticipates a need for this appropriation to be increased in order to continue providing this support to relative and fictive kin caregivers.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 620.142(1) was amended to include that the one-time placement support benefit provided to relative caregivers of children in out of home care be available to fictive kin caregivers as well.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment is necessary for consistency with enacted legislation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

As of August 1, 2021, there were 1,430 children in the state's custody placed with a relative or fictive kin caregiver (including relative or fictive kin foster parents). These relative and fictive kin caregivers could apply for and be approved to receive this one-time placement support benefit to assist with one-time costs associated with accepting the placement of the child.

(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:

Someone who meets the definition of being fictive kin to a child who has been removed from their home and placed in the state's custody must accept placement of the child. The fictive kin caregiver may choose to apply for the support benefit and, if so, shall provide tax status and contact information, as currently required of relative caregivers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no cost associated to the relative or fictive kin caregiver in order to receive this support benefit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

This one-time support benefit is provided to assist with costs associated with accepting placement of a child, such as the cost of a bed or crib, clothes, car seat, etc.

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

(a) Initially:

The cost of providing this benefit to fictive kin is difficult to estimate given that the number of fictive kin caregivers accepting placement varies from year to year and because relative or fictive kin caregivers may choose to not receive this benefit. As of August 1, 2021, there were 1,430 children in the custody of the state, placed with a relative or fictive kin caregiver (including relative or fictive kin foster parents). One million dollars in General Funds is appropriated to this program each year and the appropriation has been exhausted by relative caregivers alone. The cabinet anticipates a need for this appropriation to be increased in order to continue providing this support to relative and fictive kin caregivers.

(b) On a continuing basis:

The cabinet anticipates that providing this support to relative and fictive kin caregivers will exceed the one million dollar appropriation received for this program. TANF funds may not be used to reimburse the state for benefits provided to fictive kin caregivers.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The one million dollar per year General Fund appropriation specifically for the Relative Placement Support Benefit. This funding is used as Maintenance of Effort General Funds applied towards TANF funding.

(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:

There is no associated increase in fees. The cabinet anticipates a General Fund increase in funding for this program may be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied?

No, 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. 601-619, 671, 673, 675

(2) State compliance standards.

KRS 194A.050(1), 605.130(7), 605.150(1), 620.142(5)

(3) Minimum or uniform standards contained in the federal mandate.

42 U.S.C. 601-619, 671, 673, 675

(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 will not impose stricter requirements than those required by the federal mandate. It does vary in providing cash assistance to fictive kin caregivers pursuant to state law, KRS 620.142(1).

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

This administrative regulation will not impose stricter requirements than those required by federal mandates.

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?

No answer provided.

(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), 605.130(7), 605.150(1), 620.142(5), 42 U.S.C. 601-619, 671, 673, 675

(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?

This administrative regulation is not anticipated to generate revenue.

(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?

This administrative regulation is not anticipated to generate revenue.

(c) How much will it cost to administer this program for the first year?

The many services contained in this administrative regulation are provided and funded through different programs and varying funding streams, exceeding millions of dollars. The cost of this amendment is anticipated to exceed the one million dollars currently appropriated to this program in General Funds each year.

(d) How much will it cost to administer this program for subsequent years?

The many services contained in this administrative regulation are provided and funded through different programs and varying funding streams, exceeding millions of dollars. The cost of this amendment is anticipated to exceed the one million dollars currently appropriated to this program in General Funds each year and an increase in program funding may be necessary if relative and fictive kin caregiver placements increase.

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: