

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

922 KAR 1:520. Supplements to per diem rates.

RELATES TO: KRS 2.015, 199.011(4), (10), 200.503(3), 600.020(9), (30), 610.110(6), 620.140(1)(d)

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 home to receive a high-risk or parenting youth supplement reimbursement, to the extent funds are available, for extraordinary care the foster home provides to a child with exceptional needs, or a parenting youth, who is in the custody of the cabinet.

Section 1. Definitions.

- (1) "Child" means:
 - (a) A child as defined by KRS 199.011(4) and 600.020(9);
 - (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) who meets the exceptions to the age of majority in accordance with KRS 2.015.
- (2) "Child with a serious emotional disability" is defined by KRS 200.503(3).
- (3) "Exceptional needs" means the needs of a child:
 - (a) As specified in Section 2(2) or 4 of this administrative regulation; and
 - (b) Reimbursed in accordance with KRS 605.120(2).
- (4) "Extraordinary care" means services:
 - (a) Provided to a child with exceptional needs in the custody of the cabinet; and
 - (b) That exceed a regular per diem, as established in 922 KAR 1:350, Section 10.
- (5) "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 or 922 KAR 1:350, if referring to an individual.
- (6) "High-risk supplement" means a reimbursement to a foster home that is necessary to cover an additional expense associated with the provision of extraordinary care.
- (7) "Parenting youth supplement" means a daily supplement to the per diem that is necessary to cover an additional expense associated with a youth who is placed with and

has custody of their own child.

Section 2. High-risk supplement.

(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 III care established in 922 KAR 1:360, Section 4;

(b) The child is placed in a public child welfare agency foster home in accordance with 922 KAR 1:350;

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

1. Being a child with a serious emotional disability;
2. Being designated as medically complex by cabinet staff, as established in 922 KAR 1:350, Section 4(1)(b); or
3. Dual involvement with the Department of Juvenile Justice;

(d) A consultation is held to:

1. Assess the child and prospective foster home's need for additional support and services; and
2. Complete a "DPP-111B, High-Risk Supplement Assessment"; and

(e) The foster home agrees to maintain a monthly log of the services provided to the child for the duration of the high-risk supplement.

(3) The high-risk supplement shall be:

(a) A standardized amount 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.

(4) 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) A consultation is completed prior to granting each extension in order to:

1. Review progress made during the child's current case planning conference, 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".

(5) If a high-risk supplement extension is granted, 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 child's prior 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 the DPP-116.
- (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.

Section 5. Service Appeals. A foster home or provider referenced in Section 4(1) of this administrative regulation may request an appeal in accordance with 922 KAR 1:320.

Section 6. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "DPP-111B, High-Risk Supplement Assessment", 09/23; and
 - (b) "DPP-116, Parenting Youth Supplement", 11/20.
- (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. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 23, 2023

FILED WITH LRC: September 7, 2023 at 12:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 27, 2023, 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 16, 2023, 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, 2023. 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.