

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

922 KAR 1:145. Subsidized permanent custody.

RELATES TO: KRS 2.015, 199.011, 403.270-403.355, 600.020, 605.100, 605.130, 610.110(6), 610.125, 620.090, 620.140, 620.170, 45 C.F.R. 1355.34(b), 42 U.S.C. 673

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 605.100(1), 605.130(7), 605.150, 620.180(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the cabinet to promulgate, administer, and enforce those administrative regulations necessary to qualify for the receipt of federal funds. To maintain eligibility for full funding pursuant to Titles IV-E and IV-B of the Social Security Act, under 45 C.F.R. 1355.34(b) and (c), the cabinet shall design services to help children achieve permanency. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(7), which requires the cabinet to perform other services necessary for the protection of children, and KRS 605.100(1), which requires the cabinet to arrange for a program of care, treatment, and rehabilitation of the children committed to it. KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes cabinet requirements and procedures to process requests for subsidized permanent custody pursuant to the federal Title IV-E guardianship assistance program and state guardianship assistance program, as authorized by 42 U.S.C. 673.

Section 1. Definitions.

- (1) "Cabinet" is defined by KRS 199.011(3).
- (2) "Case permanency plan" is defined by KRS 620.020(1).
- (3) "Child" means:
 - (a) "Child" as defined by KRS 199.011(4) and 600.020(9);
 - (b) An eighteen (18) year old enrolled with regular full-time attendance in high school, vocational school, or technical school;
 - (c) 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
 - (d) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.
- (4) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).
- (5) "Parent" is defined by 42 U.S.C. 675(2).
- (6) "Relative" means an individual related to a child by blood, marriage, or adoption.
- (7) "Subsidized permanent custody" means the guardianship assistance program authorized by 42 U.S.C. 673 and funded with Title IV-E and state general funds.
- (8) "Successor caregiver" is defined as an individual named in the subsidized permanent custody agreement, or most recent amendment to the agreement, to serve as the caregiver in the event the original caregiver named in the subsidized permanent custody agreement dies or is incapacitated.

Section 2. Eligibility of Child. In order to qualify for assistance, a child shall:

- (1) Be placed in the permanent custody of a relative or fictive kin caregiver by order of a court entered pursuant to KRS 403.270-403.355, 610.125, 620.027, or 620.140 if the

- order states that reunification or adoption are not in the child's best interest;
- (2) Demonstrate a strong attachment to the relative or fictive kin caregiver;
 - (3) Have been placed in an approved relative or fictive kin foster home that received foster care maintenance payments for at least six (6) consecutive months, except for:
 - (a) A child whose sibling has met this requirement; or
 - (b) A child being placed with a successor caregiver pursuant to Section 8 of this administrative regulation;
 - (4) Be residing with a caregiver who meets the eligibility requirements established in Section 3 of this administrative regulation;
 - (5) Have been approved for subsidized permanent custody at age sixteen (16) or older in order to continue receiving payment after age eighteen (18) up to age twenty-one (21), except for a child who meets the exception to the age of majority; and
 - (6) Meet any additional eligibility requirements required for receipt of federal funding, as specified in 42 U.S.C. 673(d)(3).

Section 3. Eligibility of Caregiver.

- (1) In order to qualify for assistance, a caregiver shall:
 - (a) Be a nonparental relative or fictive kin of a child who is eligible for assistance pursuant to Section 2 of this administrative regulation;
 - (b) Meet the requirements of a foster home established in 922 KAR 1:310 or 922 KAR 1:350;
 - (c) Have completed training required by 922 KAR 1:495 for a relative or fictive kin caregiver; and
 - (d) Have a strong commitment to permanently caring for the child.
- (2) Prior to cabinet approval and the issuance of a new subsidized permanent custody agreement:
 - (a) Each caregiver and adult member of the caregiver's household shall have completed a background check pursuant to 922 KAR 1:490; and
 - (b) Each member of the caregiver's household who is age twelve (12) through age seventeen (17) shall have completed a DPP-157, submitted to a child abuse or neglect check, and been approved by the cabinet pursuant to 922 KAR 1:490.

Section 4. Subsidized Permanent Custody Agreement.

- (1) Prior to approval of subsidized permanent custody, the eligible child shall consent in writing to the placement with the selected caregiver, if the child is:
 - (a) At least fourteen (14) years of age; and
 - (b) Competent, as determined by the cabinet, to provide informed consent to the placement and terms of the agreement.
- (2) The cabinet shall confirm that all requirements established in this administrative regulation have been met and shall require the caregiver to complete the subsidized permanent custody agreement in order to receive payment pursuant to Section 5 of this administrative regulation.

Section 5. Payments and Benefits.

- (1) If funding is available and the subsidized permanent custody agreement is completed and agreed to by the cabinet and the caregiver prior to the finalization of the permanent custody, taking into consideration the circumstances of the caregiver and the needs of the child, the payments shall:
 - (a) Be for an amount that is more than zero dollars (\$0), but does not exceed the foster care maintenance payment rate that would have been paid on behalf of the child in foster care; and
 - (b) Begin, effective as of the date that the order granting permanent custody is signed into court record.

(2) A child who is approved for subsidized permanent custody shall continue to be eligible for Medicaid coverage after the order granting permanent custody and subsidized permanent custody agreement are signed and finalized in accordance with applicable provisions of 907 KAR 20:005.

(3) A child or caregiver who is approved for subsidized permanent custody shall also be eligible to receive applicable assistance provided pursuant to 922 KAR 1:565.

(4) A child who is approved for subsidized permanent custody at age sixteen (16) or older shall be eligible for:

(a) Independent living services established in 922 KAR 1:340; and

(b) An educational and training voucher pursuant to 922 KAR 1:500.

(5) A request for payment of nonrecurring subsidized permanent custody expenses of \$2,000 or less shall be submitted to the cabinet for reasonable and necessary fees, court costs, and other expenses that were actually incurred and directly related to the placement of a child no later than twelve (12) months after the order granting permanent custody is entered into court record.

Section 6. Annual Contact.

(1) The cabinet shall make annual contact with the caregiver by mail, email, phone, home visit, or other cabinet method of contact to ensure that the:

(a) Child remains in the caregiver's home;

(b) Caregiver continues to provide care and support for the child; and

(c) Cabinet payments continue to meet the needs of the child.

(2) The cabinet may conduct a home or office visit after annual contact if:

(a) The caregiver requests a home or office visit;

(b) The needs of the child have changed;

(c) Attempts to update information by mail, email, or phone contact have failed; or

(d) The cabinet receives information that is contrary to the information provided by the caregiver or child during the annual contact.

Section 7. Suspension or Termination of Agreement and Payment.

(1) The cabinet may suspend payments pursuant to a subsidized permanent custody agreement if multiple attempts by the cabinet to make annual contact as established in Section 6 of this administrative regulation have failed due to lack of response from the caregiver or child.

(2) A caregiver shall notify the cabinet of any changes in circumstances that would change the payment amount or make the caregiver ineligible for payments pursuant to Sections 2 or 3 of this administrative regulation.

(3) The cabinet may alter the payment amount based on information provided to the cabinet if the amount is agreed upon by the cabinet and caregiver;

(4) The cabinet shall temporarily suspend subsidized permanent custody payments during the period of time the:

(a) Child reenters the custody of the cabinet, if applicable; or

(b) Cabinet has repeatedly requested documentation regarding financial responsibility from the caregiver.

(5) The cabinet shall resume payments suspended pursuant to this section of the administrative regulation if modifications to the agreement are agreed to by the cabinet and the caregiver or if the caregiver resumes financial support of the child.

(6) The cabinet shall terminate a subsidized permanent custody agreement if the:

(a) Cabinet determines that the:

1. Child is no longer receiving financial support from the caregiver;

2. Caregiver's legal responsibility to the child has ended;

3. Custody is reassigned to a successor caregiver; or

4. Appropriated funds are no longer available to support continuation of this program pursuant to Section 5 of this administrative regulation;

(b) Caregiver:

1. Requests termination; or
2. Becomes deceased; or

(c) Child:

1. Becomes deceased;
2. Marries;
3. Is inducted into military services;
4. Except for a child for whom commitment to the cabinet was extended or who meets the exception to the age of majority:
 - a. Obtains age eighteen (18); or
 - b. If still enrolled in high school, obtains:
 - (i) Age nineteen (19); or
 - (ii) High school graduation before age nineteen (19).

(7) Cabinet staff shall provide notice of a reduction, suspension, or termination of payments:

- (a) Ten (10) calendar days in advance;
- (b) In accordance with 922 KAR 1:320, Section 6; and
- (c) To the caregiver at the caregiver's current or last known address.

(8) The notice shall include a statement of the reason or reasons for the reduction, suspension, or termination as determined by the cabinet.

(9) The effective date of the reduction, suspension, or termination shall be the date documented on the notice of intended action.

(10) If the caregiver has received a payment attributable to a time after the effective date of the reduction, suspension, or termination, the caregiver shall be obligated to repay the amount of that payment to the cabinet.

Section 8. Subsidized Permanent Custody Successor. In the event of the death or incapacity of a subsidized permanent custody caregiver, a new subsidized permanent custody agreement may be completed and agreed to by the cabinet and a successor caregiver if the successor caregiver:

- (1) Is named in the subsidized permanent custody agreement or amendment that was effective before the date of death or determination of incapacity of the caregiver;
- (2) Has been appointed by the court in a custody proceeding as the child's caregiver;
- (3) And each member of the caregiver's household has completed the background checks required by Section 3(2) of this administrative regulation prior to cabinet approval and the issuance of a new subsidized permanent custody agreement; and
- (4) Complies with the duties and responsibilities of the caregiver established in:
 - (a) This administrative regulation;
 - (b) A new subsidized permanent custody agreement, signed by the cabinet and the successor caregiver; and
 - (c) A subsidized permanent custody court order.

Section 9. Out-of-State Requests. The cabinet shall review out-of-state requests for subsidized permanent custody of a child in the custody of the cabinet considering the:

- (1) Best interest of the child;
- (2) Consent of the parent or parents, if applicable; and
- (3) Extent of funds available.

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 1, 2023

FILED WITH LRC: December 6, 2023 at 1:20 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 26, 2024, 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 February 19, 2024, 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 February 29, 2024. 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.

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