

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Protection and Permanency**  
**(Amended After Comments)**

**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 **or youth** 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 **or youth** who meets the exception to the age of majority, **if the child or youth is:**
    - (a) Completing secondary education or a program leading to an equivalent credential;**
    - (b) Enrolled in an institution that provides post-secondary or vocational education;**
    - (c) Participating in a program or activity designed to promote or remove barriers to employment; or**
    - (d) Employed for at least eighty (80) hours per month;** 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 **within thirty (30) calendar days** 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) **Caregiver fails to provide documentation demonstrating financial responsibility and support after the** cabinet has ~~repeatedly~~ requested **the**

documentation ~~regarding financial responsibility~~ from the caregiver at least three (3) times.

(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 and provides to the cabinet documentation demonstrating financial responsibility and support.

(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 written notice of intended action for 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 written notice of intended action 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: April 9, 2024

FILED WITH LRC: April 10, 2024 at 2:10 p.m.

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## 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 cabinet requirements and procedures utilized in processing requests for subsidized permanent custody, a new guardianship assistance program through which a nonparental relative or fictive kin foster parent may receive permanent custody of a child and financial assistance in caring for the child.

**(b) The necessity of this administrative regulation:**

Subsidized permanent custody is a new permanency option for children in the custody of the cabinet who have been placed in a relative or fictive kin foster home for over six months. Allowing this permanency option without the need for termination of parental rights will be attractive to some caregivers, relieve the caregiver and the cabinet of unnecessary administrative tasks associated with retaining the child in foster care, and will provide needed supports to the child and caregiver. The administrative regulation is being further amended in response to comments to include the criteria in which a caregiver can continue to receive supports for a youth over the age of 18 and to include a timeframe for notifying the cabinet of a change in the caregiver's circumstances.

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

KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. Subsidized permanent custody is another permanency option and goal with its own services available to eligible children and caregivers.

**(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 permanency options and services available to children in the custody of the cabinet.

**(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 is a new administrative regulation.

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

This is a new administrative regulation.

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

This is a new administrative regulation.

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

This is a new administrative regulation.

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

As of October 1, 2023, there were 437 children in the cabinet's custody placed in a foster home with a relative or fictive kin caregiver. Once a child has been in a relative

or fictive kin foster home for at least six consecutive months, they may be eligible for subsidized permanent custody.

**(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:**

A child in the custody of the cabinet who has been placed in a relative or fictive kin foster home for over six consecutive months and their caregiver may be eligible for subsidized permanent custody. The requirements established in this administrative regulation shall be met.

**(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 children or their caregivers that are eligible for subsidized permanent custody.

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

The caregiver will receive permanent custody of the child, less involvement by the cabinet, and financial assistance and supports in caring for the child. This is a new permanency option and goal for children in the state's custody.

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

**(a) Initially:**

The cabinet is already providing a per diem to foster homes that may be eligible for subsidized permanent custody; however, the cabinet does anticipate additional relative or fictive kin caregivers becoming foster parents and receiving a per diem and eventually subsidized permanent custody payments. Initially, there will not be a large cost associated with this program, but over time the number of caregivers is expected to rise. For this reason, the cabinet anticipates the cost of this program to be approximately \$7 million in General Funds and approximately \$2.5 million in federal and restricted funds each year.

**(b) On a continuing basis:**

The cabinet anticipates the cost of this program to be approximately \$7 million in General Funds and approximately \$2.5 million in federal and restricted funds each year.

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

Title IV-E guardianship assistance program funds, General Funds, and restricted 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:**

There are no fees associated with this administrative regulation.

**(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:**

**(9) TIERING: Is tiering applied?**

Tiering is not applied, because this administrative regulation, the requirements, and processes are applied in a like manner statewide.

## FEDERAL MANDATE ANALYSIS COMPARISON

**(1) Federal statute or regulation constituting the federal mandate.**

42 U.S.C. 673

**(2) State compliance standards.**

KRS 194A.050(1), 199.472, 605.100(1), 605.130(7), 605.150

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

42 U.S.C. 673 contains standards for states that choose to exercise the guardianship assistance program option.

**(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 than those contained in federal standards.

## FISCAL IMPACT STATEMENT

**(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS 194A.050(1), 199.472, 605.100(1), 605.130(7), 605.150, 42 U.S.C. 673

**(2) Identify the promulgating agency and any other affected state units, parts, or divisions:**

Cabinet for Health and Family Services, Department for Community Based Services.

**(a) Estimate the following for the first year:**

**Expenditures:**The cabinet is already providing a per diem to foster homes that may be eligible for subsidized permanent custody; however, the cabinet does anticipate additional relative or fictive kin caregivers becoming foster parents and receiving a per diem and eventually subsidized permanent custody payments. Initially, there will not be a large cost associated with this program, but over time the number of caregivers is expected to rise. For this reason, the cabinet anticipates the cost of this program to be approximately \$7 million in General Funds and approximately \$2.5 million in federal and restricted funds each year.

**Revenues:**None.

**Cost Savings:**None.

**(b) How will expenditures, revenues, or cost savings differ in subsequent years?**

Not applicable. The cost is expected to increase over subsequent years as more caregivers become aware of the ongoing financial support they can receive through this new program. The cabinet anticipates the cost of this program to be approximately \$7 million in General Funds and approximately \$2.5 million in federal and restricted funds each year.

**(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):**

Relative or fictive kin caregivers of children in the cabinet's custody. There is no cost to them, only benefit.

**(a) Estimate the following for the first year:**

**Expenditures:**None.

**Revenues:**None.

**Cost Savings:**None.

**(b) How will expenditures, revenues, or cost savings differ in subsequent years?**

Not applicable.

**(4) Identify additional regulated entities not listed in questions (2) or (3):**

This administrative regulation establishes the permanency options available for children in the cabinet's custody and their caregiver and the processes for obtaining permanency.

**(a) Estimate the following for the first year:**

**Expenditures:**The cost of the program is to the cabinet.

**Revenues:**Not applicable.

**Cost Savings:Not applicable.**

**(b) How will expenditures, revenues, or cost savings differ in subsequent years?**

There will be no new or additional costs to the agency to implement this administrative regulation for subsequent years. Not applicable.

**(5) Provide a narrative to explain the:**

**(a) Fiscal impact of this administrative regulation:**

The cabinet is already providing a per diem to foster homes that may be eligible for subsidized permanent custody; however, the cabinet does anticipate additional relative or fictive kin caregivers becoming foster parents and receiving a per diem and eventually subsidized permanent custody payments. Initially, there will not be a large cost associated with this program, but over time the number of caregivers is expected to rise. For this reason, the cabinet anticipates the cost of this program to be approximately \$7 million in General Funds and approximately \$2.5 million in federal and restricted funds each year.

**(b) Methodology and resources used to determine the fiscal impact:**

The cabinet is paying per diems to these caregivers as foster homes currently, but the cabinet has estimated the fiscal impact of caregivers who may be eligible to pursue this permanency option.

**(6) Explain:**

**(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)**

The fiscal impact is to the cabinet, and it is not an overall negative or adverse major economic impact to provide supports to caregivers and permanency to children.

**(b) The methodology and resources used to reach this conclusion:**

The cost of this new program is to the cabinet, but the cabinet is paying per diems to caregivers approved as foster parents currently.