

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

922 KAR 1:140. Permanency. ~~Foster care and adoption permanency~~ services.

RELATES TO: KRS 2.015, 194A.005(1), 199.011(3), (4), (9), 199.462, ~~199.467,~~
~~199.555,~~ 199.557, 199.801, 387.025, 527.100, 527.110, 600.020, 610.110, 610.125,
610.127, 620.020(1), (11), 620.060, 620.090, 620.140, ~~620.180,~~ 625.040, 625.090, 45
C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.467, 620.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the ~~secretary~~~~[Secretary]~~ of the Cabinet for Health and Family Services 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 199.467 requires the ~~secretary~~~~[Secretary]~~ of the Cabinet for Health and Family Services to promulgate administrative regulations establishing specific goals for the cabinet, for each fiscal year, regarding the maximum number of children who will remain in foster care longer than twenty-four (24) months, and describing the steps to be taken to achieve the goals. 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 the maximum number of children remaining in foster care longer than twenty-four (24) months, and establishes permanency services available to children in placement.

Section 1. Definitions.

- (1) "Absent parent search" means cabinet-initiated efforts to locate a biological or legal parent, or a relative.
- (2) "Age or developmentally appropriate" is defined by KRS 600.020(2).
- (3) "Cabinet" is defined by KRS 194A.005(1), 199.011(3), and 600.020(7).
- (4) "Case permanency plan" is defined by KRS 620.020(1).
- (5) "Child" means:
 - (a) A child 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)(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.
- (6) "Concurrent planning" means the cabinet simultaneously plans for:
 - (a) The return of a child in the custody of the cabinet to the child's parent; and
 - (b) Another permanency goal for the child if return to parent is not achieved within fifteen (15) of the last twenty-two ~~[twenty-two]~~(22) months, in accordance with 42 U.S.C. 675(5)(E).
- (7) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).
- (8) "Parent" is defined by 42 U.S.C. 675(2).
- (9) "Reasonable efforts" is defined by KRS 620.020(11).
- (10) "Relative" means an individual related to a child by blood, marriage, or adoption.
- (11) "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,

~~established in 922 KAR 1:145 ["Sufficient progress" means compliance with case permanency plan objectives that support the safe return of the child to the child's parent].~~

Section 2. Children in Care. Unless the secretary of the cabinet or designee approves an exception based on overall trends in the foster care population, the maximum number of children who receive foster care in excess of twenty-four (24) months shall be 3,000 during a state fiscal year.

Section 3. Permanency Planning.

(1) In a court permanency hearing held pursuant to KRS 610.125, the cabinet shall demonstrate that reasonable efforts to return the child to the child's parent:

- (a) Have been unsuccessful; or
- (b) Are not required under the provisions of KRS 610.127.

(2) In the provision of permanency services, the cabinet shall meet the requirements of the:

- (a) Indian Child Welfare Act in accordance with 25 U.S.C. 1901-1963, 42 U.S.C. 671(a)(32), and 42 U.S.C. 1996; or
- (b) Multiethnic Placement Act as amended by the Interethnic Adoption Provisions of 1996 in accordance with 42 U.S.C. 622(b)(7), 671(a)(18), and 1996b.

(3) If a child entering the custody of the cabinet has an absent parent, an absent parent search shall:

- (a) Be conducted within thirty (30) days of a child entering the custody of the cabinet;
- (b) Be conducted to gather as much information as possible related to the person and the person's location, which may include:
 - 1. Date of birth;
 - 2. Social Security number;
 - 3. Present or previous employers;
 - 4. Present or most recent address; and
- (c) Include a written record of all search attempts, written correspondence, and telephone contacts with any person to assist in locating a parent or relative.

(4) The cabinet shall not be obligated to search for or seek fictive kin as a placement for a child.

(5) When a case conference is held in compliance with KRS 620.180(2)(a)1 for a child placed in the custody of the cabinet, the cabinet shall develop and document a case permanency plan~~[, using the DPP-1281, Family Case Plan].~~

(6) The case permanency plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.

(7) Concurrent planning shall be considered:

- (a) During development of the case permanency plan; and
- (b) At the six (6) month case review.

Section 4. Permanency Goals.

(1) A permanency goal for a child who has been removed from the child's home of origin by a court shall be established according to the particular needs and best interest of the child.

(2) A permanency goal shall include one (1) of the following:

- (a) Return to parent;
- (b) Adoption;
- (c) Permanent relative placement;
- (d) Legal guardianship; ~~or~~
- (e) Subsidized permanent custody;
- (f) Transitioning to adulthood; or
- (g) Another planned permanent living arrangement.

Section 5. Return to Parent.

(1) The cabinet shall recommend to the court that a child who has been removed from the child's home of origin by the court is returned to the parent if the cabinet determines:

(a) A family has successfully mitigated the danger to the child associated with the removal or has a plan supported by the cabinet to provide safety for the child while making progress towards completing the case plan~~[made sufficient progress toward completing the case permanency plan]~~; and

(b) Return to the parent is in the best interest of the child.

(2) If the cabinet determines that a family has not successfully mitigated the danger to the child associated with the removal or does not have~~[has]~~ a plan supported by the cabinet to provide safety for the child while making progress toward completing the case plan~~[made sufficient progress towards achieving the objectives specified in the case permanency plan]~~, the cabinet shall seek a court order for:

(a) A change in the permanency goal;

(b) Termination of parental rights; or

(c) A civil action in support of the child's permanency goal.

(3) If the court determines that a circumstance occurs that negates the requirement to make reasonable efforts to reunify the child and family, as described in KRS 610.127, the cabinet shall select a permanency goal other than return to parent.

Section 6. Adoption.

(1) The permanency goal for a child in the custody of the cabinet shall be adoption if:

(a) The parent pursues voluntary termination of parental rights pursuant to KRS 625.040; or

(b) The cabinet pursues involuntary termination of parental rights:

1. Pursuant to KRS 620.180(2)(c)3 or 625.090; or

2. If the child has been in foster care for fifteen (15) of the most recent twenty-two (22) months pursuant to 42 U.S.C. 675(5)(E).

(2) The cabinet shall request an exception for proceeding with involuntary termination of parental rights pursuant to subsection (1)(b) of this section, if:

(a) A relative or fictive kin placement has been secured;

(b) Termination is not in the best interest of the child, for a compelling reason:

1. Documented in the case permanency plan; and

2. Monitored on a continual basis; or

(c) A service necessary for return to parent has not been provided within the time period specified in the case permanency plan.

(3) Cabinet staff shall consider involuntary termination of parental rights at each permanency hearing held pursuant to KRS 610.125(1) or a case review in accordance with KRS 620.180(2)(c)1 and 2.

Section 7. Permanent Relative Placement. The permanency goal for a child who has been removed from the child's home of origin by a court shall be permanent custody if:

(1) Return to the parent is not in the child's best interest; and

(2) The cabinet determines that a relative or fictive kin who does not pursue adoption,~~for~~ legal guardianship, or subsidized permanent custody, is able to provide a permanent home for the child.

Section 8. Legal Guardianship.

(1) The permanency goal for a child who has been removed from the child's home of origin by a court shall be legal guardianship if the cabinet determines that:

(a) Return to the parent,~~or~~ adoption, or subsidized permanent custody is not in the child's best interest;

(b) There is an identified adult, including fictive kin, willing to seek legal guardianship of the child; and

(c) Legal guardianship by the adult identified in paragraph (b) of this subsection is in the child's best interest.

(2) Legal guardianship shall be requested pursuant to KRS 387.025.

Section 9. Subsidized permanent custody. The permanency goal for a child who has been removed from the child's home of origin by a court shall be subsidized permanent custody if the cabinet determines that:

(1) Reunification, adoption, legal guardianship, and permanent relative custody is not in the child's best interest; and

(2) The child is eligible pursuant to Section 2 of 922 KAR 1:145.

Section 10. Transitioning to Adulthood. The permanency goal for a child who is ~~for~~ eighteen (18) years of age or older and has extended commitment to the cabinet or seventeen (17) years of age shall be transitioning to adulthood if:

(1) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;

(2) The cabinet has reviewed documentation and determined that a goal of transitioning to adulthood is in the best interest of the child;

(3) The court has determined that transitioning to adulthood is in the best interest of the child; and

(4) **For children aged seventeen (17), approval is obtained from the commissioner or designee prior to the court determination required by subsection (3) of this section and the establishment of transitioning to adulthood as a permanency goal ~~for children aged seventeen (17).~~**

Section 11. ~~Section 9.~~ Another Planned Permanent Living Arrangement.

(1) The permanency goal for a child in the custody of the cabinet who is sixteen (16) years of age or older shall be another planned permanent living arrangement if:

(a) An unsuccessful effort has been made to place the child for adoption or with a relative or fictive kin, and the child has been placed on a national adoption register;

(b) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;

(c) The cabinet has reviewed documentation that a goal of another planned permanent living arrangement is in the best interest of the child;

(d) The court has determined that another planned permanent living arrangement is in the best interest of the child to be placed; and

(e) The child has formed psychological ties with those with whom the child lives, and adoption and guardianship have been discussed with the care provider and are not viable alternatives.

(2) Approval shall be obtained from the commissioner or designee prior to the establishment of another planned permanent living arrangement as a permanency goal for a child placed with a private child-caring agency.

Section 12. ~~Section 10.~~ Permanency Services.

(1) The cabinet shall provide services for a child who has been removed from the child's home of origin by a court so that permanency is achieved.

(2) Permanency services may include:

(a) Ongoing case work and monitoring of the family to:

1. Maintain the child safely in the child's home; and

2. Ensure safe return of the child if the goal is return to the parent;

(b) Independent living services and programming for the child in accordance with 42 U.S.C. 677;

- (c) Adoption assistance pursuant to 922 KAR 1:050 or 922 KAR 1:060;
 - (d) Post-finalization adoption assistance if adoption assistance has not been previously approved pursuant to KRS 199.555 and 199.557;
 - (e) Post-adoption placement stabilization services as ~~established~~~~[described]~~ in 922 KAR 1:530; ~~for]~~
 - (f) ~~Subsidized permanent custody payments as established in 922 KAR 1:145; or~~
 - (g) Referral to other cabinet and community resources necessary for the achievement or maintenance of the child's permanency goal.
- (3) Cabinet resources for a prospective or existing permanent relative or fictive kin placement shall be established in 922 KAR 1:565.

Section 13. ~~[Section 11.]~~ Funerals and Burials.

- (1) The biological or legal parent of a child deceased while in temporary custody or committed to the cabinet, shall be responsible for funeral arrangements, unless the:
- (a) Parental rights have been terminated;
 - (b) Parent cannot be located; or
 - (c) Parent is unable to make funeral arrangements.
- (2) Personal and family resources, including the deceased child's trust fund and insurance in the deceased child's name, shall be exhausted prior to the approval of cabinet funds for funeral and burial expenses.

~~[Section 12.] [Incorporation by Reference.]~~

~~[(1)] ["DPP-1281, Family Case Plan", 11/16, is incorporated by reference.]~~

~~[(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.]~~

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

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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 the permanency options available for children in the cabinet's custody and their caregiver. This administrative regulation also establishes the maximum number of children remaining in foster care longer than twenty-four (24) months and establishes permanency services available to children in placement.

(b) The necessity of this administrative regulation:

This administrative regulation outlines the permanency services available to children in foster care, prospective adoptive placements, and relative or fictive kin placements and associated requirements.

(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. This administrative regulation establishes permanency services available to children in the cabinet's custody and their caregiver. This administrative regulation also conforms to KRS 199.467 through the establishment of the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.

(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 and the maximum number of children remaining in foster care for longer than twenty-four (24) months.

(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:

The amendment to this administrative regulation includes the subsidized permanent custody permanency goal. This is a new guardianship assistance program being implemented by the cabinet through which a nonparental relative or fictive kin caregiver and foster parent of a child may receive permanent custody of a child and financial assistance in caring for the child, authorized by 42 U.S.C. 673 and funded with Title IV-E and state general funds. The amendment also includes the transitioning to adulthood permanency goal for youth who are eighteen (18) years of age or older and have extended their commitment to the cabinet (staying in the cabinet's custody) or seventeen (17) years of age with approval. The administrative regulation is being further amended in response to comments to provide clarification.

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

This amendment is necessary to update the administrative regulation for consistency with other regulatory actions that establish the new subsidized permanent custody permanency option.

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

The amendment conforms to the content authorizing statutes through the establishment of the permanency goal processed by which the cabinet shall consider when a child is applicable for subsidized permanent custody and transitioning to adulthood.

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

The amendment will assist in the effective administration of a new permanency option available for children and their relative or fictive kin caregivers referred to as subsidized permanent custody pursuant to 922 KAR 1:145.

(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 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:

There will be no new or additional action required on the part of regulated entities as a result of this amendment. This amendment includes additional permanency options and services.

(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 additional cost to those impacted by this amendment to the administrative regulation.

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

This amendment includes additional supports available to children in the custody of the cabinet and their caregivers.

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

(a) Initially:

This amendment has no additional cost.

(b) On a continuing basis:

This amendment has no additional cost.

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

Federal Titles IV-B and IV-E of the Social Security Act funds, the federal Temporary Assistance for Needy Families (TANF) Block Grant, the federal Social Services Block Grant, restricted or agency funds derived from Medicaid, and state funds are the funding sources for these administrative regulation programs.

(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:

An increase in fees or funding will not be necessary to implement this amendment.

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

This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

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

45 C.F.R. 1355-1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

(2) State compliance standards.

KRS 194A.050(1), 199.467, 620.180

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

45 C.F.R. 1355-1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

(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 standards or additional or different responsibilities or requirements.

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), 199.467, 620.180, 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b.

(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: There will be no new or additional costs to the agency to implement this administrative regulation.

Revenues: None.

Cost Savings: None.

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

Not applicable.

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

Not applicable.

(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: There is no fiscal impact associated with this amendment.

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:

This administrative regulation establishes permanency options for children and their caregivers and the processes involved in obtaining permanency. The cabinet does pay an average of \$87.23 per day per child for children in the cabinet's custody and may continue paying for the care of children even after permanency is achieved

through adoption subsidies or subsidized permanent custody. This is funded through federal and state funding.

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

The cabinet is already providing permanency services and is therefore aware of the fiscal impact.

(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)

No, this administrative regulation will not have a negative or adverse economic impact.

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

The only cost to providing permanency services is to the cabinet, but the cabinet is providing for the cost of care of children in the cabinet's custody anyway.