

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

(Amendment)

922 KAR 1:050. State funded adoption assistance.

RELATES TO: KRS 199.555, 202B.010(12)~~[205.639(17), 216B.450(5), 600.020(21), (54), 620.020(5)]~~, Chapter 625

STATUTORY AUTHORITY: KRS 194A.050(1), 199.555(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the 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 199.555(10) requires the cabinet to establish and promulgate by administrative regulation criteria to be followed for the adoption of special needs children. This administrative regulation establishes guidelines for the implementation of the state-funded adoption assistance program for children who may otherwise grow up in foster care.

Section 1. Definitions.

- (1) "Adoption subsidy" means a payment for a special needs child placed for adoption when an adoption assistance agreement is complete.
- (2) "Extraordinary medical expenses" is defined by KRS 199.555(4).
- (3) "Nonrecurring adoption expenses" is defined by KRS 199.555(3).
- (4) "Secretary" means the Secretary of the Cabinet for Health and Family Services or designee.
- (5) "Special needs child" is defined by KRS 199.555(1).
- (6) "State-funded adoption assistance" is defined by KRS 199.555(2).

Section 2. Adoption Assistance Eligibility Criteria.

- (1) The secretary shall decide whether to pay and provide adoption assistance in accordance with KRS 199.555(5).
- (2) A special needs child shall include a child for whom adoptive placement without financial assistance is unlikely in accordance with KRS 199.555(1), because the child:
 - (a) Has a physical or mental disability;
 - (b) Has an emotional or behavioral disorder;
 - (c) Has a recognized risk of physical, mental, or emotional disorder;
 - (d) Is a member of a sibling group in which the siblings are placed together;
 - (e) Has had previous adoption disruption or multiple placements;
 - (f) Is a member of a racial or ethnic minority and two (2) years old or older; or
 - (g)
 1. Is age seven (7) or older;
 2. Has a significant emotional attachment or psychological tie to his or her foster family; and
 3. The cabinet has determined should remain with the family because it is in the best interest of the child.
- (3) To qualify for state-funded adoption assistance in accordance with KRS 199.555, a special needs child shall:
 - (a) Be committed to the Cabinet for Health and Family Services;
 - (b) Not have a parent with custody or a legal claim to the child;
 - (c) Be under age eighteen (18); and

(d) Not be eligible for federal Title IV-E adoption assistance in accordance with 922 KAR 1:060, with the exception of extraordinary medical expenses pursuant to Sections 7(1), 8, and 10(2) of this administrative regulation.

Section 3. Parental Standards. A parent receiving a child eligible for adoption assistance payments shall meet the same standards as those applied to other adoptive applicants in accordance with:

- (1) 922 KAR 1:350; or
- (2) 922 KAR 1:310.

Section 4. Adoptive ~~[Adoption]~~ Placement Agreement.

(1) Prior to placing a child for adoption, the prospective adoptive parent and the cabinet shall review and sign an adoptive~~[the adoption]~~ placement agreement to set forth the terms of a child's placement with the prospective adoptive parent.

(2) The adoptive~~[adoption]~~ placement agreement shall advise the prospective adoptive parent of the:

- (a) Special needs of the child;
- (b) Cabinet's expectations; and
- (c) Services offered by the cabinet to assist the prospective adoptive parent in the adoption process.

Section 5. Adoption Assistance Agreement. Prior to finalization of the adoption, the prospective adoptive parent and the cabinet shall discuss~~[negotiate]~~ and sign an adoption assistance agreement in accordance with KRS 199.555(6) that shall:

- (1) Determine the nature and amount of the adoption subsidy; and
- (2) Remain in effect until suspended, reduced, or terminated in accordance with Section 6 of this administrative regulation.

Section 6. Adoption Assistance Suspension, Reduction, and Termination.

(1) Except as provided in subsection (2) of this section, the cabinet shall temporarily suspend state-funded adoption assistance payments during the period of time the adopted child reenters the custody of the cabinet~~[:]~~

~~[(a)]~~

~~[1.] [Resides in:]~~

~~[a.] [Foster care as defined by KRS 620.020(5);]~~

~~[b.] [A residential treatment facility as defined by KRS 600.020(54);]~~

~~[c.] [A psychiatric residential treatment facility as defined by KRS 216B.450(5);]~~

~~[d.] [A psychiatric hospital as defined by KRS 205.639(17) beyond thirty (30) consecutive calendar days; or]~~

~~[e.] [Detention:]~~

~~[(i)] [As defined by KRS 600.020(21);]~~

~~[(ii)] [Outside the adoptive home; and]~~

~~[(iii)] [For a period of thirty (30) calendar days or more; or]~~

~~[2.] [Is absent from the home of the adoptive parents for a period of thirty (30) consecutive calendar days or more, unless the child is absent due to medical care or school attendance; and]~~

~~[(b)] [Receives care and support for the child's special needs from a local, state, or federal public agency].~~

(2) State-funded adoption assistance shall be reduced~~[renegotiated]~~ in accordance with 922 KAR 1:530, Section 3(2).

(3) State-funded adoption assistance shall be reduced if the adoptive parent fails to provide documentation demonstrating financial responsibility and support after the cabinet has requested the documentation from the adoptive parent at least three (3) times.

(4) The cabinet shall resume payments pursuant to this section of the administrative regulation, including any needed adjustments to the agreement, once the adoptive parent has provided the requested documentation demonstrating financial responsibility and support of the child.

(5) ~~{(3)}~~ State-funded adoption assistance payments shall be terminated in accordance with KRS 199.555(8) if the:

(a) Adoptive parent:

1. Is no longer legally responsible for the special needs child in accordance with KRS Chapter 625;
2. Becomes deceased; or
3. Requests discontinuation of the adoption assistance payments; or

(b) Special needs child:

1. Becomes deceased;
2. Marries;
3. ~~{Gains full-time employment;}~~
- ~~{4.} ~~{Is considered an emancipated minor;}~~~~
- ~~{5.} Is inducted into military service;~~
4. {6.} Reaches age eighteen (18); or
5. {7.} If the child is enrolled in high school, reaches:
 - a. Age nineteen (19); or
 - b. The month of the child's high school graduation, if the child's graduation precedes the child's 19th birthday.

Section 7. Adoption Assistance Payments.

(1) State-funded adoption assistance payments may include:

- (a) Extraordinary medical expenses in accordance with KRS 199.555;
- (b) Nonrecurring adoption expenses not to exceed ~~\$2,000~~~~{ \$1,000 }~~ incurred in the adoption of a child who is considered a special needs child; and
- (c) An adoption subsidy.

(2) An adoption assistance payment shall begin on the date agreed to~~{that the adoption placement agreement and adoption assistance agreement are signed}~~ by the adoptive parent and the cabinet representative, as documented on the adoption assistance agreement.

(3) The amount of the state-funded adoption assistance payment shall not exceed the amount paid for foster care maintenance for the same child, in accordance with KRS 199.555(7), including medically complex~~{fragile}~~, specialized medically complex~~{fragile}~~, and care plus foster care per diem reimbursements established by the Department for Community Based Services.

(4) A child placed in therapeutic foster care, as described in 922 KAR 1:310, shall not be eligible to receive adoption assistance payments in excess of:

- (a) A care plus foster care or medically complex foster care per diem reimbursement established by the Department for Community Based Services; or
- (b) The therapeutic foster care per diem reimbursed by the child-placing agency on behalf of the child unless~~{if}~~ the:
 1. Dollar amount is necessary to meet the child's needs; and
 2. Commissioner or designee approves.

Section 8. Covered Extraordinary Medical Services.

(1)

(a) Copayments for covered extraordinary medical expenses shall be required using the adopted parent household's adjusted gross income in relation to Kentucky's estimated median household income established by the United States Census Bureau.

(b) To the extent state resources allow, the cabinet shall annually adjust the estimated median income used for copayment calculations concurrent with the United States Census Bureau.

(c) Unless otherwise noted in this section, copayments shall be as established in this paragraph.

1. A copayment for extraordinary medical services shall not be required from an adoptive parent whose household's adjusted gross income is at or below 100 percent of Kentucky's estimated median household income.

2. A ten (10) percent copayment for extraordinary medical services shall be required from an adoptive parent whose household's adjusted gross income is over 100 percent, but less than 150 percent, of Kentucky's estimated median household income.

3. A fifteen (15) percent copayment for extraordinary medical services shall be required from an adoptive parent whose household's adjusted gross income is over 150 percent, but less than 200 percent, of Kentucky's estimated median household income.

4. A twenty (20) percent copayment for extraordinary medical services shall be required from an adoptive parent whose household's adjusted gross income is over 200 percent of Kentucky's estimated median household income.

(2) A verifiable receipt and service provider contact information shall be submitted prior to reimbursement for services listed in this section.

(3) Copayments shall be deducted from each monthly receipt that is submitted for payment of a covered extraordinary medical service.

(4) Services covered by the extraordinary medical program may include:

(a) Orthodontia with a:

1. Copayment of fifty (50) percent of the cost; and

2. Dentist or physician's verification that the child's medical or dental need exists~~[existed prior to the adoption finalization]~~, is medically necessary, and verification was obtained prior to the adoption finalization;

(b) Transportation if mileage for health treatment needs exceed the yearly mileage for foster care rates;

(c) Child care services:

1. For a full-time or part-time working parent who works a minimum of twenty (20) hours per week;

2. For a non-working parent with documentation from a qualified professional, as defined by KRS 202B.010(12), of the therapeutic need for the service;

3. With fees paid to the child care provider by the adoptive parent and reimbursed by the cabinet only after the cabinet receives a paid receipt as verified from the child care provider;

4. With annual employment verification provided to the cabinet by a working adoptive parent;

5. Reimbursed at a rate based on the age of the child and certification of the provider in accordance with 922 KAR 2:160; and

6. Ending upon the child reaching age thirteen (13), unless documentation from a medical or mental health professional stating the diagnosed need for continuance of the child care is:

a. Provided upon the child reaching age thirteen (13); and

b. Submitted every six (6) months to the cabinet's social service worker;

(d) Tutoring:

1. Not to exceed twenty-five (25) dollars per hour for no more than two (2) hours per week;

2. Provided by personnel other than immediate family, for which qualifications are verified by a social services worker;
3. For a child:
 - a. With an individual education plan (IEP); ~~or~~~~and~~
 - b. Two (2) or more grade level years behind chronological age; and
4. With need and unavailability of services as documented by the child's school;
- (e) Respite care:
 1. Offered to a child approved for the medically complex or care plus rates prior to adoption finalization, at two (2) respite days per child per month;
 2. Offered to a child approved for the specialized medically fragile rate prior to adoption finalization, at three (3) respite days per month per child;
 3. That shall not be cumulative; and
 4. Submitted monthly for reimbursement; and
- (f) Evidence-based or evidence-informed health services after Medicaid and private health insurance have been exhausted, such as:
 1. Counseling;
 2. Expressive or art therapy;
 3. Behavioral therapy;
 4. Physical therapy;
 5. Occupational therapy;
 6. Speech therapy;
 7. Prescribed medication, excluding over the counter medication ~~[Medication]~~; or
 8. Special equipment.

(5) The extraordinary medical program shall include the reimbursement of funeral and burial expenses for a medically complex child who had a terminal medical diagnosis documented by a treating physician prior to an adoption being finalized, not to exceed \$4,500 for the cost of the funeral and burial.

Section 9. Annual Family Contact.

- (1) Annual contact with the adoptive family shall be made by mail, email, phone,~~[or]~~ home visit, or other cabinet method of contact to determine that the:
 - (a) Child remains in the adoptive home;
 - (b) Parent continues to provide care and support for the child; and
 - (c) Adoption assistance payments continue to meet the special needs of the child.
- (2) The cabinet may conduct a home visit after an adoption assistance annual contact is made by mail, email, phone, or other cabinet method of contact:
 - (a) If:
 1. The adoptive parent requests a home visit;
 2. The special needs of the child change, as indicated by the adoptive parent;
 3. Attempts to update information by additional mail, email~~[or]~~ phone, or other cabinet method of contact have failed; or
 4. The cabinet receives information that is contrary to the information verified by the adoptive parent during the annual contact; or
 - (b) In accordance with 922 KAR 1:330.

Section 10. Adoption Assistance Renegotiation.

- (1) Renegotiation of an adoption assistance agreement:
 - (a) May be requested by the cabinet or the adoptive parent before or after the adoption is finalized; and
 - (b) Is contingent on compliance with Sections 2(2), 6, 9, and 12 of this administrative regulation.
- (2) If conditions in KRS 199.555(6) are met, the cabinet shall reimburse extraordinary medical expenses requested by an adoptive parent of a special needs child to prevent

disruption of the adoption:

- (a) After the adoption is final; and
 - (b) Through state funded adoption assistance.
- (3) A move of the special needs child or the adoptive parent of the special needs child out of the state or country shall have no effect on the child's eligibility for state funded adoption assistance payments.
- (4) If an adoption assistance payment is changed through renegotiation, the cabinet and adoptive parent shall sign a new adoption assistance agreement.

Section 11. Service Appeal. An applicant for adoption assistance payments or an adoptive family aggrieved by a cabinet action shall be granted an administrative hearing in accordance with 922 KAR 1:320.

Section 12. Notice of Change.

- (1) Cabinet staff shall provide notice of a reduction, suspension~~[discontinuance]~~, or termination of adoption assistance payments:
- (a) Ten (10) calendar days in advance; and
 - (b) In accordance with 922 KAR 1:320, Section 6.
- (2) An adoptive parent shall notify the cabinet of any changes in circumstances that would make the adoptive parent ineligible for adoption assistance payments or change the amount of the adoption assistance payment as described in KRS 199.555(9) and Section 6 of this administrative regulation.

Section 13. State-funded Adoption Assistance Limitation. The number of state-funded adoption assistance cases and the amount of state-funded adoption assistance payments paid per case shall be limited by available funds for the state-funded adoption assistance program.

~~[Section 14.] [Training. Contingent upon the availability of funding, the Department for Community Based Services shall offer training to adoptive parents receiving state-funded adoption assistance consistent with training offered to foster home parents as specified in 922 KAR 1:495.]~~

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 4, 2024

FILED WITH LRC: June 10, 2024 at noon

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 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 August 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 August 31, 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.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Krista Quarles or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the state-funded adoption assistance program for children who would otherwise grow up in foster care to the extent funds are available.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish state-funded adoption assistance.

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

This administrative regulation conforms to the authorized statutes by establishing the state-funded adoption assistance program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the administration of the statutes through its establishment of a state-funded adoption assistance program.

(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 provides updated language regarding state-funded adoption assistance. It allows for a reduction in assistance payments in certain specific instances, includes reimbursement of funeral or burial expenses for a medically complex child that was adopted, increases the amount of adoption expenses the cabinet will cover for a special needs child, expands options for making annual contact, and makes technical corrections in accordance with KRS Chapter 13A.

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

This amendment is needed for consistency with 922 KAR 1:060, which is being amended for compliance with federal rules, and for consistency with the subsidized permanent custody program.

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

This amendment conforms to the content of the authorizing statutes through its clarification of and update of the state-funded adoption assistance program.

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

This amendment will assist in the effective administration of the statutes through the establishment of clearer guidelines regarding the state-funded adoption assistance program.

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

There were 1,096 unique children adopted from foster care in Kentucky in 2023.

(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:

The amendment to this administrative regulation reinforces current adoption assistance agreement language between the cabinet and an adoptive parent. There is no new action anticipated for adoptive parents or their children.

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

The amendment to this administrative regulation reinforces existing practice specified through the adoption assistance agreement between the cabinet and an adoptive parent. There is no new or additional cost anticipated for adoptive parents or their children.

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

The amendment to this administrative regulation clarifies benefits and services for adoptive parents and children adopted through a public agency adoption.

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

(a) Initially:

The amount of nonrecurring adoption expenses the cabinet will cover is increasing in this amendment, but is not projected to be substantial.

(b) On a continuing basis:

The administrative body will continually monitor its costs to make any adjustments necessary to maintain state-funded adoption assistance within appropriations.

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

The source of funding to be used for implementation and enforcement of this administrative regulation is state general 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:

This amendment does not require an increase in fees or funding.

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

The amendment to this administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applied. The state funded adoption assistance program is implemented in a like manner statewide.

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), 199.555(10).

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

The Cabinet for Health and Family Services will be impacted by this administrative regulation through administrative of the program.

(a) Estimate the following for the first year:

Expenditures:Expenditures will increase as a result of increasing the amount of nonrecurring adoption expenses that adoptive parents may request the cabinet cover, but that is not estimated to be a substantial increase

Revenues:This administrative regulation does not generate revenue.

Cost Savings:No cost savings to the cabinet are expected.

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

This is not expected to vary greatly.

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

None.

(a) Estimate the following for the first year:

Expenditures:No expenditures are expected.

Revenues:This administrative regulation does not generate revenue.

Cost Savings:No cost savings are expected.

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

This is not expected to differ over subsequent years.

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

Adoptive parents are regulated entities subject to this administrative regulation, but there are no new requirements established in this administrative regulation.

(a) Estimate the following for the first year:

Expenditures:Not applicable.

Revenues:Not applicable.

Cost Savings:The amount of nonrecurring adoption expenses that the cabinet may cover is being increased from \$1,000 to \$2,000 for the adoption of a special needs child.

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

This is not expected to vary greatly.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

Increasing the amount of nonrecurring adoption expenses that adoptive parents may receive from the cabinet from \$1,000 to \$2,000 for the adoption of a special needs child is expected to have a minor fiscal impact.

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

The cabinet may be paying more in nonrecurring adoption expenses for children and youth meeting the special needs criteria, but it is only an increase of \$1,000 per child who meets the criteria.

(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)

This administrative regulation will not have an overall negative or adverse major economic impact to entities.

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

This amendment does not establish costs to regulated entities, it includes cost savings to regulated entities that are eligible. The cost the cabinet may pay will be increased, but this is not expected to be substantial and will offset the cost of children remaining in cabinet custody.