

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

(Amended After Comments)

922 KAR 1:060. Federal Title IV-E adoption assistance.

RELATES TO: KRS 199.500(1), 199.502, 199.555, 199.557, Chapter 625, 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.557(4)

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 operate the programs and fulfill the responsibilities vested in the cabinet. KRS 199.557(4) requires the cabinet to implement federal Title IV-E adoption assistance payments in accordance with the administrative regulations promulgated by the cabinet. This administrative regulation establishes guidelines for the implementation of the federal Title IV-E adoption assistance program for children who may otherwise grow up in foster care.

Section 1. Definitions.

- (1) "Adoption assistance agreement" is defined by 42 U.S.C. 675(3).
- (2) "Adoption subsidy" means a payment for a special needs child placed for adoption when an adoption assistance agreement is complete.
- (3) "Federal Title IV-E adoption assistance" is defined by KRS 199.557(1).
- (4) "Nonrecurring adoption expenses" is defined by 42 U.S.C. 673(a)(6).
- (5) "Relative" means the father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, niece, great grandmother, great grandfather, great aunt, or great uncle of the child.

Section 2. Adoption Assistance Eligibility Criteria.

- (1) A child shall be determined by the cabinet as a special needs child in accordance with 42 U.S.C. 673(c), if:
 - (a) The child is available for adoption in accordance with:
 1. KRS 199.500(1);
 2. KRS 199.502; or
 3. KRS Chapter 625;
 - (b) The child has a specific factor or condition described by KRS 199.555(1) that makes the child difficult to place for adoption without adoption assistance; and
 - (c) Effort has been made to place the child with an appropriate adoptive parent without providing adoption assistance.
- (2) If the child has a strong emotional tie with the prospective adoptive parent while in the care of the prospective adoptive parent as a foster child, an exception to subsection (1)(c) of this section shall be made.
- (3) A special needs child shall:
 - (a) Meet the eligibility criteria established in 42 U.S.C. 673 when the adoption proceedings are initiated including:
 1. Eligibility for Aid to Families with Dependent Children effective on July 16, 1996, upon the child's removal from the home of a relative;
 2. Eligibility for Supplemental Security Income;
 3. Status as a child:
 - a. Born to a minor parent who is receiving Title IV-E foster care maintenance; and
 - b. Who has received Title IV-E foster care maintenance;

4. Having been in foster care for sixty (60) consecutive months on or after October 1, 2009; or

5. Status as a sibling of a child described in subparagraph 1. or 4. of this paragraph to be placed in the same adoption placement as the child; and

(b) Not have a parent with custody or legal claim to the child.

(4) Eligibility for Aid for Families with Dependent Children specified in subsection (3)(a)1. of this section shall not apply to a child in accordance with 42 U.S.C. 673(e).

(5) If an adoption assistance agreement is terminated in accordance with Section 7 of this administrative regulation or ~~reduced~~~~[renegotiated]~~ for a period of time in accordance with 922 KAR 1:530, a child previously eligible for federal Title IV-E adoption assistance shall be treated as having the same financial circumstances as the child had when originally adopted.

Section 3. Parental Standards. A parent receiving a child eligible for adoption assistance 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 a prospective adoptive parent receiving an adoption subsidy, the prospective adoptive parent and a cabinet representative shall review and sign an adoptive~~[the adoption]~~ placement agreement.

(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.

(1) Prior ~~[At the time of or prior]~~ to finalization of the adoption, an adoptive parent and the cabinet shall discuss~~[negotiate]~~ and sign an adoption assistance agreement that shall:

(a) Be in effect in accordance with 42 U.S.C. 675(3) and 45 C.F.R. 1356.40(b);

(b) Determine the nature and amount of the adoption subsidy; and

(c) Remain in effect until terminated, even if the adoptive parent moves out of the Commonwealth of Kentucky.

(2) If an adoption is finalized, the cabinet shall pay nonrecurring adoption expenses incurred by an adoptive parent during the adoption of a special needs child pursuant to 45 C.F.R. 1356.41.

(3) If a child is eligible for adoption assistance under 42 U.S.C. 673(a)(2)(A)(ii)(I)(bb), the requirement of Section 4(1) of this administrative regulation shall be waived.

(4) An adoption assistance payment shall begin on the date agreed to~~[that the adoption assistance agreement is signed]~~ by the adoptive parent and cabinet representative, as documented on the adoption assistance agreement.

(5)

(a) The amount of federal Title IV-E adoption assistance shall not exceed the amount that would be paid for foster care maintenance for the same child, in accordance with 42 U.S.C. 673(a)(3), including medically complex~~[fragile]~~, specialized medically complex~~[fragile]~~, and care plus foster care per diem reimbursements established by the Department for Community Based Services.

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

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

Section 6. Federal Title IV-E Adoption Assistance.

(1) Federal Title IV-E adoption assistance shall continue in accordance with KRS 199.557 and 42 U.S.C. 673(a)(4) until the child reaches age:

- (a) Eighteen (18); or
- (b) Twenty-one (21), if the child:
 1. Has a signed adoption assistance agreement on or after his or her sixteenth birthday and 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; or
 2. Is ~~is~~ determined to have a disability in accordance with subsection (2) of this section.

(2) Disability determination.

(a) In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), an adopted special needs child shall have a disability that warrants continuation of the child's federal Title IV-E adoption assistance if the child has been determined to meet the definition of permanent or total disability pursuant to 42 U.S.C. 1382c(a)(3) by either the:

1. Social Security Administration; or
2. Medical review team of the cabinet.

(b) In making a child's disability determination, the medical review team shall consider:

1. The child's medical history and subjective complaint regarding an alleged physical or mental disability, illness, or impairment; and
2. Competent medical testimony relevant to whether:
 - a. A physical or mental disability, illness, or impairment exists; and
 - b. The disability, illness, or impairment is sufficient to reduce the child's ability to gain full-time employment or pursue opportunities in a state or federal education program.

(c) Other factors to be considered by the medical review team in making a determination shall include the child's:

1. Age;
2. Employment history;
3. Educational background; and
4. Subjective complaint regarding the alleged effect of the physical or mental condition on the child's ability to support and care for self.

(d) The child shall be referred, if necessary, for further appraisal of his or her abilities.

(e) If the medical review team makes the disability determination, the medical review team shall provide a written report of the determination under this subsection to the cabinet and the:

1. Child, if the child is age eighteen (18) or older; or
2. Adoptive parent, if the child is under age eighteen (18).

(3) Federal Title IV-E adoption assistance may include:

- (a) Nonrecurring adoption expenses not to exceed ~~\$2,000~~~~[\$1,000]~~ incurred in the adoption of a special needs child; and
- (b) An adoption subsidy.

Section 7. Termination of Adoption Assistance Payments. In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), federal Title IV-E adoption assistance payments shall be terminated if:

- (1) The adoptive parent requests;
- (2) The child reaches age:
 - (a) Eighteen (18);~~or~~
 - (b) Twenty-one (21), if the child has met a requirement of Section 6(1)(b)is determined to have a disability in accordance with Section 6(2)) of this administrative regulation; or
 - (c) Eighteen (18) to twenty-one (21), if the child no longer meets a requirement of Section 6(1)(b) of this administrative regulation.
- (3) The cabinet determines that the:
 - (a) Adoptive parent is no longer legally responsible for the support of the child pursuant to KRS Chapter 625; or
 - (b) Child is no longer receiving support from the adoptive parent; or
- (4) No ~~An~~ ~~No~~ adoptive parent who signed the adoption assistance agreement remains~~does not remain~~~~remains~~ living.

Section 8. Adoption Assistance Reduction.

- (1) 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 in writing from the adoptive parent at least three (3) times.
- (2) The cabinet shall resume payments, including any needed adjustments to the agreement, once the adoptive parent has provided the requested documentation demonstrating financial responsibility and support of the child.

Section 9. ~~Section 8.~~ Adoption Assistance Renegotiation.

- (1) Renegotiation of an adoption assistance agreement may be requested by the adoptive parent before or after the adoption is finalized in accordance with 42 U.S.C. 673 or 922 KAR 1:530.
- (2) The renegotiated amount of federal Title IV-E adoption assistance payments shall be agreed upon by the:
 - (a) Adoptive parent; and
 - (b) Cabinet.
- (3) If the adoption assistance payment is renegotiated in accordance with subsections (1) and (2) of this section, the cabinet and adoptive parent shall sign a new adoption assistance agreement.
- (4) Federal Title IV-E adoption assistance payments shall not be changed by a move of the adoptive parents out of the state or country.

Section 10. ~~Section 9.~~ Service Appeal. An applicant for adoption assistance payments or an adoptive family aggrieved by a cabinet action may request review through~~shall be granted~~ an administrative hearing in accordance with 922 KAR 1:320.

Section 11. ~~Section 10.~~ Notice of Change.

- (1) Cabinet staff shall provide notice of a reduction 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) In accordance with 42 U.S.C. 673, an adoptive parent shall notify the cabinet of any change in circumstance that would make the adoptive parent ineligible for adoption assistance payments or change the amount of the adoption assistance payment.

Section 12. ~~[Section 11.]~~ Extraordinary Medical Expenses. In accordance with KRS 199.555(6) or 922 KAR 1:050, an adoptive child shall be eligible for assistance with extraordinary medical expenses.

Section 13. Annual Family Contact.

(1) Annual contact with the adoptive family shall be made by mail, email, phone, 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, 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.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 11, 2024

FILED WITH LRC: October 14, 2024 at 10:50 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rachael Ratliff or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes adoption assistance supported under federal Title IV-E of the Social Security Act. This administrative regulation is also being amended for clarity in updated changes to existing language as a result of written comments received during the public comment period.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the adoption assistance program under federal Title IV-E of the Social Security Act.

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

The administrative regulation conforms to the authorizing statutes through its establishment of federal Title IV-E adoption assistance.

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

The administrative regulation assists in the effective administrative of the statutes through its establishment of the federal Title IV-E adoption assistance.

(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 federal Title IV-E adoption assistance and eligibility criteria for youth recipients. The amount of nonrecurring adoption expenses that the cabinet will cover is being increased from \$1,000 to \$2,000 for the adoption of a special needs child. This amendment requires that contact with the adoptive family be made on an annual basis while they continue to receive financial assistance, makes conforming amendments, and includes technical corrections in accordance with KRS Chapter 13A. This administrative regulation is also being amended for clarity as a result of written comments received during the public comment period.

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

This amendment is necessary to reflect federal eligibility criteria changes based on the age of the child. Without this amendment, the state risks federally-imposed corrective action and possible penalty.

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

This amendment conforms to the content of the authorizing statutes through its alignment with recent changes to Title IV-E of the Social Security Act.

(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 its alignment with federal law.

(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 provides updated language regarding federal Title IV-E adoption assistance and eligibility criteria for youth recipients. This amendment includes language regarding annual family contact and the criteria for which youth may continue to receive assistance beyond age eighteen (18).

(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 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. In addition, the amendment protects federal funding for adoption assistance.

(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. For the purpose of this administrative regulation, this cost is paid with federal funding.

(b) On a continuing basis:

The administrative body will continually monitor its costs to make any adjustments necessary to maintain 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 and federal funds made available under Title IV-E of the Social Security Act.

(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 federal Title IV-E adoption assistance program is implemented in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

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

45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3)

(2) State compliance standards.

KRS 194A.050(1), 199.557(4)

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

45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3)

(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 stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

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), 199.557(4), 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3).

(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 administration 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 the cabinet will cover, but that is not estimated to be a substantial increase and it is paid with federal funding.

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, and the only new requirement established in this amendment is that they participate in communication with the cabinet once per year while they continue to receive financial support.

(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 will 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 receive from the cabinet from \$1,000 to \$2,000 for the adoption of a special needs child is expected to have a fiscal impact, but this is paid with federal funding.

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

The cabinet will 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 pays will be increased, but this is provided with federal funding and is not expected to be substantial.