

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 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 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. 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 the adoption placement agreement.
- (2) The 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) At the time of or prior to finalization of the adoption, an adoptive parent and the cabinet shall 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 that the adoption assistance agreement is signed by the adoptive parent.
- (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-fragile, specialized medically-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 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 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 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 \$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 is determined to have a disability in accordance with Section 6(2) of this administrative regulation;
- (3) The cabinet determines that the:
 - (a) Adoptive parent is no longer legally responsible for the support of the child; or
 - (b) Child is no longer receiving support from the adoptive parent; or
- (4) No adoptive parent who signed the adoption assistance agreement remains living.

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 9. 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 10. Notice of Change.

(1) Cabinet staff shall provide notice of 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 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.

(35 Ky.R. 1377; 1818; eff. 2-6-2009; 36 Ky.R. 1137; 1494; eff. 2-5-2010; 45 Ky.R. 1451; eff. 1-23-2019; TAm eff. 3-20-2020.)