

## **CABINET FOR HEALTH AND FAMILY SERVICES**

### **Department for Community Based Services**

#### **Division of Protection and Permanency**

#### **(Amendment)**

### **922 KAR 1:360. Private child care placement, levels of care, and payment.**

RELATES TO: KRS 199.011, 199.640-199.680, 199.801, 600.020(25), ~~605.090(1)(b), (d), 610.110, 142 U.S.C. 622, 672, 675~~

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

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 programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) and 605.090(1)(d) authorize the cabinet to establish by administrative regulation the rate setting methodology and the rate of payment for child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations establishing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice or the cabinet, in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon the conditions established by the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level and placement setting; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care and placement setting; and (f) procedures for determination of components of the model program cost analysis.

#### **Section 1. Definitions.**

- (1) "Cabinet" is defined by KRS 199.011(3).
- (2) "Child-caring facility" or "facility" is defined by KRS 199.011(5).
- (3) "Child-placing agency" or "agency" is defined by KRS 199.011(6).
- (4) "Department" is defined by KRS 199.011(7) and 199.641(1)(b).
- (5) "Emergency shelter" is defined by KRS 600.020(25).
- (6) "Gatekeeper" means the department or agent responsible for:
  - (a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and
  - (b) Other administrative duties in the areas of:
    1. Assessment;
    2. Placement;
    3. Performance measurement; and
    4. Consultation regarding children and their needs.
- (7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.
- (8) "Initial level of care" means a level of care:
  - (a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and
  - (b) That is time-limited and effective for the first six (6) months of a child's placement.
- (9) "Level of care" means the standard representing the treatment and service needs of a child placed by the cabinet in out-of-home care.
- (10) "Level of care packet" means an assessment conducted by designated cabinet staff and a collection of forms required for submission to the gatekeeper for the purpose of

determining the appropriate level of care and placement setting in accordance with Section 2(2) of this administrative regulation.

(11) "Medically complex" means a child who is determined to have a medical condition as defined by 922 KAR 1:495 and further described in 922 KAR 1:350, Section 4.

(12) "Model program cost analysis" is defined by KRS 199.641(1)(c).

(13) "Placement coordinator" means an individual whose responsibilities are established in KRS 199.801.

(14) "Reassigned level of care" means a level of care that is:

- (a) Determined by the gatekeeper after a child's level of care expires; and
- (b) Authorized for a specific period of time.

(15) "Time study" is defined by KRS 199.641(1)(d).

(16) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

- (a) Identifying the child's current level of functioning, treatment, service, and supervision needs; and
- (b) Assigning the appropriate level of care.

## Section 2. Referral Process for Level of Care System Placement.

(1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age or a child who is medically complex regardless of age at the time:

- (a) The child is referred for placement with a child-caring facility or child-placing agency;
- (b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age or is found to be medically complex; or
- (c) A child's level of care expires and assignment of a new level is necessary.

(2) A level of care packet shall include the following child-specific information:

- (a) Identifying data;
- (b) Individual strengths and limitations;
- (c) Daily living skills;
- (d) Physical health needs including:
  - 1. Any significant medical history;
  - 2. Current diagnoses, assessments, and treatment; and
  - 3. Documentation indicating the child's medically complex status if the child is medically complex;
- (e) Behavioral health needs including:
  - 1. Screening tools utilized based upon the child's age; and
  - 2. Current diagnoses, assessments, and treatment recommendations;
- (f) Medications;
- (g) History of substance abuse, high risk, or other significant behavior including:
  - 1. Sexual acting out; and
  - 2. Legal history, status, or other court involvement;
- (h) Out-of-home care placement information including:
  - 1. Reason for entering out-of-home care;
  - 2. History of abuse, neglect, or dependency;
  - 3. Current custody status;
  - 4. Current and previous placements; and
  - 5. Permanency goal;
- (i) Social supports;
- (j) Educational functioning, grade level, and any special educational need; and
- (k) Religious background and practices.

- (3)
- (a) If a child needs placement within a child-caring facility or a child-placing agency, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the placement coordinator.
  - (b) The placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.
- (4) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement in accordance with KRS 199.801 and 922 KAR 1:370, a cabinet staff person shall:
- (a) Complete the ~~DP-114T, Transitional Child-Caring and Child-Placing Level of Care Schedule, through January 31, 2023, or the DP-114, Child-Caring and Child-Placing Level of Care Schedule, effective February 1, 2023,~~ with the level of care payment rate for placement type:
    - 1. As assigned by the gatekeeper within the previous six (6) months; or
    - 2. If there is an emergency placement, within two (2) business days of the placement or receipt of the assigned level of care;
  - (b) Arrange transportation for the child to the placement; and
  - (c) Notify the placement coordinator of the selected placement.
- (5) If a child-caring facility or child-placing agency accepts an emergency placement requested by the cabinet outside of the gatekeeper's regular working hours, a cabinet staff person shall:
- (a) Submit a level of care packet to the gatekeeper for a child who does not have a current level of care assignment; and
  - (b) Inform the placement coordinator of the location and date of placement.
- (6) The placement coordinator shall notify a child-caring facility or child-placing agency that was not chosen for placement upon provision of notification in accordance with subsection (4)(c) of this section.

**Section 3. Gatekeeper Responsibilities. The gatekeeper shall:**

- (1) Evaluate a child referred by the cabinet or currently placed in a child-caring facility or child-placing agency for the purpose of establishing an initial or reassigned level of care. The child shall be:
  - (a) Four (4) years of age or older; or
  - (b) Determined to be medically complex by designated cabinet staff;
- (2) Within three (3) working days of receipt of the level of care packet:
  - (a) Determine the appropriate level of care according to an assessment of the child's treatment, supervision, and service needs consistent with one (1) of the three (3) levels of care; and
  - (b) Return the completed CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment, to the department and the child-caring facility or the child-placing agency;
- (3) Assess a child placed in a child-caring facility in accordance with 42 U.S.C. 675a(c) within the first thirty (30) days of placement;
- (4) Conduct a utilization review for a child:
  - (a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and
  - (b)
    - 1. Every three (3) months thereafter if the child is in a child-caring facility; or
    - 2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;
- (5) Reassign a child's level of care after the previous level has expired;
- (6) Monitor each child-caring facility and child-placing agency;

- (7) Maintain a confidential information system for each child served that shall include:
  - (a) Placement history;
  - (b) Level of care assignments;
  - (c) Length of treatment; and
  - (d) Discharge outcomes; and
- (8) For a utilization review, return the completed CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, to the child-caring facility or child-placing agency and the cabinet after a level is conducted or reassigned.

Section 4. Levels of Care. A level of care shall be assigned in accordance with this section.

- (1) A Level I child shall be a child who requires a routine home environment that:
  - (a) Provides for the basic needs of the child;
  - (b) Provides guidance and nurturing;
  - (c) Provides supervision to meet the needs of the child;
  - (d) Provides educational support;
  - (e) Provides access to routine medical care; and
  - (f) Ensures the emotional and physical well-being of the child.
- (2) A Level II child shall be a child who:
  - (a) Requires a routine home environment that meets the requirements of subsection (1) of this section;
  - (b) Has identified treatment needs based on available behavioral health screening and assessment information, current treatment recommendations, or has been determined to be medically complex;
  - (c) Has a history of complex trauma related to maltreatment;
  - (d) Requires supervision in a structured supportive setting with:
    - 1. Counseling available from professional staff;
    - 2. Educational support; and
    - 3. Services designed to improve physical and behavioral health and wellbeing;
  - (e) May occasionally require intense levels of intervention to maintain the least restrictive environment; and
  - (f) Requires a program flexible enough to allow increased:
    - 1. Independence if the child is capable; or
    - 2. Structure during temporary periods of regression.
- (3) A Level III child shall be a child who:
  - (a) Has significant treatment needs as indicated by:
    - 1. Available behavioral health screening and assessment information or current treatment recommendations that require specialized or frequent treatment services;
    - 2. A determination by designated cabinet staff that the child has a high degree of medical complexity that requires specialized medical care;
    - 3. The presence of both significant behavioral health needs requiring treatment and a determination of medical complexity by designated cabinet staff; or
    - 4. A severe impairment or disability that requires a caregiver to attend to all care needs of the child; and
  - (b) Requires a highly structured supportive setting:
    - 1. With frequent therapy or therapeutic services provided by a qualified mental health professional or other treatment professional allowed pursuant to 922 KAR 1:300 within a treatment program designed to improve social, emotional, and educational adaptive behavior;
    - 2. That includes twenty-four (24) hour supervision; or
    - 3. That provides safe and effective care for a severe, chronic medical condition, behavioral health issue, or other highly specialized needs.

Section 5. Payment Methodology and Rates.

(1) Payment Methodology.

(a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the "model program cost analysis" defined by KRS 199.641(1)(c).

(b) Each private child-caring facility and child-placing agency shall report to the cabinet annually, on the DPP-888, Instructions for Completing the Annual Cost Report and Time Study for Child Caring and Child Placing Programs and Facilities.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.

(a) The factor shall be determined:

1. Based on the amount of treatment provided at each level of care; and

2. By determining the median of:

a. Number of daily treatment hours, derived from time study data, provided to children served by private child-caring facilities and child-placing agencies; and

b. Level of care of children served by private child-caring facilities and child-placing agencies that contract with the cabinet.

(b)

1. For children whose level is determined, the median level of care shall be represented by an index factor of one (1).

2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of eighty (80)~~ninety (90)~~ percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Statewide median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

a. Board;

b. Care; and

c. Treatment components; or

2. For an emergency shelter without a treatment license:

a. Board; and

b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)

(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:

1. Child safety while in the care of a private child-caring facility or child-placing agency;

2. Child safety after reunification with the child's family;

3. Adequate educational support;

4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;
  5. Increased placement stability during the service period;
  6. Increased achievement of permanency goals; and
  7. Increased stability in less restrictive or permanent placement following planned discharge.
- (b) The cabinet's contract with a private child-caring facility shall specify the:
1. Indicators used to measure the performance outcomes established in paragraph (a) of this subsection; and
  2. Target percentages used as performance goals.
- (c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.
- (d) At the time the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.
- (e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.
- (7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:
- (a) Shall be geared toward improved performance outcomes; and
  - (b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.
- (8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:
- (a) Reduced length of stay in out-of-home placement;
  - (b) Increased safety from child abuse or neglect;
  - (c) Increased number of children moving into and remaining in permanent placement;
  - (d) Increased number of children and their families cared for in close proximity to their home communities;
  - (e) Increased number of children reunified with their families;
  - (f) Increased accountability for success in after care; or
  - (g) Decreased reentry into state custody.

#### Section 6. Residential Care.

- (1) A child-caring facility that cares for children in the custody of the cabinet shall be licensed pursuant to 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.
- (2) The facility shall comply with 922 KAR 1:300, Section 8, Residential Treatment Program, if providing treatment-oriented services.
- (3) Only a child assigned as Level III shall be placed in residential care.
- (4) The daily rate for residential care to a child-caring facility shall be:
  - (a) \$193.50 per child for a child-caring facility determined by designated cabinet staff to not meet the requirements of a specified setting for placement in accordance with 42 U.S.C. 672(k)(2); and
  - (b) ~~\$336.00~~ ~~[\$298.50]~~ per child for a child-caring facility determined by designated cabinet staff to meet the requirements of a specified setting for placement in

accordance with 42 U.S.C. 672(k)(2).

#### Section 7. Emergency Shelter Care.

(1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

- (a) ~~\$220.59~~ ~~[\$193.50]~~ per child per day for a child-caring facility with a treatment license; or
- (b) ~~\$165.44~~ ~~[\$145.12]~~ per child per day for a child-caring facility without a treatment license.

(2) If a child with an assigned level of care enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall adhere to the child's individual treatment plan.

#### Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency.

(1) The basic daily rate for foster care shall be ~~\$51.33~~ ~~[\$44.82]~~.

(2) ~~The [If assessed on or after July 1, 2022, upon the next utilization review, the]~~ daily rate for foster care shall be ~~\$51.33~~ ~~[\$44.82]~~ per child for:

- (a) A child under the age of four (4) who has not been assigned a level; and
- (b) A child over the age of four (4) with a level I assigned level of care.

(3) ~~The [If assessed prior to July 1, 2022, the daily rates for therapeutic or treatment foster care shall be as follows:]~~

~~[(a)] [Levels I and II, if the child is stepped down from Level III or higher \$76.10 per child;]~~

~~[(b)] [Level III - \$83.16 per child;]~~

~~[(c)] [Level IV - \$101.23 per child; and]~~

~~[(d)] [Level V - \$139.96 per child.]~~

~~[(4)] [If assessed on or after July 1, 2022, upon the next utilization review, the]~~ daily rates for therapeutic or treatment foster care shall be:

- (a) Level II - ~~\$99.50~~ ~~[\$83.16]~~ per child; and
- (b) Level III - \$139.96 per child.

(4) A private agency foster home shall not receive a per diem that is less than the corresponding public foster home per diem published at <https://www.chfs.ky.gov/agencies/dCBS/dpp/Pages/agreements.aspx>.

#### Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

- (1) A rate consistent with the assigned level of care for the adolescent parent; and
- (2) Inclusive of child care cost, the amount established in Section 8(1) of this administrative regulation for the committed child of an adolescent parent who is committed to the cabinet.

#### Section 10. Independent Living Programs.

(1) An independent living program shall be licensed pursuant to 922 KAR 1:305 and shall meet the standards for independent living programs established in 922 KAR 1:310 and 922 KAR 1:340.

(2) The daily rate for an independent living program shall be:

- (a) ~~\$99.50~~ ~~[\$83.16]~~ per child for Level I or Level II; and
- (b) \$139.96 per child for Level III.

(3) A Level III child in an independent living setting shall require increased structure, supervision, case management, and treatment services.

#### Section 11. Programs with Decoupled Rates. ~~[(1)]~~ A child-caring facility or child-placing agency providing highly specialized behavioral health services may be paid for board and treatment services separately through agreement with the:

- (1) ~~((a))~~ Department for the cost of room, board, and watchful oversight; and
- (2) ~~((b))~~ Department for Medicaid Services or its designee for behavioral health treatment services.

#### Section 12. Provider Requirements.

- (1) A child-caring facility or child-placing agency shall:
  - (a) Inform the department of the levels of care the facility or agency has the ability to serve;
  - (b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:
    1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;
    2. Clinical services including:
      - a. The evaluation and treatment of behavioral health needs; and
      - b. Identification and alleviation of related trauma symptoms, disability, or distress experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and
    3. Support services that:
      - a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;
      - b. Allow a child to cope with the trauma, disability, or distress;
      - c. Provide access to improving the educational or vocational status of the child; and
      - d. Provide essential elements of daily living;
  - (c) Submit the following reports in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:
    1. To the gatekeeper, a Child and Adolescent Needs and Strengths assessment report completed within the past six (6) months or another supplemental tool approved by the gatekeeper; and
    2. To the gatekeeper and designated cabinet staff, a copy of the CRP-7, Children's Review Program Application for Level of Care Payment (ALP):
      - a. On a quarterly basis, for a private child care residential placement; or
      - b. On a semiannual basis for a foster care placement;
  - (d) Provide outcomes data and information as requested by the gatekeeper; and
  - (e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:
    1. The Council on Accreditation; or
    2. The Joint Commission.
- (2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

#### Section 13. Utilization Review and Authorization of Payment.

- (1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports established in Section 12(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.
- (2) If the child-caring facility or child-placing agency fails to submit the reports as established in Section 12(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:
  - (a) Suspend payments until the necessary information has been submitted to the gatekeeper;



- (b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or
- (c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.
- (3) If the child-caring facility makes timely submission of the reports, and if the:
  - (a) Level of care remains unchanged, payments shall continue unchanged;
  - (b) Level of care is reduced, and the:
    - 1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or
    - 2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or
  - (c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.
- (4) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as established in Section 14 of this administrative regulation.

#### Section 14. Redetermination.

- (1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:
  - (a) New information that supports the request for a new level; and
  - (b) Completion of the "request for redetermination" section of one (1) of the following forms:
    - 1. CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, for a utilization review;
    - 2. CRP-4, Children's Review Program Notice of Level of Care Redetermination;
    - 3. CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, for a utilization review; or
    - 4. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment, for a reassignment.
- (2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review due date or admission, and if the gatekeeper assigns a higher level with a CRP-4, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:
  - (a) The date of the most recent utilization review due date if the complete utilization review materials were received on or before the utilization review due date; or
  - (b) The date of admission.
- (3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review due date or admission, and if a:
  - (a) Higher level is assigned by the gatekeeper with a CRP-4, the increased payment shall be effective the day after the request is received by the gatekeeper; or
  - (b) Lower level is assigned by the gatekeeper with a CRP-4, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.
- (4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-4, an appeal may be requested in accordance with Section 16 or 17 of this administrative regulation.

#### Section 15. Reassignment.

- (1) If the level of care expires and the child is moved to a different child-caring facility or child-placing agency placement, a reassigned level of care shall be obtained by the:
  - (a) Department completing a level of care packet for a level assignment; or
  - (b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:
    1. A cover letter requesting a reassignment;
    2. The most recent Child and Adolescent Needs and Strengths assessment report or a comparable assessment of the child; and
    3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary.
- (2) The reassigned level of care rate shall be effective on the date of admission to the new placement.
- (3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as established in Section 14 of this administrative regulation.

#### Section 16. Informal Dispute Resolution.

- (1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.
- (2) Upon receipt of a request for informal resolution, the cabinet shall:
  - (a) Review the request; and
  - (b) Render a written decision on the issue raised within thirty (30) calendar days unless an extension is granted by the secretary or designee:
    1. Due to extenuating circumstances that prolong the review; and
    2. With notice provided to the contract agent.
- (3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section (17) of this administrative regulation.

Section 17. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

#### Section 18. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "CRP-2, Children's Review Program Notice of Level of Care Payment Authorization", 01/22;
  - (b) "CRP-4, Children's Review Program Notice of Level of Care Redetermination", 01/22;
  - (c) "CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", 01/22;
  - (d) "CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment", 01/22;
  - (e) "CRP-7, Children's Review Program Application for Level of Care Payment (ALP)", 07/22;
  - (f) ~~"DPP-114T, Transitional Child Caring and Child Placing Level of Care Schedule", 07/22;~~
  - ~~{(g)}~~ "DPP-114, Child Caring and Child Placing Level of Care Schedule", ~~05/23~~~~{02/23}~~; and
  - (g) ~~{(h)}~~ "DPP-888, Instructions for Completing the Annual Cost Report and Time Study for Child Caring and Child Placing Programs and Facilities", 07/22.

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*LESA DENNIS, Acting Commissioner*  
*CARRIE BANAHAN, Deputy Secretary*

APPROVED BY AGENCY: April 25, 2023

FILED WITH LRC: May 4, 2023 at 3:45 p.m.

**PUBLIC HEARING AND COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on July 24, 2023, 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 July 17, 2023, 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 July 31, 2023. 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 502-564-6746; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person:**Laura Begin **Phone:** (502) 564-3703 **Email:** Laura.Begin@ky.gov

**(1) Provide a brief summary of:**

**(a) What this administrative regulation does:**

This administrative regulation establishes levels of care based upon the needs of a child for whom the Cabinet for Health and Family Services has legal responsibility, a payment rate for each level, gatekeeper responsibilities, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program costs analysis.

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

KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) and 605.090(1)(d) authorize the cabinet to establish by administrative regulation the rate setting methodology and the rate of payment for child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations establishing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice or the cabinet in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon the conditions established by the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605.

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

This administrative regulation conforms to the content of the authorizing statutes by establishing the levels of care and associated payments for a child's placement at a child-caring facility or child-placing agency consistent with the level and quality of care and service provided.

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

This administrative regulation assists with the effective administration of the statutes through its incorporation of the methodology regarding the placement of a child in the custody of the cabinet with a child-caring facility or child-placing agency, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

**(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 amendment increases the per diem rates for specific levels of care provided for children with the highest needs in the custody of the state. The annual audited cost report and time study and preliminary data from the most recent rate study have been evaluated and the Department for Community Based Services (DCBS) has determined that a mid-cycle inflation adjustment is necessary to adequately reimburse child-placing and child-caring providers. Because documentation and analysis show that this rate increase is justified and needed, federal funding will be utilized in implementing this amendment. Documentation that the department

received from the Children's Alliance requests that, "this rate increase be implemented as soon as possible as private child-caring and child-placing agencies are struggling to cover their rapidly rising costs given the swift and unprecedented inflation rates, respond to the workforce crisis that has ensued since the pandemic and meet the increased need for behavioral health services. Providers need financial relief as soon as possible". Material incorporated by reference is also being amended to reflect this rate increase.

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

This amendment is necessary to increase the reimbursement rate for the care of children placed in child-caring and child-placing facilities. Facilities have struggled to maintain staff at safe staff-to-child ratios, which has caused facilities to not be able to accept the placement of children in the state's custody with high medical or behavioral health needs. DCBS needs to ensure that these facilities remain open and able to accept and care for children. Audits and studies have shown that the current rates are not adequate; therefore, this increase will be paid with federal funds. The Children's Alliance has stressed the urgent need to increase rates so that agencies can continue to provide needed services to the most vulnerable citizens. The rate increase is anticipated to assist with provider capacity, thereby better assuring placement options and quality care for children in state custody. The health and welfare of these children are jeopardized without the payment rate increase, in addition to threats to federal child welfare funding due to an inadequate service array for children requiring out-of-home care.

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

KRS 199.641(2) states, "when the department chooses to contract with a child-caring facility or child-placing agency for services to a child in the custody of or committed to the department, the department shall make payments to that facility based on the rate setting methodology developed from the model program cost analysis." This amendment ensures that payments to facilities are consistent with cost analyses, audits, and studies, and that private facilities have adequate funds to provide safe staff-to-child ratios and can continue to accept the placement of children requiring higher levels of care.

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

The amendment will assist in the effective administration of the statutes by increasing some payment rates so that they are more consistent with actual provider costs, thereby better facilitating placement options and preserving the health and welfare of children in the custody of the cabinet.

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

As of April 2023, there were 5,057 unique children placed in a private facility or agency setting according to their needed level of care established in this administrative regulation. There were 49 child-caring agencies and 122 child-placing agencies licensed to operate in Kentucky.

**(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 children affected by this administrative regulation will have no new action required. Federal law has increased the standards that must be met for some of the

entities providing care pursuant to this administrative regulation; therefore, they will be receiving increased per diems for providing care and meeting these new standards. It is the intent of the department that these increases will also help maintain staff and private foster homes so that the placement of children with higher therapeutic or medical needs will be accepted.

**(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 costs to affected entities, only to the department.

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

Affected entities will receive a per diem rate increase through this amendment. This rate increase is designed to offset the cost of meeting higher standards and to address the staffing crisis experienced by many facilities. Children in the state's custody will benefit from having more placement options and providers that can provide the level of care they need.

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

**(a) Initially:**

The per diem increases are within existing appropriations.

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

The per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

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

The sources of funding for these programs include federal Title IV-E (of the Social Security Act) foster care maintenance, general funds, and agency and restricted funds derived from the Temporary Assistance for Needy Family (TANF) block grant and Medicaid.

**(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:**

No increase in fees or funding is necessary to implement this administrative regulation.

**(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?**

This administrative regulation does include tiering as different per diem rates and standards are associated with specific levels of care provided to children in the state's custody.

## **FEDERAL MANDATE ANALYSIS COMPARISON**

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

42 U.S.C. 622, 672, 675

**(2) State compliance standards.**

KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

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

42 U.S.C. 622, 672, 675

**(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. The increase in per diem rates are necessary in order to meet the higher standards required by the Family First Prevention Services Act and to address the staffing crisis experienced by facilities in providing care to children with high needs.

**(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.

## FISCAL NOTE

**(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

The Cabinet for Health and Family Services, specifically the Department for Community Based Services (DCBS), is impacted by this administrative regulation.

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

KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1), 42 U.S.C. 622, 672

**(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

**(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?**

This administrative regulation will generate no new revenues.

**(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?**

This administrative regulation will generate no new revenues.

**(c) How much will it cost to administer this program for the first year?**

The administrative body has conducted extensive analysis of audits and studies to ensure the per diem increases are sustainable within appropriations.

**(d) How much will it cost to administer this program for subsequent years?**

The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

**Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.**

**Revenues (+/-):**

**Expenditures (+/-):**

**Other Explanation:**

**(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.**

**(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?**

No cost savings are anticipated.

**(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?**

No cost savings are anticipated.

**(c) How much will it cost the regulated entities for the first year?**



There are no costs to regulated entities.

**(d) How much will it cost the regulated entities for subsequent years?**

There are no costs to regulated entities.

**Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.**

**Cost Savings (+/-):**

**Expenditures (+/-):**

**Other Explanation:**

**(5) Explain whether this administrative regulation will have a major economic impact, as defined below.**

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a negative major economic impact; rather, it provides higher payment rates to affected entities.