

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

922 KAR 1:520. Supplements to per diem rates.

RELATES TO: KRS 2.015, 199.011(4), (10), ~~200.503(3)~~~~[200.115(1)]~~, 600.020(9), (30), ~~[605.120(2)]~~, 610.110(6), ~~[620.020(1)]~~, ~~620.140(1)(d)~~~~[42 U.S.C. 672]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 605.120(2)

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 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 605.120(2) requires the cabinet to establish a reimbursement system, within existing appropriation amounts, for foster parents that comes as close as possible to meeting the actual cost of caring for foster children, and to address additional costs associated with providing care to children with exceptional needs. In addition, *Olmstead v. L.C. and E.W.*, 119 S. Ct. 2176 (1999), held that unnecessary institutionalization of a person with a disability may be a violation of the Americans with Disabilities Act of 1990, 3 U.S.C. 421 and that, given certain exceptions, services should be delivered in the most integrated setting appropriate to the treatment needs of a person with a disability. This administrative regulation establishes the requirements for a foster home to receive a high-risk or parenting youth supplement reimbursement, to the extent funds are available, for extraordinary care the foster home provides to a child with exceptional needs, or a parenting youth, who is in the custody of the cabinet.

Section 1. Definitions.

(1) ~~["Case permanency plan" is defined by KRS 620.020(1).]~~

~~[(2)]~~ "Child" means:

(a) A child as defined by KRS 199.011(4) and 600.020(9);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d);
or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(2) "Child with a serious emotional disability" is defined by KRS 200.503(3).

(3) ~~["Crisis" means a factor or set of factors that:]~~

~~[(a)] [Jeopardizes a child's placement in a home; and]~~

~~[(b)] [Creates a risk for removal of the child from the home to a more restrictive setting, including institutionalization.]~~

~~[(4)]~~ "Exceptional needs" means the needs of a child:

(a) As specified in Section 2(2) or 4 of this administrative regulation; and

(b) Reimbursed in accordance with KRS 605.120(2).

(4) ~~[(5)]~~ "Extraordinary care" means services:

(a) Provided to a child with exceptional needs in the custody of the cabinet; and

(b) That exceed a regular per diem, as established in 922 KAR 1:350, Section 10.

~~[(5)] [(6)] ["Family team meeting" means a meeting convened to develop a child's case permanency plan to successfully attain the desired outcomes for the child and family.]~~

~~[(7)]~~ "Foster home" means:

- (a) A "foster family home" as defined by KRS 199.011(10) and 600.020(30), if referring to a physical structure; or
- (b) An individual approved as a foster parent by the cabinet pursuant to 922 KAR 1:310 or 922 KAR 1:350, if referring to an individual.
- ~~(6)~~ ~~[(8)]~~ "High-risk supplement" means a reimbursement to a foster home that is necessary to cover an additional expense associated with the provision of extraordinary care.
- ~~(7)~~ ~~[(9)]~~ "Parenting youth supplement" means a daily supplement to the per diem that is necessary to cover an additional expense associated with a youth who is placed with and has custody of their own child.
- ~~[(10)]~~ ~~["Transition" means the period of a child's adjustment from a more restrictive out-of-home care placement to a foster home.]~~

Section 2. High-risk supplement.

- (1) To the extent funds are available, the cabinet shall reimburse a foster home for the extraordinary care provided to a child with exceptional needs.
- (2) The cabinet shall consider a child eligible for a high-risk supplement if:
 - (a)
 - 1. Community resources meet the child's needs; and
 - 2. The child requires services consistent with Level ~~III~~~~[IV or Level V]~~ care established in 922 KAR 1:360, Section 4;
 - (b) The child is placed in a public child welfare agency~~[medically complex or care plus]~~ foster home in accordance with 922 KAR 1:350;
 - (c) A child has a need for extraordinary care due to~~[-a]~~:
 - 1. Being a child with a serious emotional disability. ~~[Transition]; [or]~~
 - 2. Being designated as medically complex by cabinet staff, as established in 922 KAR 1:350, Section 4(1)(b); or
 - 3. Dual involvement with the Department of Juvenile Justice ~~[Crisis];~~
 - (d) A consultation~~[family team meeting]~~ is held to:
 - 1. Assess the child and prospective foster home's need for additional support and services; and
 - 2. Complete a "DPP-111B, High-Risk Supplement Assessment"; and
 - ~~[2.] [Include the following individuals:]~~
 - ~~[a.] [Designated regional cabinet staff;]~~
 - ~~[b.] [Family members, including the child or a sibling;]~~
 - ~~[c.] [Family friends;]~~
 - ~~[d.] [Community partners;]~~
 - ~~[e.] [Foster parents; or]~~
 - ~~[f.] [Other individuals requested by the family or cabinet staff; and]~~
 - (e) The foster home agrees to maintain a monthly log of the services provided to the child for the duration of the high-risk supplement.
- ~~(3) [If a child is eligible for the high-risk supplement:]~~
 - ~~[(a)] [Designated regional cabinet staff shall develop an addendum to the child's case permanency plan that includes specific services and their timeframes for the child; and]~~
 - ~~[(b)] [The child's foster home shall complete monthly logs of the child's extraordinary care.]~~
- ~~[(4)]~~ The high-risk supplement shall be:
 - (a) A standardized amount ~~[added to the per diem]~~ specified in contract between an approved foster home and the cabinet; and
 - (b) Provided to a foster home for a period of up to six (6) months if the requirements established in this section are met.

(4) ~~((5))~~ Extensions to the high-risk supplement may be granted in six (6) month intervals if:

(a) The child is reassessed by the cabinet pursuant to Section 3 of this administrative regulation and continues to meet the eligibility requirements established in subsection (2) of this section; and

(b) A consultation is completed ~~[The family team meeting is held]~~ prior to granting each extension in order to:

1. Review progress made during~~[in]~~ the child's current case planning conference~~[permanency plan addendum]~~, which shall include a review of the foster home's monthly log of the child's extraordinary care; and

2. Complete a new "DPP-111B, High-Risk Supplement Assessment".

(5) ~~((6))~~ If a high-risk supplement extension is granted, the~~[the]~~

~~[(a)] [The cabinet shall develop a new addendum to the child's case permanency plan that includes the specific services and their timeframes to be provided through the period of the extension granted; and]~~

~~[(b)] [The]~~ foster home shall continue to complete monthly logs of the child's extraordinary care.

Section 3. Reassessment for High-Risk Supplement.

(1) If a foster home receives a high-risk supplement, the child shall be reassessed when the supplement expires to determine if the eligibility requirements established in Section 2 of this administrative regulation are met.

(2) If a child eligible for the high-risk supplement is relocated to another foster home or out-of-home placement, the cabinet:

(a) Shall cease reimbursement of the high-risk supplement to the child's prior foster home; and

(b) May redetermine the child to be eligible for the high-risk supplement if the requirements established in Section 2(2) of this administrative regulation are met.

Section 4. Parenting Youth Supplement.

(1) To the extent funds are available, the cabinet shall reimburse a foster home or approved provider pursuant to 922 KAR 1:300, 922 KAR 1:310, or 922 KAR 1:340 for the extraordinary care provided to a child who is a parenting youth.

(2) The cabinet shall consider a child eligible for a parenting youth supplement if:

(a) The child is placed in:

1. A cabinet-approved foster home as established by 922 KAR 1:350;

2. An independent living setting approved in accordance with 922 KAR 1:340;

3. A private child-placing agency foster home approved in accordance with 922 KAR 1:310; or

4. An approved private child-caring facility in accordance with 922 KAR 1:300.

(b) The child:

1. Is in the custody of the cabinet;

2. Has custody and control of their own child or children; and

3. Physically resides in the same location as the child or children; and

(c) A "DPP-116, Parenting Youth Supplement" is completed.

(3) A parenting youth supplement shall be:

(a) A standardized amount per child of the parenting youth added to the per diem of the parenting youth;

(b) Effective for the duration of the placement in which the youth in the custody of the cabinet and their child or children reside together; and

(c) Specified in the DPP-116.

(4) If a child deemed eligible for the parenting youth supplement is relocated to another foster home or provider established in subsection (2)(a) of this section, the cabinet:

- (a) Shall cease reimbursement of the parenting youth supplement to the child's prior foster home or provider; and
- (b) May redetermine the child to be eligible for the parenting youth supplement if the requirements of subsection (2) of this section are met.

Section 5. Service Appeals. A foster home or provider referenced in Section 4(1) of this administrative regulation may request an appeal in accordance with 922 KAR 1:320.

Section 6. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "DPP-111B, High-Risk Supplement Assessment", ~~09/23~~~~07/20~~; and
 - (b) "DPP-116, Parenting Youth Supplement", 11/20.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 23, 2023

FILED WITH LRC: September 7, 2023 at 12:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 27, 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 November 16, 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 November 30, 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the criteria and process for the provision of supplements to foster home per diems specifically for caring for high-risk and parenting youth.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the process by which a foster home or parenting youth may be reimbursed for extraordinary care in meeting the needs of children in out of home care.

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

KRS 605.120(2) requires the cabinet to establish a reimbursement system, within existing appropriation amounts, for foster parents that comes as close as possible to meeting the actual cost of caring for foster children, and to address additional costs associated with providing care to children with exceptional needs. This administrative regulation adds a supplement to foster care per diem for caring for youth in the cabinet's custody who require high-risk and parenting youth supplement to current per diem rates.

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

This administrative regulation assists in the effective administration of the statutes through the establishment of extraordinary care provisions and existing high-risk and parenting youth supplement to current per diem rates.

(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 updates the extraordinary care provisions for children in out of home care and streamlines the approval for a high-risk supplement for eligible children in out of home care in an effort to promote placement stability. This amendment is also necessary for consistency with recent amendments made to the levels of care established in 922 KAR 1:360. Material incorporated by reference, the DPP-111B, is also being amended in a consistent manner.

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

The amendment is necessary in order to be able to provide a high-risk supplement to the per diem for the care of children with more complex needs in out of home care. This amendment is also necessary to reflect changes made in 922 KAR 1:360.

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

The amendment conforms to the content of the authorizing statutes through the provision of reimbursement to foster homes that meet the extraordinary needs of children in out of home 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 through the provision of reimbursement to foster homes that provide for the extraordinary needs of children in out of home care.

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

During SFY2023, there were 291 youth receiving a special social services agreement; 57 youth receiving a parenting youth supplement; and 2 receiving a high risk supplement. Department for Community Based Services approved placement settings for youth in out of home care will be able to receive additional supports through this administrative regulation and proposed amendment.

(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:

A youth in need of extraordinary care provisions will have to meet criteria established in this administrative regulation to be eligible for the high-risk supplement. An approved provider will be required to submit the high-risk supplement assessment form in order to receive the additional reimbursement.

(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 new costs to the identified entities.

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

Youth in need of extraordinary care provisions will experience the benefit of placement stability and appropriate service provision with the per diem supplements established in this administrative regulation. Financial arrangements with the foster care providers are comparable to past arrangements involving the same population with complex needs.

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

(a) Initially:

The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body. There is a limited number of children and youth that this amendment will be applicable to, although it will provide great assistance towards obtaining placement stability for that small number of youths.

(b) On a continuing basis:

The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

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

The sources of funding includes federal Social Security Act Title IV-E funds for foster care maintenance and 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:

An increase in fees or funding is not 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?

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

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, Department for Community Based Services, implements and 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), 605.120(2)

(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?

The administrative regulation will not generate any revenue for state or local government.

(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?

The administrative regulation will not generate any revenue for state or local government in subsequent years.

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

No fiscal impact is expected, and costs may be absorbed within existing appropriations.

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

Costs to the administrative body are comparable and absorbable within existing appropriations. There is a limited number of children and youth that this amendment will be applicable to, although it will provide great assistance towards obtaining placement stability for that small number of youths.

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?

Some children and youth placed in foster homes may receive a higher per diem for their complex care and may provide some cost savings for regulated entities.

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

Some children and youth placed in foster homes may receive a higher per diem for their complex care and may provide some cost savings for regulated entities.

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

This amendment does not include costs to regulated entities.

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

This amendment does not include 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 major economic impact.