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AUDITOR OF PUBLIC ACCOUNTS

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Sent via email to CHFSregs@ky.gov

Re: Auditor of Public Accounts' Comment Letter Regarding Proposed Regulation 922 KAR 1:565

Dear Ms. Quarles,

March 27, 2024, was a day of celebration for Kentucky's kinship care children and their caregivers. That is the day the General Assembly unanimously passed Senate Bill (SB) 151 and sent it to Governor Andrew Beshear for signature. After years of work by kinship care advocates and the General Assembly, kinship caregivers were finally going to get much-needed time to make a crucial custodial decision with long-lasting impacts on the children under their care.

Or so they thought. Five days after signing the bill into law, Governor Beshear sent a letter to the General Assembly making it clear he had no intention of executing SB 151.

Refusing to let Governor Beshear grind this progress to a halt, I stepped in to see what could be done. Since Governor Beshear claimed only an alleged lack of funding as the reason for his refusal to execute SB 151, my office launched an examination to see (1) whether the Cabinet for Health and Family Services (CHFS) already has the allegedly needed money and (2) whether SB 151 really comes with an alleged \$19.7 (now \$14.7) million price tag. This examination and a corresponding lawsuit remain ongoing because of the roadblocks Governor Beshear and CHFS have put up to prevent us from obtaining the information we need to answer those questions.

Almost a year after that examination began, CHFS promulgated an amended 922 KAR 1:565, a regulation outlining the "[s]ervice array for a relative or fictive kin caregiver." Upon hearing this news, many became hopeful that Governor Beshear and CHFS would finally execute SB 151. But that hope quickly dissipated upon reading the fine print: The proposed regulation requires CHFS to execute SB 151 *but only upon CHFS receiving what it believes to be sufficient General Funds from the General Assembly*.

This comment letter explains why that condition is unconstitutional, unlawful, and embodies the Beshear administration's inexplicable refusal to implement identified solutions that would immediately allow kinship caregivers and their children to exercise their SB 151 rights.



## BACKGROUND

### Kentucky's children need help.

Kentucky has every potential to be the best place in the nation to raise a child. But we are currently falling behind the pack.

Kentucky ranks 36th in the nation for overall child well-being.<sup>1</sup> That overall ranking is based on Kentucky's rankings with respect to four metrics: Kentucky ranks 34th in the nation in economic well-being,<sup>2</sup> 25th in education,<sup>3</sup> 31st in health,<sup>4</sup> and 41st in family and community.<sup>5</sup>

Alarming, about half of Kentucky's children have suffered from an adverse childhood experience.<sup>6</sup> Adverse childhood experiences can include:

- Family economic hardship;
- Parents having divorced, separated, served time in jail, or died;
- Witnessing domestic violence;
- Experiencing neighborhood violence; or
- Living with someone with a mental illness or substance use problem.<sup>7</sup>

The greater the risk to a child's well-being and the greater the risk of adverse childhood experiences, particularly economic hardship and the current opioid crisis, the higher the likelihood that a child will have to enter foster care.<sup>8</sup>

<sup>1</sup> The Annie E. Casey Foundation, *2025 KIDS COUNT Data Book: State Trends in Child Well-Being*, 14–15 (June 9, 2025), <https://assets.aecf.org/m/resourcedoc/Aecf-2025kidscountdatabook.pdf> (Casey Foundation).

<sup>2</sup> Economic well-being is measured by the percentages of children in poverty, children whose parents lack secure employment, children in households with a high housing cost burden, and teens not in school and not working. *Id.* at 8, 12, 18–19, 30, 36.

<sup>3</sup> Education is measured by the percentages of young children not in school, fourth graders not proficient in reading, eighth graders not proficient in math, and high school students not graduating on time. *Id.* at 6, 12, 20–21, 31, 37.

<sup>4</sup> Health is measured by the percentages of low-birthweight babies, children without health insurance, child and teen death rate, and teens who abuse alcohol or drugs. *Id.* at 7, 12, 22–23, 32, 38.

<sup>5</sup> Family and community is measured by the percentages of children living in single-parent families, children living in families where the household head lacks a high school diploma, children living in high-poverty areas, and teen birth rate. *Id.* at 7, 12, 24–25, 33, 39.

<sup>6</sup> Kentucky Youth Advocates, *The Economic Impact of Adverse Childhood Experiences in Kentucky*, 5 (June 2025), <https://kyyouth.org/wp-content/uploads/2025/07/The-Economic-Impact-of-ACEs.pdf> (Kentucky Youth Advocates); Kentucky Injury Prevention and Research Center, *Special Emphasis Report: Adverse Childhood Experiences (ACEs)* 1 (2022), [https://kiprc.uky.edu/sites/default/files/2024-07/aces-2022-ky\\_profile\\_final.pdf](https://kiprc.uky.edu/sites/default/files/2024-07/aces-2022-ky_profile_final.pdf); Data Resource Center for Child & Adolescent Health, *2021-2022 National Survey of Children's Health*, <https://www.childhealthdata.org/browse/survey/results?q=10684&r=19&r2=1> (last visited Dec. 17, 2025).

<sup>7</sup> Kentucky Youth Advocates, *supra* note 6, at 3; *see also* Shannon Moody, et al., Interim Joint Committee on Families & Children, 54:30–1:38:00 (Sept. 25, 2024), <https://ket.org/legislature/archives/2024/interim/interim-joint-committee-on-families-and-children-lrnt24>.

<sup>8</sup> *See generally* Darejan Dvalishvili, et al., *Childhood poverty and foster care placement: Implications for practice and policy*, Child Abuse and Neglect, Vol. 154 (Aug. 2024), <https://www.sciencedirect.com/science/article/abs/pii/S0145213424003168>; Scott Dallman, *The Effect of Opioid Abuse on Child Out-of-Home Placements* (Nov. 2020) (working paper), [https://scottdallman.github.io/images/JMP\\_ScottDallman.pdf](https://scottdallman.github.io/images/JMP_ScottDallman.pdf).



### **Kinship caregivers have stepped up to help Kentucky’s children.**

For displaced children, Kentucky’s kinship caregivers—relatives or close family friends of a child in need—are stepping up to give them loving homes where they can thrive. This is important because research continues to confirm that, in most instances, kinship care is the best option to promote optimal overall well-being for children who cannot be with their parents.<sup>9</sup>

Kinship caregivers provide a familiar, stable, and nurturing temporary or permanent home for children that preserves familial bonds and cultural connections.<sup>10</sup> Children cared for by kinship caregivers experience less placement disruptions than children in a traditional foster care setting, which minimizes additional trauma that can often compound to create more mental, behavioral, and physical health concerns and barriers throughout life.<sup>11</sup>

An estimated 55,000 Kentucky children are currently being raised by kinship caregivers.<sup>12</sup> Stated differently, 6% of the Commonwealth’s children are being cared for by a kinship caregiver, which is twice the national average.<sup>13</sup>

### **Kinship caregivers need time to make a crucial custodial decision.**

When children are removed from an abusive situation and placed with a kinship caregiver, these caregivers have a crucial decision to make—the type of custody they will assume over the child. And that crucial decision almost always comes down to deciding between one of two types of custody: Kinship caregivers can choose to either (1) take temporary custody of the children for whom they will be caring or (2) have CHFS take temporary custody of the children while the children remain in the homes of kinship caregivers for day-to-day care.<sup>14</sup>

On its face, taking temporary custody of a child *sounds* like the better option. But for most kinship caregivers, it is not. The second option—known as “kinship foster care,” becoming a “relative or fictive kin foster parent,” or becoming a “DCBS foster parent”—provides greater financial assistance and a path for kinship caregivers to obtain subsidized permanent custody of the child for whom they are caring.<sup>15</sup> And to be clear, even though CHFS technically has legal custody of the child under that choice, the child still remains in the home of the kinship caregiver every day.

As CHFS readily admits, only about half of Kentucky’s kinship caregivers choose the kinship-foster-care route. But that figure doesn’t make much sense. Based on the demographics of Kentucky’s kinship caregivers and the benefits available to them in choosing that route, and the

<sup>9</sup> Exhibit 1 at 2.

<sup>10</sup> *Id.*; Commissioner Lesa Dennis, Interim Joint Committee on Families & Children, 10:00–11:12, 28:00–33:35 (June 19, 2024), <https://ket.org/legislature/archives/2024/interim/interim-joint-committee-on-families-and-children-td3355> (Dennis); Exhibit 3 at Slide 2.

<sup>11</sup> Exhibit 1 at 2.

<sup>12</sup> *Id.*; see also Dennis, *supra* note 10, at 10:00–11:12, 28:00–33:35.

<sup>13</sup> Exhibit 1 at 2.

<sup>14</sup> *J. B-K by E.B. v. CHFS*, 48 F.4th 721, 724 (6th Cir. 2022) (citing KRS 620.140(1)(c)); Exhibit 2 at Slide 5; Exhibit 3 at Slides 4–5; Exhibit 4.

<sup>15</sup> Exhibit 2 at Slides 5–6; Exhibit 3 at Slides 5–6; Exhibit 4.



fact that children cared for under that route still remain in the home of the kinship caregiver, far more kinship caregivers should be choosing that route. So why aren't they?

Kinship care advocates and the General Assembly traced this puzzling figure, at least in part, to CHFS's failure to properly inform kinship caregivers of the benefits and drawbacks of their custodial options. CHFS's current policy only provides a kinship caregiver with "ten (10) working days" to sift through all of the legal complexities around the kinship caregiver's custodial decision.<sup>16</sup> Even more problematic, despite this policy, public testimony has revealed that CHFS purportedly fails to adhere to that full ten-day window in many instances.<sup>17</sup> These short decision-making windows necessitated SB 151.

### **The General Assembly gave kinship caregivers needed time.**

SB 151 mandates a simple, but crucial, change to that ten-day window: Kinship caregivers are now legally entitled to a 120-day decision-making window.<sup>18</sup> The General Assembly created this lengthier period of time to give kinship caregivers time during this stressful moment to seek out counsel and advice on all of the legal complexities bearing on the right custodial decision for the children under their care.

### **Governor Beshear and CHFS refuse to give kinship caregivers that needed time.**

Even after *signing SB 151 into law*, Governor Beshear and CHFS have refused to execute it. They are hiding behind an intellectually dishonest legal argument and unproven factual assertions.<sup>19</sup> While our investigation to find a path forward by examining every granular detail bearing on this issue remains ongoing, there are, as outlined below, publicly known facts that cast serious doubt on the validity of Governor Beshear's and CHFS's reasons for refusing to execute SB 151.

### **922 KAR 1:565 must be amended to give kinship caregivers and the children under their care what they need right now.**

All of that being the case, 922 KAR 1:565 unconstitutionally and unlawfully conditions the execution of SB 151 on an additional appropriation of an unspecified amount of State General Fund dollars. More specifically, the regulation is littered with the condition that CHFS will execute SB 151 *only if* "the General Assembly appropriates State General Funds necessary for the cabinet to implement" that law. Conditioning the execution of SB 151 in this way violates Governor Beshear's and CHFS's constitutional duty to faithfully execute the law, the duly enacted text of SB 151 itself, and the basic moral rights of our kinship caregivers and the children under their care.

<sup>16</sup> DCBS Standards of Practice Online Manual, C8.1 Relative and Fictive Kin Placement Consideration, Procedure ¶ 6.A. (Oct. 9, 2025), <https://manuals-sp-chfs.ky.gov/C8/Pages/C8-1.aspx>.

<sup>17</sup> Senator Julie Raque Adams and Norma Hatfield, Senate Families & Children Committee, 6:49–22:40 (Feb. 6, 2024), <https://ket.org/legislature/archives/2024/regular/senate-families-children-committee>.

<sup>18</sup> 2024 Ky. Acts Ch. 85, § 2(3) (2024 SB 151, § 2(3)).

<sup>19</sup> Exhibit 5.



## DISCUSSION

Thousands of kinship caregivers in Kentucky have unknowingly given up financial and custodial benefits for the children under their care because Governor Beshear and CHFS refuse to execute SB 151. The proposed regulation, 922 KAR 1:565, is a continuation of this refusal and must be amended to mandate the immediate execution of SB 151. It is Governor Beshear's and CHFS's constitutional, statutory, and moral duty to do so. And they can do so immediately—there are at least two immediate solutions available to Governor Beshear and CHFS. It is time to do the right thing for the people of Kentucky by implementing these solutions to execute SB 151.

### I. The proposed regulation is unconstitutional.

Littered throughout 922 KAR 1:565 is some variation of the following unconstitutional condition:

To the extent the General Assembly appropriates State General Funds necessary for the cabinet to implement the services under KRS 620.142(3), the cabinet shall carry out those services.<sup>20</sup>

What this means is that CHFS will not execute SB 151 unless it receives an unspecified amount of State General Fund dollars that it subjectively deems sufficient to carry out the law. This condition is an unlawful abrogation of Governor Beshear's and CHFS's constitutional duty to faithfully execute the law and must be amended to provide for the immediate execution of SB 151.

### A. Governor Beshear and CHFS must faithfully execute SB 151.

Sections 69 and 81 of the Kentucky Constitution require Governor Beshear and all executive branch agencies under his control, like CHFS, to execute the General Assembly's duly enacted laws. More specifically, Section 69 gives the Governor "[t]he supreme executive power of the Commonwealth" to carry out his Section 81 duty to "take care that the laws be faithfully executed." Under this plain text, Governor Beshear *must* ensure that the General Assembly's duly enacted laws are carried out. And because CHFS is "directly under the Governor's control" and must "answer to" him,<sup>21</sup> CHFS is just as constitutionally responsible as Governor Beshear for carrying out SB 151.

Kentucky courts have been clear on this. The esteemed Chief Justice Palmore famously said in a landmark Kentucky opinion: "We do not doubt that if the General Assembly should pass a law that requires implementation . . . the chief executive would be *required* to carry it out."<sup>22</sup> More recently, the Kentucky Supreme Court unanimously reiterated this holding and made clear that Governor Beshear and executive branch entities and officials under his control are "*not* . . . free to disregard or refuse to enforce statutes [they] dislike."<sup>23</sup> So more than 40 years of established Kentucky Supreme Court precedent instructs the Governor and his agencies and officials that they must execute the General Assembly's duly enacted laws—they don't have a choice.

<sup>20</sup> 922 KAR 1:565, Prefatory Statement, § 5(4), § 6(4).

<sup>21</sup> *Beshear v. Bevin*, 498 S.W.3d 355, 380–81 (Ky. 2016).

<sup>22</sup> *Brown v. Barkley*, 628 S.W.2d 616, 623 (Ky. 1982) (emphasis added).

<sup>23</sup> *Stivers v. Beshear*, 659 S.W.3d 313, 325 (Ky. 2022) (emphasis added).



Governor Beshear's and CHFS's only argument to the contrary has been to conjure up an intellectually dishonest reading of a single Kentucky case, *Fletcher v. Commonwealth*, 163 S.W.3d 852 (Ky. 2005).<sup>24</sup> They claim this case stands for the proposition that they don't have to execute a law if they simply declare that they allegedly don't have the money to do so. But they could not be more wrong. And, ironically, *Fletcher* itself holds the exact opposite.

The issue in *Fletcher* was whether former Governor Ernie Fletcher could create his own budget bill in the absence of one passed by the General Assembly.<sup>25</sup> The General Assembly failed to appropriate *any funds whatsoever* to the executive branch because the General Assembly failed to adopt an executive branch budget bill for the 2004–06 biennium.<sup>26</sup> Because of that failure, Governor Fletcher was left to run Kentucky without any money at all.<sup>27</sup> Rather than shut down the government, Governor Fletcher tried to use funds that the General Assembly never said he could.<sup>28</sup> But the Kentucky Supreme Court stated that Governor Fletcher could not do that because Section 230 of the Kentucky Constitution does not allow the executive branch to spend money that the General Assembly has not appropriated to it.<sup>29</sup>

That is a far cry from what is happening here. The General Assembly *did* pass a budget bill and awarded CHFS over \$3.6 billion in State General Funds, in addition to authorizing CHFS to spend the over \$22.7 billion in total revenue it receives from all sources.<sup>30</sup> The General Assembly provided CHFS's Department for Community Based Services (DCBS), one of CHFS's departments that CHFS has charged with executing kinship care laws, with over \$700 million in State General Funds and authorized DCBS to spend the more than \$1.7 billion it receives across all sources of revenue.<sup>31</sup> So, unlike in *Fletcher*, CHFS and DCBS have been appropriated money, including hundreds of millions of dollars in State General Funds, and the authority to spend it.

Generally speaking, Governor Beshear and CHFS are entitled to spend that money as they see fit. One exception to that discretion, however, is the mandate of Sections 69 and 81 of the Kentucky Constitution, *Brown*, *Fletcher*, and *Stivers*: Governor Beshear and CHFS must execute the General Assembly's duly enacted laws, like SB 151. What that means is that Governor Beshear and CHFS *must* figure out how to execute SB 151 using the money the General Assembly has said it can use.

The irony here is that this is exactly what *Fletcher* itself stands for. *Fletcher* does not diminish the mandates of *Brown* and *Stivers* requiring Governor Beshear and his agencies to execute the laws the General Assembly enacts. Instead, what *Fletcher* says is that “[i]f the legislative department fails to appropriate funds deemed sufficient to operate the executive department at a desired level

<sup>24</sup> Governor Beshear and CHFS have also pointed to *Planned Parenthood v. Cameron*, 603 F. Supp. 3d 501 (W.D. Ky. 2022). But as a now-vacated federal district court decision, *Planned Parenthood v. Cameron*, No. 22-5832, 2023 WL 3620977 (6th Cir. 2023), it carries absolutely no legal weight.

<sup>25</sup> *Fletcher*, 163 S.W.3d at 856.

<sup>26</sup> *Id.* at 857.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 858.

<sup>29</sup> *Id.* at 872–73.

<sup>30</sup> 2024 Ky. Acts Ch. 175, § 1 Part I.A.G., Total – Health and Family Services Cabinet, page 56.

<sup>31</sup> 2024 Ky. Acts Ch. 175, § 1 Part I.A.G.8, page 52.



of services, the executive department *must serve the citizenry as best it can with what it is given.*<sup>32</sup> So even *Fletcher* itself requires Governor Beshear and CHFS to do everything possible to execute the General Assembly's duly enacted laws. But, as outlined below, that is not happening.

**B. The proposed regulation is unconstitutional because it allows Governor Beshear and CHFS to refuse to faithfully execute the law even when two identified immediate solutions exist.**

The executive branch has no authority to condition its execution of a law on the receipt of the amount of funding it wants. Rather, as *Fletcher* itself states, “the executive department must serve the citizenry as best it can with what it is given.”<sup>33</sup>

Here, Governor Beshear and DCBS can do that in one of two ways. First, they can immediately execute SB 151 by using an identified idle pot of money that would more than cover the alleged \$14.7 million cost of SB 151. Second, they can eliminate wasteful discretionary spending and instead use that money to execute SB 151. There is no excuse to refrain from doing either.

**1. The money is there right now.**

On October 17, 2025, after almost a month of public outcry, Governor Beshear found \$9.1 million to offset an alleged shortfall within Kentucky's Senior Meals program.<sup>34</sup> According to State Budget Director John Hicks's October 17th letter, this \$9.1 million was shifted “from the Medicaid Benefits appropriation unit” to the Senior Meals program.<sup>35</sup> More specifically, that \$9.1 million was part of a \$25 million appropriation for a Medicaid-related study that did not occur.<sup>36</sup> Importantly, what this means for the execution of SB 151 is that there is \$15.9 million left in a “pot of money” that is just “sitting there.”<sup>37</sup>

Both the (1) Regulatory Impact Analysis and Tiering Statement and (2) Fiscal Impact Statement attached to proposed regulation 922 KAR 1:565 estimate the cost of executing SB 151 to now be \$14.7 million, that figure being a full \$5 million less than Governor Beshear's and CHFS's prior entrenched cost calculation. That means that even if CHFS is now correctly estimating the cost of SB 151 to be \$14.7 million (and there are good reasons to believe the cost is much lower), that entire alleged cost can be covered by the available \$15.9 million identified above that is just “sitting there.”

There is absolutely no excuse for the Beshear administration to refuse to use this money to execute SB 151. It already used a portion of it to cover an expense for which that money wasn't originally designated. If the Governor can take from this pot of money to fund the Senior Meals program, he can absolutely take from it to execute SB 151. Because the money is there, 922 KAR 1:565 must be amended to provide for the immediate execution of SB 151.

<sup>32</sup> *Fletcher*, 163 S.W.3d at 873 (emphasis added).

<sup>33</sup> *Id.*

<sup>34</sup> Exhibit 6.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*



## 2. Wasteful spending must cease in favor of using funds to execute SB 151.

DCBS has a \$1.7 billion budget, with over \$700 million of that budget in State General Funds. As outlined above, Governor Beshear's and CHFS's constitutional duty to faithfully execute the law requires them to refrain from wasteful, discretionary spending and, instead, use that money to execute SB 151. Any action to the contrary is an abrogation of this constitutional duty.

To assist Governor Beshear and CHFS in executing their constitutional duties, we have identified some questionable DCBS expenditures from fiscal year 2025 that, constitutionally, should not have been given priority over the execution of SB 151. Considering we are only halfway through fiscal year 2026, these types of potentially wasteful expenditures should cease in favor of executing SB 151:

- A plethora of seemingly extravagant meals. Here are four examples:
  - \$5,581.60 paid to a vendor for lunch on April 17, 2025, that included two fajita veggie bars for 20, spicy queso diablo, freshly sauced fajita veggies, 30 crispy corn taco shells, two chicken and steak bars for 100, choose your rice and beans, signature three-cheese queso, more fajita veggies, 150 flour tortillas, 15 chocolate brownies, 115 chocolate chunk cookies, four unsweetened iced teas, ten sweet teas, ten lemonades.
  - \$3,955 paid to a vendor for a lunch on September 17, 2024, that included baked chicken, pulled pork, roasted reds, rolls, salad, dessert, tea, lemonade, water, and a delivery fee.
  - \$4,082 paid to a vendor for a lunch on September 25, 2024, that included baked chicken, pulled pork, roasted reds, rolls, salad, dessert, tea, lemonade, water, and a delivery fee.
  - \$1,760 paid to a vendor for lunch on May 29, 2025, that included spinach salad with the dressings, roast beef with gravy, chicken Monterey, vegetables, rice, green beans, mashed potatoes, steamed vegetables, rolls, chocolate cake, cheesecake with toppings, cobblers, tea, lemonade, and a delivery fee.
- At least \$915,997.89 paid to various vendors for “legal services” when CHFS already has over 50 attorneys.
- \$481,523.05 paid to a vendor for “emotional injury evaluations.” This was \$339,016.80 more than the next highest vendor for these same services and over \$400,000 more than all other vendors providing this service. A sample invoice shows questionable billing practices, including the impossibility of spending 20 hours in one day interviewing one patient after allegedly starting that interview at 11 a.m.
- At least \$145,800.12 paid to various vendors for “advertising.” Additional advertising expenditures of \$38,325.50 and \$23,723.16 were also found elsewhere.
- \$539,145 paid to a vendor that agreed to pay a judgment to resolve civil allegations that it improperly billed services to Medicare and Kentucky Medicaid.
- \$87,003 paid to a chiropractor for “drug testing.”
- \$5,525.35 paid for “cable services.”
- \$38,815 paid for “trade shows, fairs, and expositions” expenses.
- At least \$250,362.16 paid for “out-of-state travel” expenses.



- At least \$20,263.36 paid for “travel for Non-State Employees” expenses.
- At least \$206,008.33 paid for “dues.”
- At least \$1,360,769.99 paid to various vendors for benefit eligibility determinations when this is a function that CHFS already performs itself.
- \$6,000 paid to the Lexington Legends.
- \$23,474.53 paid to Square.
- At least \$5,492.48 in expenses for conferences not already noted in other spending areas.
- At least \$517,197.86 in “other” expenses. As an example, included in these expenses is one for \$33,078.68 for a two-day conference, \$18,033.20 of which is for “catering” services.
- At least \$34,307,475.50 paid for IT-related services when CHFS has its own internal IT group (OATS) and can use the Commonwealth Office of Technology for IT needs.

Added together, these questionable expenditures exceed \$38 million—almost triple the estimated cost of SB 151. There is no legitimate excuse for DCBS to continue to spend money in these wasteful ways when kinship caregivers and the children under their care are entitled to benefit from the exercise of their legal rights under SB 151. CHFS must amend 922 KAR 1:565 to provide for the immediate execution of SB 151.

## **II. The proposed regulation violates the plain language of SB 151.**

The proposed regulation is not only unconstitutional, but it is also statutorily unlawful. The General Assembly’s statutes, like SB 151, trump executive branch regulations. But the proposed regulation unlawfully contradicts SB 151 in several ways.

*First*, as extensively discussed, the proposed regulation conditions the execution of SB 151 on CHFS receiving an additional unspecified amount of State General Funds that it subjectively deems sufficient to execute that bill. That is unlawful. There is no language in SB 151 that gives Governor Beshear and CHFS the discretion to refuse to give kinship caregivers 120 days to decide whether to become a relative or fictive kin foster parent. While kinship caregivers have the discretion as to whether to make that choice, Governor Beshear and CHFS must now make that choice available for 120 days.<sup>38</sup>

*Second*, the proposed regulation unlawfully confines the execution of SB 151 to the receipt of State General Funds when other types of funding could also be used to execute SB 151. CHFS has already admitted that various federal funding sources, like Title IV-E funds and TANF funds, can be used for kinship care purposes. While CHFS maintains that the federal government told it that it cannot use Title IV-E funds to execute SB 151, part of our investigation includes determining whether that is actually true. But even if it is, Governor Beshear and CHFS have no excuse to refrain from using TANF funds to execute SB 151. And there are many other federal funding sources that CHFS has not yet explored—like Family Connection Grants and Social Services Block Grants—that could be used to execute SB 151. SB 151 requires CHFS to “seek any state or federal waivers to implement” the bill, but there is no language in the proposed regulation that

<sup>38</sup> 2024 Ky. Acts Ch. 85 § 2(3) (codified at KRS 620.142(3)).



requires CHFS to do so. Failing to explore alternative funding sources outside of simply State General Funds is a violation of the plain language of SB 151.

*Third*, the proposed regulation fails to carry SB 151's mandate that a child have a voice in the kinship caregiver placement process. More specifically, Section 1(1)(c) of SB 151 (codified as KRS 620.140(1)(c)) now requires DCBS to obtain a list from the "child, if able" of potential caregivers with whom he or she would like to be placed. Yet the proposed regulation makes no mention of the child's right here, which is a violation of the plain language of SB 151.

The proposed regulation must be amended to fix these deficiencies.

### **III. The proposed regulation violates basic tenets of morality and human decency.**

Kentucky's kinship caregivers are trying to do what they can to keep children off of the streets and give them loving homes where they can thrive. Governor Beshear's administration should be doing everything it can to help these caregivers. At the very least, the administration should not do anything to harm caregivers and the children under their care.

But that harm is, unfortunately, exactly what is happening right now. For some unknown reason or set of reasons—reasons that we intend to find out—Governor Beshear and CHFS are refusing to do what is necessary to help improve the lives of Kentucky's kinship caregivers and the children under their care. That is just plain wrong. There is no reason to let political gamesmanship get in the way of helping Kentuckians who are helping children.

\* \* \*

Thank you for the opportunity to be heard. I implore CHFS to amend 922 KAR 1:565 to afford the immediate execution of SB 151. As I have constantly said throughout my entire involvement on this issue, I am more than happy to meet with Governor Beshear and CHFS at any time to find a path forward to immediately execute SB 151.

Sincerely,



Allison Ball  
Kentucky Auditor of Public Accounts

