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I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on 08/12/2015 by the
Department of Human Services, Child Welfare Programs 413

Agency and Division

Administrative Rules Chapter Number

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To become effective 08/19/2015 through 02/14/2016.

RULE CAPTION

Amending rule relating to guardianship assistance

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

413-070-0917

SUSPEND:

Statutory Authority:

409.050, 418.005, Or Laws 2015, ch 840

Other Authority:

None

Statutes Implemented:

409.010, 411.141, 418.005, Or Laws 2015, ch 840

RULE SUMMARY

Effective August 12, 2015, OAR 413-070-0917 is amended to establish eligibility requirements for state-funded guardianship assistance in compliance with Oregon Laws 2015, chapter 840.

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Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
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accompanies this form

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Department of Human Services, Child Welfare Programs
Agency and Division

413
Administrative Rules Chapter Number

Amending rule relating to guardianship assistance

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Temporary amendment of OAR 413-070-0917

Statutory Authority:

409.050, 418.005, Or Laws 2015, ch 840

Other Authority:

None

Statutes Implemented:

409.010, 411.141, 418.005, Or Laws 2015, ch 840

Need for the Temporary Rule(s):

Effective August 12, 2015, Oregon Laws 2015, chapter 840 established state-funded guardianship assistance payments for children who are ineligible for Title IV-E. OAR 413-070-0917 needs to be amended because the current rule does not state the eligibility criteria for these payments. The amendments establish eligibility criteria for state-funded guardianship assistance as required by Oregon Laws, chapter 840.

Documents Relied Upon, and where they are available:

Joint Committee on Ways and Means Staff Measure Summary SB 501A: <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureAnalysisDocument/32419>

Justification of Temporary Rule(s):

The Department finds that failure to act promptly by amending OAR 413-070-0917 will result in serious prejudice to the public interest, the Department, and children who are ineligible for Title-IV-E assistance. The Department needs to proceed by temporary rule because the public, the Department, and children who are ineligible for Title IV-E will immediately benefit because the Department will be in compliance with Oregon Laws 2015, chapter 840 that extends eligibility to those children.

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413-070-0917 Eligibility and Extension of for Guardianship Assistance

~~(Amended 07/17/15) (Temporary Effective 8/19/15 - 2/14/16)~~

~~(1) Eligibility: Child~~

~~(a) Guardianship assistance may only be established for a child placed in the United States or a territory or possession thereof.~~

~~(b) A guardianship assistance agreement must be signed by the potential guardian and a Department representative before guardianship has been legally established by a state or participating tribal court.~~

~~(e1) To be eligible for Title IV-E guardianship assistance, a child must meet all of the following:~~

~~(Aa) Be a United States citizen or qualified non-citizen as described in OAR 413-100-0210 and in 8 USC section 1641(b) or (c).~~

~~(Bb) Be removed from his or her home pursuant to a voluntary placement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.~~

~~(C) The Department or participating tribe has determined that neither return home nor adoption is an appropriate permanency option for the child.~~

~~(D) Be eligible for Title IV-E foster care maintenance payments during a six consecutive month period during which the child resided in the home of the potential guardian who was fully licensed, certified, or approved by the state or a participating tribe as meeting the licensure or certification requirements for a foster family home in the state where the home is located. The Department determines a child's eligibility for a Title IV-E maintenance payment under OAR 413-100-0000 to 413-100-0345.~~

~~(c) Be placed in the United States or a possession thereof.~~

~~(d) Have resided in the home of the potential guardian for a period of at least six consecutive months during which the potential guardian was fully licensed, certified, or approved by the state or a participating tribe as meeting the licensure or certification requirements for a foster family home in the state where the home is located.~~

~~(e) Demonstrate a strong attachment to the potential guardian.~~

~~(Ef) Be in the care or custody of the Department's or participating tribe's care or custody for a minimum of — and placed with the potential guardian who meets the relative definition as described in OAR 413-070-0000(74)(a) to (e).~~

- ~~(i) Six months, if the *potential guardian* is the child's *relative* as defined by OAR 413-070-0000(74)(a) through (d); or~~
 - ~~(ii) Twelve months, if the *potential guardian* is a *substitute caregiver* who meets the definition of a *relative* under OAR 413-070-0000(74)(e)(B).~~
 - ~~(F) Demonstrate a strong attachment to the potential guardian.~~
 - ~~(G) Be consulted regarding the guardianship arrangement when the *child* has attained 14 years of age.~~
 - (g) Be eligible for Title IV-E under OAR 413-100-0000 to 413-100-0345.
- (2) Effective August 12, 2015, to be eligible for state-funded *guardianship assistance*, a *child* must:
- (a) Be ineligible for Title IV-E funded *guardianship assistance*.
 - (b) Meet the eligibility requirements in subsections (a) to (e) of section (1) of this rule.
 - (c) Be in the care or custody of the Department and placed with the *potential guardian* who meets the *relative* definition as described in OAR 413-070-0000(74)(a) to (e).
- (3) Each *sibling* of a *child* or *young adult* eligible for *guardianship assistance* is also eligible for *guardianship assistance* without meeting the eligibility requirements in subsections (b) to (f) of section (1) of this rule when:
- (a) The *sibling* is placed in a guardianship with the same *potential guardian* or *guardian*, whether the siblings are placed at the same time or not; and
 - (b) The *potential guardian* or *guardian* and the Department or *participating tribe* agree that both of the following are appropriate:
 - (A) Placing the child's *sibling* in the home of the *potential guardian* or *guardian*; and
 - (B) Guardianship as a *permanency plan* for the *sibling*.
- (4) The child must be consulted regarding the guardianship arrangement when the *child* has attained 14 years of age.
- (5) In the event of the death or *incapacity* of the *guardian*, a *child* eligible for Title IV-E or state-funded *guardianship assistance* remains eligible if a *successor legal guardian* is

named in the *guardianship assistance agreement*, including any amendments to the agreement, prior to the death or *incapacity* of the *guardian*, and the requirements of OAR 413-070-0925(2) are met.

(26) ~~In order for a *child* to be determined eligible for *guardianship assistance*, All of the following must be documented in the child's case plan:~~

- (a) How the *child* meets the eligibility requirements~~;~~
- (b) The steps the Department or participating tribe has taken to determine that return to the home or *adoption* is not appropriate~~;~~
- (c) The efforts the Department or *participating tribe* has made to discuss *adoption* with the child's *relative caregiver* and the reasons *adoption* is not an option~~;~~
- (d) The efforts the Department or *participating tribe* has made to discuss kinship guardianship with the child's *parent* or parents or the reasons why efforts were not made~~;~~
- (e) The reason a permanent placement with a potential *relative guardian* and receipt of a kinship *guardian assistance payment* is in the child's best interests~~; and~~
- (f) The reasons for any separation of siblings during placement. If the child's placement with the potential *relative guardian* does not include siblings, the case plan must also include a description of the reasons the *child* is separated from siblings during placement.

~~(7) A *guardianship assistance agreement* must be signed by the *potential guardian* and a Department representative before guardianship has been legally established by a state or participating *tribal court*.~~

~~(3) Siblings. Each *sibling* of a *child* or *young adult* eligible for *guardianship assistance* is also eligible for *guardianship assistance* without meeting the eligibility requirements in paragraphs (1)(c)(B) to (F) of this rule when:~~

- ~~(a) The *sibling* is placed in a guardianship with the same *potential guardian* or *guardian*, whether the siblings are placed at the same time or not; and~~
- ~~(b) The *potential guardian* or *guardian* and the Department or *participating tribe* agree that both of the following are appropriate:~~
 - ~~(A) Placing the child's *sibling* in the home of the *potential guardian* or *guardian*; and~~
 - ~~(B) Guardianship as a *permanency plan* for the *sibling*.~~

~~(4) In the event of the death or *incapacity* of the *guardian*, a *child* eligible for Title IV-E *guardianship assistance* remains eligible if a *successor legal guardian* is named in the *guardianship assistance agreement*, including any amendments to the agreement, prior to the death or *incapacity* of the *guardian*, and the requirements of OAR 413-070-0925(2) are met.~~

~~(5) Extension of Guardianship Assistance for a Young Adult~~

~~(a) The Department may approve an extension of a *guardianship assistance agreement* for an individual under the age of 21 when the individual meets paragraph (A) or (B) of this subsection.~~

~~(A) An initial *guardianship assistance agreement* was entered into on behalf of the *child* and at the time of the *child's* 18th birthday, the *child*:~~

~~(i) Qualifies as an individual with a developmental disability as determined by the Oregon Department of Human Services, Developmental Disabilities Services;~~

~~(ii) Qualifies as an individual with a developmental disability as determined by the equivalent developmental disability program if living in a state other than Oregon; or~~

~~(iii) Qualifies for Supplemental Security Income (SSI) as determined by the Social Security Administration.~~

~~(B) An initial *guardianship assistance agreement* was entered into on behalf of the *child* who is age 16 or 17, and upon reaching the age of 18, the *child* is:~~

~~(i) Completing secondary school (or equivalent);~~

~~(ii) Enrolled in post-secondary or vocational school;~~

~~(iii) Participating in a program or activity that promotes or removes barriers to employment;~~

~~(iv) Employed for at least 80 hours a month; or~~

~~(v) Determined incapable of any of the above due to a documented medical condition, physical disability, or mental disability.~~

~~(b) In order for the extension of *guardianship assistance* under paragraph (a)(A) of this section to be approved on behalf of a *young adult*, the *guardian* must submit to the Department documentation from the agency making the determination described in subparagraphs (a)(A)(i) to (iii) of this section.~~

- ~~(c) — In order for the extension of *guardianship assistance* under paragraph (a)(B) of this section to be approved on behalf of a *young adult*, the *guardian* must submit to the Department documentation verifying the circumstances described in subparagraphs (a)(B)(i) through (v) of this section. Documentation of circumstances described in subparagraph (a)(B)(v) of this section must be from a medical or mental health professional.~~
- ~~(d) — The Department must receive the request for extension of the *guardianship assistance agreement* and the documentation described in subsections (b) and (c) of this section:~~
- ~~(A) — At least 30 calendar days before the individual's 18th birthday; or~~
- ~~(B) — Before a date determined by the Department when the Department approves a request from the *guardian* to submit the documentation after the individual's 18th birthday. The Department must receive the request before the individual's 18th birthday.~~
- ~~(e) — If the Department does not receive the documentation as required by subsections (b) through (d) of this section, the Department may not approve an extension of a *guardianship assistance agreement*.~~
- ~~(f) — When an extension of *guardianship assistance* has been approved under paragraph (a)(A) of this section, *guardianship assistance* will continue until the young adult turns 21 years old.~~
- ~~(g) — When an extension of *guardianship assistance* has been approved under paragraph (a)(B) of this section, the Department will review the eligibility of the *young adult* for continued *guardianship assistance*:~~
- ~~(A) — At least annually; or~~
- ~~(B) — When information is received that indicates the *young adult* may no longer be eligible for *guardianship assistance* or may be eligible for *guardianship assistance* in a different amount.~~
- ~~(h) — The *guardian* must notify the Department, orally or in writing, of any changes in circumstances that may make the *young adult*:~~
- ~~(A) — Ineligible for *guardianship assistance*; or~~
- ~~(B) — Eligible for *guardianship assistance* in a different amount.~~

Stat. Auth.: ORS [409.050](#), [418.005](#), Or Laws 2015, ch 840

Stats. Implemented: ORS [409.010](#), [411.141](#), [418.005](#), Or Laws 2015, ch 840