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Department of Human Services, Child Welfare Programs 413

Agency and Division

Administrative Rules Chapter Number

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To become effective 10/01/2015 Rulemaking Notice was published in the September 2015 Oregon Bulletin.

**RULE CAPTION**

Amending rules in OAR chapter 413 division 70 relating to child welfare programs

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:**

413-070-0918, 413-070-0990, 413-070-1000, 413-070-1010, 413-070-1020, 413-070-1030, 413-070-1040, 413-070-1050, 413-070-1060

**AMEND:**

413-070-0000, 413-070-0170, 413-070-0450, 413-070-0510, 413-070-0512, 413-070-0514, 413-070-0516, 413-070-0518, 413-070-0519, 413-070-0520, 413-070-0532, 413-070-0536, 413-070-0540, 413-070-0550, 413-070-0551, 413-070-0552, 413-070-0556, 413-070-0565, 413-070-0625, 413-070-0630, 413-070-0800, 413-070-0830, 413-070-0840, 413-070-0855, 413-070-0905, 413-070-0917, 413-070-0919, 413-070-0925, 413-070-0934, 413-070-0939, 413-070-0944, 413-070-0949, 413-070-0964, 413-070-0974

**REPEAL:**

413-070-0022, 413-070-0027, 413-070-0033, 413-070-0110, 413-070-0516(T), 413-070-0518(T), 413-070-0519(T), 413-070-0651, 413-070-0909, 413-070-0917(T)

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

409.050, 411.060, 411.070, 418.005, 418.027

**Other Authority:**

Preventing Sex Trafficking and Strengthening Families Act of 2014

**Statutes Implemented:**

409.010, 409.050, 411.060, 411.070, 411.141, 418.005, 418.015, 418.027, 418.280, Or Laws 2015, ch 254, 795, and 840

**RULE SUMMARY**

The Department of Human Services, Office of Child Welfare Programs, is amending rules in chapter 413, division 70, about substitute care to implement provisions of Oregon Laws 2015, chapters 254, 795, and 840.

Oregon Laws 2015, chapter 254 (HB 2908, which brings Oregon into compliance with the Preventing Sex Trafficking and Strengthening Families Act of 2014) requires the Department to: establish the "reasonable and prudent parent" standard to guide the Department and caregivers in making decisions about whether to allow foster youth to engage in typical and appropriate childhood activities; implement improvements to APPLA (Another Planned Permanent Arrangement); and create a new placement option known as the "fit and willing relative." Specifically:

- OAR 413-070-0000 is amended to define "reasonable and prudent parent standard" as a standard characterized by sensible parental decision-making that protects a child or young adult, while also encouraging developmental growth, to be used when determining

whether to allow a child or young adult in substitute care to participate in activities.

- OAR 413-070-0000 is amended to define "age-appropriate or developmentally appropriate activities" as activities generally suitable for the age and abilities of a child or young adult.
- OAR 413-070-0600 to 413-070-0645 about placement matching are amended to require the Department to consider whether a potential substitute care placement has the ability to support the interests of the child or young adult to participate in appropriate extracurricular activities.
- OAR 413-070-0520 to 413-070-0565 about APPLA (Another Planned Permanent Living Arrangement) are being amended to:
  - o Require the Department to review Department's efforts to ensure the child has ongoing opportunities to engage in appropriate extracurricular activities, include it in the case plan, and provide it to the court at permanency hearings;
  - o Eliminate APPLA for children under the age of 16;
  - o Establish new case review requirements for children on APPLA; and
  - o Establish new permanency hearing requirements:
    - Asking the child about the desired permanency outcome;
    - Requiring a compelling reason why other permanency plan options are not in the child's best interest; and
    - Making a judicial determination regarding the Department's efforts to ensure the child has ongoing opportunities to engage in appropriate extracurricular activities.
- OAR 413-070-0990 to 413-070-1060 about the "fit and willing relative" placement are being adopted to:
  - o Create the option to place a child or young adult with a relative or person with a caregiver relationship
  - o State that this placement option may only be used when more preferred placements are not in the best interest of the child or young adult
  - o Require an individual to meet the following requirements before being considered as a fit and willing relative:
    - Be a relative of the child or a person with a caregiver relationship
    - Be approved by the Department as a long-term resource
    - Have a current certificate of approval

Oregon Laws, chapter 795 (SB 741) requires the Department to give equal status and priority to relatives and current caretakers as is given to prospective adoptive parents with regard to child safety, attachment, and well-being. OAR 413-070-0500 to 413-070-0519 about legal permanency, concurrent planning, and use of a permanency committee are amended to reflect those policies. This makes permanent temporary rules adopted on September 1, 2015.

Oregon Laws 2015, chapter 840, section 16 (SB 501) expands guardianship assistance eligibility to include a child who is ineligible for Title IV-E funded guardianship assistance. OAR 413-070-0909 and 413-070-0917 about funding and eligibility for guardianship assistance are amended to establish eligibility criteria. This makes permanent a temporary rule adopted on August 19, 2015. OAR 413-070-0918 is also being adopted to establish criteria for extending a guardianship assistance agreement.

Non-substantive changes were also made throughout the division to improve readability and organization; repeal unnecessary rules; correct and improve grammar; and update rule and statutory references.

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## 413-070-0000

### Definitions

(Amended ~~07/17/15~~ 10/01/15)

The following definitions apply to OAR chapter 413, division 70.

- (1) "Adoption" means a legal or administrative process that establishes a permanent legal parent-child relationship between a *child* and an adult who is not already the child's legal parent and terminates the legal parent-child relationship between the adopted *child* and any former parent.
- (2) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a *child* where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.
- (3) "Affected family members" means biological and legal parents, extended family members, and any person within the fifth degree of consanguinity to the *child*.
- (4) "Age-appropriate or developmentally appropriate activities" means:
  - (a) Activities or items that are generally accepted as suitable for children or young adults of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a *child* or *young adult*, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and
  - (b) In the case of a specific *child* or *young adult*, activities or items that are suitable for the *child* or *young adult* based on the developmental stages attained by the *child* or *young adult* with respect to the cognitive, emotional, physical, and behavioral capacities of the *child*.
- (5) "Antipsychotic medication" means a medication, specified in class 28:16:08 by the American Hospital Formulary Service, used to treat psychosis and other conditions.
- (6) "APPLA" means Another Planned Permanent Living Arrangement, a *permanency plan* for a stable secure living arrangement for a *child* who has reached the age of 16 or *young adult* that includes building relationships with significant people in the child's life that may continue after *substitute care*. APPLA is the least preferred *permanency plan* of the five permanency plans for a *child* or *young adult* and is appropriate only after the permanency plans of reunification, *adoption*, guardianship, and placement with a *fit and willing relative* have been determined not in the best interests of a *child* or *young adult*.
  - (a) "Planned" means the arrangement is intended, designed, and deliberate.

- (b) "Permanent" means enduring and stable.
- (7) "Assessment" means the determination of a *child* or young adult's need for mental health services through interviewing the *child* or *young adult* and obtaining all pertinent medical and psychosocial history information from the individual, family, and collateral sources. The "assessment" --
- (a) Addresses the current complaint or condition presented by the *child* or *young adult*;
  - (b) Determines a diagnosis; and
  - (c) Provides treatment direction and individualized services and supports.
- (8) "Base rate payment" means a payment to the *foster parent* or *relative caregiver* for the costs of providing the *child* or *young adult* with the following:
- (a) Food, including the special or unique nutritional needs of the *child* or *young adult*;
  - (b) Clothing, including purchase and replacement;
  - (c) Housing, including maintenance of household utilities, furnishings, and equipment;
  - (d) Daily supervision, including teaching and directing to ensure safety and well-being at a level appropriate for the age of the *child* or *young adult*;
  - (e) Personal incidentals, including personal care items, entertainment, reading materials, and miscellaneous items; and
  - (f) Transportation, including gas, oil, and vehicle maintenance and repair costs for local travel associated with providing the items listed above, and transportation to and from extracurricular, child care, recreational, and cultural activities.
- (9) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on the needs and strengths of a *child* or *young adult* for one or more of the following purposes:
- (a) To identify case planning, service planning, and supervision needs of the *child* or *young adult* in *substitute care* with a certified family;
  - (b) To determine the *level of care payment* while in *substitute care* with a certified family; and
  - (c) To determine the *level of care payment* included in an adoption assistance agreement or *guardianship assistance agreement*.

- (10) "Caregiver relationship" means a relationship between a person and a *child* or *young adult* that meets all of the following requirements:
- (a) The relationship has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child's life if the child is less than six months of age. A "caregiver relationship" does not include a relationship between a *child* or *young adult* and a person who is an unrelated *foster parent* of the *child* or *young adult* unless the relationship continued for a period of at least twelve consecutive months.
  - (b) The person had physical custody of the *child* or *young adult* or resided in the same household as the *child* or *young adult* and provided the *child* or *young adult* on a daily basis with the love, nurturing, and other necessities required to meet the psychological and physical needs of the *child* or *young adult*.
  - (c) The *child* or *young adult* depended on the relationship to meet the needs of the *child* or *young adult*.
- (11) "CASA" means a court appointed special advocate: a volunteer who is appointed by the court, is a party to the juvenile proceeding, and advocates for the *child* pursuant to ORS 419B.112.
- (12) "Certificate of approval" means a document that the Department issues to approve the operation of a child-specific *relative caregiver* home, child-specific foster home, pre-adoptive home, or a regular foster home.
- (13) "Child" means a person under 18 years of age.
- (14) "Child-family contact" means communication between the *child* or *young adult* and family and includes, but is not limited to, visitation with the *child* or *young adult*, participation in the *child* or young adult's activities, and appointments, phone calls, e-mail, and written correspondence.
- (15) "Child's home" means the home from which the *child* is removed under the provisions of ORS 419B.150.
- (16) "Committee facilitator" means a Department staff member appointed as a member of the committee to facilitate a permanency or adoption committee meeting.
- (17) "Concurrent permanent plan" means the alternate *permanency plan* whenever the *child* has been placed in *substitute care* when the goal of the *permanency plan* is to return the *child* to the parents. The "concurrent permanent plan" is developed simultaneously with the plan to return the *child* to the parents or legal guardians.

- (18) "Conditions for return" means a written statement of the specific behaviors, conditions, or circumstances that must exist within a *child's home* before a *child* can safely return and remain in the home with an in-home ongoing safety plan.
- (19) "Cultural heritage" means the language, customary beliefs, social norms, and material traits including, but not limited to, the dress, food, music, and dance of a racial, religious, or social group that are transmitted from one generation to another.
- (20) "Current caretaker" means a *foster parent* who:
- (a) Is currently caring for a *child* in the care and custody of the Department and who has a *permanency plan* or *concurrent permanent plan of adoption*; and
  - (b) Has cared for the *child* or at least one *sibling* of the *child* for at least the past 12 consecutive months or for one-half of the child's or sibling's life if the child or sibling is younger than two years of age.
- (21) "Department" means the Department of Human Services, Child Welfare.
- (22) "Designee" means a person who the designator directly and immediately supervises or a person with equal or greater management responsibility than the designator.
- (23) "Diligent search" means that, at a minimum, there will be contact with the child's tribal social service program, a search of all county or state listings of available Indian homes, and contact with local, regional, and national Indian programs that have placement resources available for Indian children.
- (24) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of the *child* or *young adult* when the *child* or *young adult* qualifies for a *level of care payment*.
- (25) "Entity" means any organization or agency including, but not limited to a private child placing agency, that is separate and independent of the Department, performs functions pursuant to a contract or subcontract with the Department, and receives federal funds.
- (26) "Extended family" has the meaning given by the law or custom of the *Indian child's tribe*. In the absence of law or custom, "extended family" means a person 18 or over who is the Indian child's *grandparent*, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.
- (27) "Extended family member" means a person ordinarily recognized as the refugee child's parent by the custom of the child's culture, or a person 18 years of age or older who is the child's *grandparent*, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

- (28) "Family member" means any person related to the *child* or *young adult* by blood, marriage, or *adoption*, including, but not limited to the parents, grandparents, stepparents, aunts, uncles, sisters, brothers, cousins, and great-grandparents. "Family member" also includes the *registered domestic partner* of a person related to the *child*, a *child* 12 years of age or older, and when appropriate, a *child* younger than 12 years of age. Under the Indian Child Welfare Act (ICWA), "family member" has the meaning given by the law or custom of the child's tribe.
- (29) "Fit and willing relative" means an individual who meets the eligibility criteria in OAR 413-070-1010.
- (30) "Foster care agency" means a private child-caring agency that offers to place children by taking physical custody of and then placing the children in a home certified by the agency.
- (31) "Foster care placement" means any action removing, or which could result in the removal of, a *child* from his or her *parent* or *Indian custodian*, such as court-ordered supervision in the home, for placement in foster care, with a *guardian*, or in an institution where the *parent* or *Indian custodian* cannot have the *child* returned upon demand, but where parental rights have not been terminated.
- (32) "Foster parent" means an individual who operates a home that has been approved by the Department to provide care for an unrelated *child* or *young adult* placed in the home by the Department.
- (33) "General applicant" means an individual who:
- (a) Is neither a relative or *current caretaker*; and
  - (b) Has submitted a completed application to adopt a *child*.
- (34) "Grandparent" for purposes of visitation, contact, or communication ordered by the court under ORS 419B.876 means the legal parent of the *child* or young adult's legal parent, as defined in ORS 109.119.
- (35) "Guardian" means an individual who has been granted guardianship of a *child* through a judgment of the court.
- (36) "Guardianship assistance" means assistance provided by the Department to the *guardian* on behalf of an eligible *child* or *young adult* to offset costs associated with meeting the ongoing needs of the *child* or *young adult*. "Guardianship assistance" may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.
- (37) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the *potential guardian* or *guardian* setting forth the assistance the Department is to provide on behalf of the *child* or *young adult*, the

responsibilities of the *guardian* and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

- (38) "Guardianship assistance agreement only" means a written agreement, binding on the parties to the agreement, between the Department and the *potential guardian* or *guardian* of an eligible *child* or *young adult*, when the *potential guardian* or *guardian* is not receiving a *guardianship assistance payment* or medical coverage at the time of the agreement but may request it at a later date.
- (39) "Guardianship assistance base rate" means the portion of the *guardianship assistance payment* that is negotiated with the *potential guardian* or *guardian* and cannot exceed the amount of the Oregon foster care *base rate payment* for the *child* or young adult's age.
- (40) "Guardianship assistance payment" means a monthly payment made by the Department to the *guardian* on behalf of the eligible *child* or *young adult*.
- (41) "Guardianship Assistance Review Committee" means a committee composed of local and central office Department staff with expertise in the area of guardianship.
- (42) "ICWA" means the Indian Child Welfare Act.
- (43) "Impending danger safety threat" means a family behavior, condition, or circumstance that meets all five safety threshold criteria. A threat to a *child* that is not immediate, obvious, or occurring at the onset of the CPS intervention. This threat is identified and understood more fully by evaluating and understanding individual and family function.
- (44) "Incapacity" means a physical or mental illness, or impairment that reduces substantially or eliminates the individual's ability to support, care for, or meet the needs of the *child* and is expected to be permanent.
- (45) "Independent living housing subsidy" means a payment to assist in covering the cost of room, board, or other monthly expenses made to an eligible individual who is at least 16 years of age and is in the care and custody of the Department and living independently.
- (46) "Indian" means any person who is a member of or eligible for membership in an *Indian tribe* or who is an Alaskan native and a member of a Regional Corporation as defined in 43 USC section 1606.
- (47) "Indian child" means an unmarried person under 18 years of age who is either a member of a federally-recognized *Indian tribe* or is eligible for membership in a federally-recognized *Indian tribe* and who is the biological child of a member of an *Indian tribe*.
- (48) "Indian Child Welfare Act Manager" ("ICWA Manager") means staff who monitors Department policy and procedures towards compliance with the Indian Child Welfare Act; investigates complaints of non-compliance from tribes; provides consultation to

caseworkers relating to law and administrative rules; and provides ICWA materials and training.

- (49) "Indian child's tribe" means the *Indian tribe* in which an *Indian child* is a member or eligible for membership. In the case of an *Indian child* who is a member or eligible for membership in more than one *Indian tribe*, it is the *Indian tribe* with which the *Indian child* has the most significant contacts.
- (50) "Indian custodian" means any *Indian* person who has legal custody of an *Indian child* under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the *parent* of such *child*.
- (51) "Indian organization" means any group, association, partnership, corporation, or legal entity owned or controlled by Indians or a majority of whose members are Indians, such as an Indian Child Welfare Committee.
- (52) "Indian tribe" means any "Indian tribe", band, nation, or organized group or community of Indians who are recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska native village as defined in 43 USC section 1606, and any tribe whose federal relationship has been terminated by congressional action.
- (53) "Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996" ("IEPA") means section 1808 of the act which is entitled "Removal of Barriers to Interethnic Adoption", and affirms and strengthens the prohibition against discrimination in *adoption* or foster care placements, and is codified in 42 USC section 671(a)18.
- (54) "Involuntary proceeding" means any action removing a *child* from a *parent* or *Indian custodian* and such *parent* or *Indian custodian* cannot have the *child* returned upon demand.
- (55) "Judicial hours" means the number of hours a court is available to hold a hearing. Legal holidays and weekends do not count as "judicial hours".
- (56) "Legal assistance specialist" means an Adoption Program staff member who provides consultation on the technical and legal processes to achieve a *permanency plan* for a *child* in the legal custody of the Department.
- (57) "Level of care payment" means the payment provided to an approved or certified family, a *guardian*, a pre-adoptive family, or an adoptive family based on the need for *enhanced supervision* of a *child* or *young adult* determined by applying the CANS algorithm to the results of the CANS screening.
- (58) "Licensed medical professional" means an individual who meets the criteria of both of the following subsections:

- (a) The individual holds at least one of the following valid licensures or certifications:
    - (A) Physician licensed to practice in the State of Oregon;
    - (B) Nurse practitioner certified by the Oregon State Board of Nursing under ORS 678.375; or
    - (C) Physician assistant licensed to practice in the State of Oregon.
  - (b) The individual's training, experience, and competence demonstrate expertise in children's mental health, the ability to conduct a mental health *assessment*, and the ability to provide *psychotropic medication* management for children and young adults.
- (59) "Medically accepted indication," defined in ORS 418.517, means any use for a covered outpatient drug that is approved under the Federal Food, Drug and Cosmetic Act, or recommended by the Pharmacy and Therapeutics Committee, or the use of which is supported by one or more citations included or approved for inclusion in any of the following compendia:
- (a) American Hospital Formulary Services drug information;
  - (b) United States Pharmacopoeia drug information or any successor publication;
  - (c) The DRUGDEX Information System; or
  - (d) Peer-reviewed medical literature.
- (60) "Multiethnic Placement Act of 1994" means federal statutes which prohibit discrimination based on *race*, color, or national origin as considerations in *adoption* and foster placements.
- (61) "Nonrecurring guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the *potential guardian* of an eligible *child* for a one-time payment to reimburse the *guardian* for the reasonable and necessary expenses incurred in legally finalizing the guardianship.
- (62) "Nonrecurring guardianship expenses" means a one-time payment of up to \$2,000 per *child* that the Department will make to a *guardian* to assist with the reasonable and necessary expenses associated with obtaining legal guardianship of an eligible *child*.
- (63) "Office of Developmental Disabilities Services" means the Department of Human Services, Office of Developmental Disabilities Services.

- (64) "Parent" means the biological or adoptive mother or the legal father of the *child*. A legal father is a man who has adopted the *child* or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an *Indian child* under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the *child* by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.
- (65) "Participating tribe" means a federally recognized *Indian tribe* in Oregon with a Title IV-E agreement with the Department.
- (66) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a *permanency plan* or a potential permanency resource when the *child* or *young adult* likely is not returning to his or her *parent*.
- (67) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the *child* or *young adult*. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume responsibility for the *child* or *young adult* during the remaining years of dependency and be accessible and supportive to the *child* or young adult in adulthood.
- (68) "Permanent foster care" means the out of home placement of a *child* or *young adult* in which there is a long-term foster care agreement between each *substitute caregiver* and the Department approved by the juvenile court under which the *substitute caregiver* commits to raise a *child* in *substitute care* until the age of majority and be accessible to and supportive of the *child* into adulthood, until the court determines that APPLA - permanent foster care is no longer the appropriate *permanency plan* for the *child* or *young adult*.
- (69) "Potential guardian" means an individual who:
- (a) Has been approved by the Department or *participating tribe* to be the *guardian* of a *child*; and
  - (b) Is in the process of legalizing the relationship to the *child* through the judgment of the court.
- (70) "Provider" means an individual approved by a licensed private child-caring agency to provide care for a *child* or *young adult*, or an employee of a licensed private child-caring agency approved to provide care for a *child* or *young adult*.
- (71) "Psychotropic medication," defined in ORS 418.517, means medication, the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including, but not limited to antipsychotic, antidepressant, and anxiolytic medication and behavior

medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

- (72) "Qualified mental health professional" means an individual who meets the requirements of both of the following subsections:
- (a) Holds at least one of the following educational degrees:
    - (A) Graduate degree in psychology;
    - (B) Bachelor's degree in nursing and is licensed by the state of Oregon;
    - (C) Graduate degree in social work;
    - (D) Graduate degree in a behavioral science field;
    - (E) Graduate degree in recreational, art, or music therapy; or
    - (F) Bachelor's degree in occupational therapy and is licensed by the State of Oregon.
  - (b) Whose education and experience demonstrates the competencies to --
    - (A) Identify precipitating events;
    - (B) Gather histories of mental and physical disabilities, alcohol and drug use, past mental health services, and criminal justice contacts;
    - (C) Assess family, social, and work relationships;
    - (D) Conduct a mental status examination;
    - (E) Document a multiaxial DSM diagnosis;
    - (F) Develop and supervise a treatment plan;
    - (G) Conduct a mental health assessment; and
    - (H) Provide individual, family, or group therapy within the scope of his or her practice.
- (73) "Race" means American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, White.
- (74) "RCWAC" means the Refugee Child Welfare Advisory Committee.

- (75) "Reasonable and prudent parent standard" means the standard, characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child or young adult while encouraging the emotional and developmental growth of the child or young adult, that a substitute care provider shall use when determining whether to allow a child or young adult in substitute care to participate in extracurricular, enrichment, cultural, and social activities.
- (76) ~~"Refugee child" has the meaning given the term in ORS 418.925. means a person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group, or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group, or political opinion.~~
- (a) ~~As used in this section, "persecution" means that harm or suffering will be inflicted upon the person in order to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.~~
- (b) ~~As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.~~
- (77) "Registered domestic partner" means an individual joined in a domestic partnership that is registered by a county clerk in accordance with ORS 106.300 to 106.340.
- (78) "Relative" means any of the following:
- (a) An individual with one of the following relationships to the *child* or *young adult* through the *parent* of the *child* or *young adult* unless the relationship has been dissolved by *adoption* of the *child*, *young adult*, or *parent*:
- (A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.
- (B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great. Individuals with one common biological parent are half-blood relatives.
- (C) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.
- (D) A spouse of anyone listed in paragraphs (A) to (C) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative"

under this paragraph, the *child* or *young adult* must have had a relationship with the spouse prior to the most recent episode of Department custody.

- (b) An individual with one of the following relationships to the *child* or *young adult*:
  - (A) A *sibling*, also to include an individual with a sibling relationship to the *child* or *young adult* through a putative father.
  - (B) An individual defined as a relative by the law or custom of the tribe of the *child* or *young adult* if the *child* or *young adult* is an *Indian child* under the Indian Child Welfare Act or in the legal custody of a tribe.
  - (C) An individual defined as a relative of a *refugee child* or *young adult* under OAR 413-070-0300 to 413-070-0380.
  - (D) A stepparent or former stepparent if the *child* or *young adult* had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.
  - (E) A *registered domestic partner* of the *parent* of the *child* or *young adult* or a former *registered domestic partner* of the *parent* of the *child* or *young adult* if the *child* or *young adult* had a relationship with the former domestic partner prior to the most recent episode of Department custody.
  - (F) The adoptive parent or an individual who has been designated as the adoptive resource of a *sibling* of the *child* or *young adult*.
  - (G) An unrelated legal or biological father or mother of a half-sibling of the *child* or *young adult* when the half-sibling of the *child* or *young adult* is living with the unrelated legal or biological father or mother.
- (c) An individual identified by the *child* or *young adult* or the family of the *child* or *young adult*, or an individual who self-identifies, as being related to the *child* or *young adult* through the *parent* of the *child* or *young adult* by blood, *adoption*, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (C) of subsection (a) of this section unless the relationship has been dissolved by *adoption* of the *child*, *young adult*, or *parent*.
- (d) An individual meeting the requirements of at least one of the following:
  - (A) An individual not related to the *child*, *young adult*, or *parent* by blood, *adoption*, or marriage:
    - (i) Who is identified as a member of the family by the *child* or *young adult* or by the family of the *child* or *young adult*; and

- (ii) Who had an emotionally significant relationship with the *child* or *young adult* or the family of the *child* or *young adult* prior to the most recent episode of Department custody.
- (B) An individual who has a blood relationship to the *child* or *young adult* as described in paragraphs (A) to (C) of subsection (a) of this section through the birth parent of the *child* or *young adult*, but the prior legal relationship has been dissolved by *adoption* of the *child*, *young adult*, or birth parent, and who is identified as a member of the family by the *child* or *young adult* or who self-identifies as a member of the family.
- (e) For eligibility for the *guardianship assistance* program:
  - (A) A stepparent is considered a *parent* and is not a "relative" for the purpose of eligibility for *guardianship assistance* unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the *child* has been terminated by divorce or death.
  - (B) A *foster parent* may only be considered a "relative" for the purpose of eligibility for *guardianship assistance* when:
    - (i) There is a compelling reason why *adoption* is not an achievable *permanency plan*;
    - (ii) The *foster parent* is currently caring for a *child*, in the care or custody of the Department or a *participating tribe*, who has a *permanency plan* or *concurrent permanent plan* of guardianship;
    - (iii) The *foster parent* has cared for the *child* for at least 12 of the past 24 months; and
    - (iv) The Department or tribe has approved the *foster parent* for consideration as a *guardian*.
- (79) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related *child* or *young adult* placed in the home by the Department.
- (80) "Relative search" means the efforts of the Department to identify, locate, and document the contact with a *child* or young adult's relatives.
- (81) "Reservation" means Indian country as defined in 18 USC section 1151, and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any *Indian tribe* or individual or held by any *Indian tribe* or individual subject to a restriction by the United States against alienation.

- (82) "Safety service provider" means a participant in a protective action plan, initial safety plan, or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.
- (83) "Secretary" means the Secretary of the Interior.
- (84) "Sibling" means one of two or more children or young adults who are related, or would be related but for a termination or other disruption of parental rights, in one of the following ways:
- (a) By blood or *adoption* through a common *parent*;
  - (b) Through the marriage of the legal or biological parents of the children or young adults; or
  - (c) Through a legal or biological parent who is the *registered domestic partner* of the legal or biological parent of the children or young adults.
- (85) "Special immigrant juvenile status" means a legal process to obtain lawful permanent resident status for a *child* who does not have lawful permanent resident status because he or she entered the United States without inspection and who meets the other criteria required by federal law.
- (86) "Substitute care" means the out-of-home placement of a *child* or *young adult* who is in the legal or physical custody and care of the Department.
- (87) "Substitute caregiver" means a *relative caregiver*, *foster parent*, or *provider* authorized to provide care to a *child* or *young adult* in the legal or physical custody of the Department.
- (88) "Successor legal guardian" means an individual who has been named in the *guardianship assistance agreement*, including any amendments to the agreement, as a replacement legal *guardian* in the event of the death or *incapacity* of the *guardian*.
- (89) "Supervised visit" means a *child-family contact* that includes a designated third party to protect the emotional and physical safety of a *child* or *young adult*.
- (90) "Termination of parental rights" means an action which results in the termination of the parent-child relationship.
- (91) "Title VI of Civil Rights Act of 1964" prohibits discrimination on the basis of *race*, color or national origin under programs receiving federal assistance through the United States Department of Health and Human Services.
- (92) "Tribal court" means the court which holds jurisdiction over Indian child custody proceedings and is either a Court of Indian Offenses, a court established and operated

under code or custom of an *Indian tribe*, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

- (93) "Urgent medical need" means the onset of psychiatric symptoms requiring professional attention within 48 hours to prevent a serious deterioration in a *child* or young adult's mental or physical condition.
- (94) "Visit" means planned, in-person contact between the *child* or *young adult* and one or more family members.
- (95) "Voluntary proceeding" means any action in which a *parent* or *Indian custodian* has voluntarily given custody of his or her *child* to another and such voluntary action does not prohibit the *parent* or *Indian custodian* from regaining custody of the *child* at any time.
- (96) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419A.004

# Multiethnic Placements

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## **413-070-0022**

### **Denials or Delays of Placement Based on Race, Color or National Origin Prohibited**

*(Amended 07/17/15)*

[THIS RULE IS REPEALED](#)

~~This topic is addressed in OAR [413-070-0015](#).~~

Stat. Auth.: ORS [418.005](#)

Stats. Implemented: ORS [418.005](#)

## **413-070-0027**

### **Denial of Opportunity to Be an Adoptive or Foster Parent Based on Race, Color, or National Origin Prohibited**

*(Amended 07/17/15)*

[THIS RULE IS REPEALED](#)

~~This topic is addressed in OAR [413-070-0020](#).~~

Stat. Auth.: ORS [418.005](#)

Stats. Implemented: ORS [418.005](#)

## **413-070-0033**

### **Exceptions**

*(Amended 07/07/00)*

[THIS RULE IS REPEALED](#)

~~OAR [413-070-0000](#) to [413-070-0030](#) do not apply to the placement of children pursuant to the [Indian Child Welfare Act](#).~~

Stat. Auth.: ORS [418.005](#)

Stats. Implemented: [418.005](#)

# Placement of Indian Children

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## 413-070-0110

### Legislative Authority

(Amended 01/01/02)

#### THIS RULE IS REPEALED

~~These rules are promulgated pursuant to the statutory authority granted to the Department of Human Services (DHS) in ORS 418.005.~~

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

## 413-070-0170

### ICWA Procedures at Initial Contact

(Amended ~~07/17/15~~ 10/01/15)

This section presents the initial steps to follow in providing services and taking legal action for child custody proceedings covered by the ICWA.

- (1) Determination of Indian Status:
  - (a) Oral inquiry must be made in every case which involves or could involve changes in custody to determine whether the case involves an *Indian child*. Department staff must routinely request racial or ethnic data of parents or *guardian* by reading aloud from the intake form the racial and ethnic categories for the client's self-identification. If the child's parents are unavailable or unable to provide a reliable answer regarding the Indian heritage of their *child*, Department staff must consider:
    - (A) All documentation in the file, including contact with previous caseworkers, if any;
    - (B) Close observation of the physical characteristics of the *child*, parents, and other siblings or relatives accompanying the *child*;
    - (C) Consultation with relatives and collateral contacts providing information which suggests the *child* or *parent* may be *Indian*; and
    - (D) Examination of any other information bearing on the determination of the child's Indian heritage, such as communication from other sources including Indian tribes and organizations.

- (b) If, in following the above steps, information obtained suggests the *child* may be of Indian heritage but the tribe cannot be determined, staff must contact the Department ICWA Manager to determine if:
  - (A) The birth place of the *child* or parent, or the current or former residence of the *child* or parent is known to be a common residence of Indian families; and
  - (B) The surname of the *child* or parent is one which is known to be common among members of Indian tribes.
- (2) Determination of Indian Tribe. If it appears the *child* is of Indian heritage, the caseworker must determine the tribe in which the *child* is a member or eligible for membership. Department staff must ask the parent or custodian of the *child* about the tribe with which the *child* may be affiliated. If this inquiry does not provide the necessary information, Department staff must, at a minimum, contact the following:
  - (a) Relatives and extended family members.
  - (b) Indian tribes and organizations in Oregon, such as the Commission on Indian Services.
  - (c) The appropriate Bureau of Indian Affairs (BIA) Office.
- (3) ICWA Eligibility. For a *child* to be considered an Indian under ICWA, the *child* must be:
  - (a) An unmarried person under the age of eighteen; and
  - (b) A person who is either a member of an federally-recognized *Indian tribe* or eligible for membership in an federally-recognized *Indian tribe* and the biological child of a member of an *Indian tribe*;
  - (c) In order for the worker to determine if the *child* is a tribal member or eligible for membership, the tribe or possible tribes identified must be contacted.
- (4) Tribal Membership:
  - (a) A tribal determination of membership is conclusive because each tribe defines the criteria for membership in the tribe and determines who meets those criteria. Inquiries to the tribe must be sent "Return Receipt Requested" to a membership committee, an enrollment clerk, or individual who is accustomed to responding to questions about tribal membership.
    - (A) If the tribe does not respond, Department staff must contact the tribe by telephone. If the tribe cannot be reached by phone, the caseworker must contact the local Bureau of Indian Affairs Area Office and the ICWA

Manager for assistance.

- (B) The caseworker must request that all information given be treated confidentially.
- (b) If the *child* is a member of one tribe and eligible for membership in others, the tribe of actual membership is the child's tribe. If the *child* is not now a member of a tribe, the caseworker must ascertain whether the *child* is eligible for membership and is the biological child of a member of an federally-recognized Indian tribe. To do this, the caseworker asks:
  - (A) The *child*, when the *child* is old enough to respond;
  - (B) The parents or relatives, including in-laws, as appropriate; and
  - (C) The tribe.
- (5) Out-of-State Tribes. When an *Indian child* is a member of or eligible for membership in a federally-recognized tribe located in another state, the Act applies and all applicable provisions, including provisions governing notification of the tribe, must be followed.
- (6) Multi-Tribal Membership:
  - (a) The *child* may be eligible for membership in more than one tribe. In that case the *Indian child's tribe* is the tribe with which the *child* has the most significant contacts. In considering with which tribe the *child* has the most significant contacts, the caseworker shall investigate:
    - (A) The length of residence on or near the reservation of each tribe and the frequency of contacts with each tribe;
    - (B) The child's participation in activities of each tribe;
    - (C) The child's fluency in the language of each tribe;
    - (D) Whether there has been a previous adjudication with respect to the *child* by a court of one of the tribes;
    - (E) Residence on or near one of the tribes' reservation of the child's relatives;
    - (F) Tribal membership of custodial parent or *Indian custodian*; and
    - (G) Interest asserted by each tribe in response to the notice specified in OAR 413-070-0210.

- (b) Documentation of such investigation shall be submitted to the court so that it can consider the comparative interests of each tribe in the child's welfare in making its decision on the matter.
- (7) Enrollment of Indian Clients. If the *child* is not a member of the child's tribe, but is applying to become a member, the caseworker must proceed as though the *child* is a member and follow the requirements of the Act. Department staff must assist the family in filling out and returning required paperwork to the appropriate tribe and, as necessary, counsel parents hesitant to enroll a *child* by emphasizing the positive benefits of tribal enrollment and membership.
- (8) ICWA Not Applicable. Once determined, tribal status must be clearly documented in the case record, along with the date and source of documentation. An *Indian child* who is officially determined by the tribe not to be a member of nor eligible for membership is not subject to the requirements of the Indian Child Welfare Act. In such cases, Department staff must:
- (a) Document in the case record steps taken to determine the child's Indian or tribal ancestry and the tribe's written statement declaring the *child* ineligible for membership; and
  - (b) Incorporate in any court hearing the tribe's written statement declaring the *child* ineligible for membership.
- (9) Cultural Heritage Protection. In instances where the ICWA does not apply, but the *child* is biologically an *Indian* or considered an *Indian* by the Indian community, the Department must respect the child's right to participate in the culture of origin in case planning, particularly if the *child* is identifiably Indian by physical features or social relationship.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

# Psychotropic Medication Management

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## 413-070-0450

### Disclosure Requirements for ~~the Department Regarding a Child 14 Years of Age and Older and a or~~ Young Adult in Substitute Care

(Amended ~~01/01/15~~ 10/01/15)

Pursuant to ORS 109.675, a child 14 years of age or older or *young adult* in *substitute care* may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder, or a chemical dependency, excluding methadone maintenance, by a licensed physician, licensed physician assistant, licensed psychologist, registered nurse practitioner, licensed clinical social worker, licensed professional counselor or marriage and family therapist, or a community mental health program established and operated pursuant to ORS 430.620. However, when a child 14 years of age or older or *young adult* is in *substitute care*, and the *substitute caregiver* or the Department has knowledge of any prescription, the notification requirements of OAR 413-070-0470, 413-070-0480, and 413-070-0490 apply.

Stat. Auth.: ORS 418.005, 418.517

Stats. Implemented: ORS 109.640, 109.675, 418.005, 418.517

# Legal Permanency, Concurrent Planning, and Use of Permanency Committee

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## 413-070-0510

### Obligation to Seek Legal Permanency

(Amended ~~12/29/10~~ 10/01/15)

- (1) Except ~~as provided in section (3) of this rule, when a parent has subjected a child or young adult to aggravated circumstances as defined in ORS 419B.340, and prior to placement of a child or young adult in substitute care,~~ the Department must make reasonable efforts to preserve and reunify families by:—
  - (a) ~~Prior to placing a child in substitute care to prevent or eliminate the need for removing the child;~~
  - (ba) ~~By~~ Establishing conditions for return described in OAR 413-0140-0006 when a child or young adult is removed; and
  - (eb) ~~By~~ Implementing a permanency plan to make it possible for the child or young adult to safely return home.
- (2) The Department must also make reasonable efforts to achieve the *concurrent permanent plan* for ~~legal~~ permanency through *adoption, or guardianship, placement with a fit and willing relative, or APPLA.* ~~and to complete the steps necessary to finalize permanency.~~
- (3) ~~Reasonable efforts to prevent a child's placement in substitute care or safely reunite a child with the family are not required when a parent has subjected a child to aggravated circumstances as defined in ORS 419B.340.~~
- (43) The Department must seek ~~the court's~~ approval of the court prior to changing the *permanency plan* of a child or young adult.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

## 413-070-0512

### Development and Review of the Permanency Plan and Concurrent Permanent Plan

(Amended ~~07/17/15~~ 10/01/15)

- (1) ~~When developing the permanency plan and concurrent permanent plan, the Department must:~~

- ~~(a) Describe the purpose of permanency and concurrent planning to the family;~~
- ~~(b) Involve the child's or young adult's parents, identified relatives, the CASA, attorneys, the tribe when the *child or young adult* is an *Indian child*, the RCWAC when the *child or young adult* is a *refugee child*, and other service providers, as appropriate;~~
- ~~(c) Provide full disclosure of the timelines under which the Department pursues permanency pursuant to federal and state law; and~~
- ~~(d) Describe the resources which may be available to relatives when *adoption or guardianship* is a *permanency plan*.~~

(21) The When developing the *permanency plan* and *concurrent permanent plan*, the caseworker must complete all of the following actions:

- (a) Develop a *permanency plan* and a *concurrent permanent plan* for each *child or young adult* in the Department's custody within 60 days of the placement of the *child or young adult* into *substitute care*; ~~and~~.
- (b) Review the plan every 90 days, pursuant to OAR ~~413-040-00005~~ to 413-040-0032.
- (c) Involve a team of individuals knowledgeable about the needs of the *child or young adult* in the development and ongoing assessment of the most appropriate *permanency plan* and *concurrent permanent plan* for the *child or young adult*. The team must include all of the following:
  - (A) The parents, unless a supervisor approves not including a specified *parent* because the contact may compromise the safety of a *child or young adult* or another individual; parental rights have been terminated; or the *parent* has signed a release and surrender agreement.
  - (B) The attorney of the parents, unless parental rights have been terminated or the *parents* have signed a release and surrender agreement.
  - (C) The *child* who has attained 14 years of age or *young adult* and, at the option of the *child or young adult*, up to two members of the case planning team who are chosen by the *child or young adult* as described in OAR 413-040-0010(3)(c).
  - (D) The CASA.
  - (E) The attorney of the *child or young adult*.
  - (F) A tribal representative if the *child or young adult* is an *Indian child*.

- (G) A member of the RCWAC, if the *child* is a *refugee child*.
- (H) The team may include any of the following:
  - (i) The *child* at any age, whenever developmentally appropriate.
  - (ii) The *child* or young adult's *substitute caregiver*.
  - (iii) The substitute caregiver's certifier.
  - (iv) The child's or young adult's relatives.
  - (v) Persons with a *caregiver relationship*.
  - (vi) Other individuals with involvement in the *child* or young adult's life.
  - (vii) Individuals with expertise in permanency.
- (d) Use ongoing contacts with the individuals in subsection (c) of this section to:
  - (A) Monitor the progress toward achieving the *permanency plan*.
  - (B) Provide the *child* or *young adult*, and the parents of the *child* or *young adult*, the opportunity to identify available permanency resources should reunification not be achievable.
  - (C) Review the efforts to identify and place the *child* or *young adult* with a *relative* and to place siblings together.
  - (D) Consider the parents' acceptance of a plan other than reunification and their preference for continued contact with the *child* or *young adult*.
  - (E) Identify and consider which *concurrent permanent plan* best meets the current and lifelong safety, permanency, and well-being needs of the *child* or *young adult* in the following preferential order:
    - (i) *Adoption*.
    - (ii) Guardianship, which may be considered only when there are compelling reasons why *adoption* cannot be achieved.
    - (iii) Placement with a *fit and willing relative*, which may be considered only when there are compelling reasons why *adoption* or guardianship cannot be achieved.

- (iv) If the child has reached the age of 16, Another Planned Permanency Living Arrangement, which may be considered only when there are compelling reasons why adoption, guardianship or placement with a fit and willing relative cannot be achieved.
- (e) Determine the Department has taken action on the potential permanency resources identified by the child or young adult, the family of child or young adult, a member of the team of the child or young adult, or the Department.
- (f) Determine which permanency plan best meets the safety, permanency, and well-being needs of the child or young adult and provides the child or young adult with support and connection in adulthood, and document the basis for the determination.
- (g) Submit a recommendation to the permanency committee as required in OAR 413-070-0516.
- (h) Obtain the approval of a legal assistance specialist before recommending a change of permanency plan to adoption.
- (2) Participants in the development and review process must be informed of all of the following:
  - (a) The purpose of permanency and concurrent planning.
  - (b) The timelines under which the Department pursues permanency pursuant to federal and state law.
  - (c) The resources which may be available to relatives when adoption or guardianship is a permanency plan.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

## **413-070-0514**

### **Working with a Child's Team Regarding a Permanency Plan and Concurrent Permanent Plan Use of Permanency Committee**

*(Amended ~~07/17/15~~ 10/01/15)*

#### **THIS RULE IS REVISED IN ITS ENTIRETY**

- (1) ~~The caseworker must consult with a team of individuals, knowledgeable about the needs of the child or young adult, including the ongoing assessment of the most appropriate~~

~~permanency plan and concurrent permanent plan for the child or young adult, throughout the course of the case.~~

~~(a) The team must include the following individuals to the extent required in each of the following paragraphs:~~

~~(A) The parents, unless a supervisor approves not including a specified parent because the contact may compromise the safety of a child, young adult, or another individual; parental rights have been terminated; or the parent has signed a release and surrender agreement;~~

~~(B) The parent's attorney, unless parental rights have been terminated or the parent has signed a release and surrender agreement;~~

~~(C) The child or young adult, whenever developmentally appropriate;~~

~~(D) The CASA;~~

~~(E) A child or young adult's attorney;~~

~~(F) A tribal representative if the child or young adult is an Indian child; and~~

~~(G) A member of the RCWAC, if the child is a refugee child.~~

~~(b) The team may include:~~

~~(A) The child or young adult's substitute caregiver;~~

~~(B) The substitute caregiver's certifier;~~

~~(C) The child's or young adult's relatives;~~

~~(D) Persons with a caregiver relationship;~~

~~(E) Other individuals with involvement in the child or young adult's life; and~~

~~(F) Individuals with expertise in permanency.~~

~~(2) The caseworker utilizes the ongoing contact with these individuals to~~

~~(a) Monitor the progress toward achieving the permanency plan;~~

~~(b) Provide the child or young adult, and the parents of the child or young adult, the opportunity to identify available permanency resources should reunification not be achievable;~~

- ~~(c) — Review the efforts to identify and place the *child* or *young adult* with a *relative* and to place siblings together;~~
  - ~~(d) — Consider the parents' acceptance of a plan other than reunification and their desire for continued contact with the *child* or *young adult*;~~
  - ~~(e) — Identify and consider which *concurrent permanent plan* best meets the current and lifelong safety, permanency, and well-being needs of the *child* or *young adult* in the following preferential order:
    - ~~(A) — *Adoption*;~~
    - ~~(B) — Guardianship, which may be considered only when there are compelling reasons why *adoption* cannot be achieved; or~~
    - ~~(C) — Another Planned Permanency Living Arrangement, which may be considered only when there are compelling reasons why *adoption* or guardianship cannot be achieved.~~~~
- ~~(3) — After the caseworker has complied with section (2) of this rule and prior to considering a change in *permanency plan*, the caseworker must determine that the Department has taken action on the potential permanency resources identified by the Department, the *child* or *young adult*, the family of *child* or *young adult*, or a member of the team of the *child* or *young adult*; and the caseworker must review with the team of the *child* or *young adult*:~~
- ~~(a) — The outcome of the assessment of potential permanency resources; and~~
  - ~~(b) — The Department's efforts to develop and maintain the relationship of the *child* or *young adult* with potential permanency resources.~~
- ~~(4) — When the caseworker determines a change in *permanency plan* should be considered, the caseworker must determine which *permanency plan* best —~~
- ~~(a) — Meets the safety, permanency, and well-being needs of the *child* or *young adult*;~~
  - ~~(b) — Provides the *child* or *young adult* with support and connections in adulthood.~~
  - ~~(c) — The caseworker documents the basis for the determination.~~
- ~~(5) — The *legal assistance specialist* must approve changing the *permanency plan* to *adoption* prior to the caseworker recommending *adoption* to the court.~~
- ~~(6) — The *permanency committee* must make recommendations; and~~

- ~~(a) — A Child Welfare Program Manager or *designee* must make the decision on behalf of the Department:
  - ~~(A) — To approve changing the *permanency plan* to guardianship prior to the caseworker recommending the plan to the court; and~~
  - ~~(B) — To identify the *substitute caregiver* as the appropriate permanency placement resource for the plan of guardianship.~~~~
- ~~(b) — A Child Welfare Program Manager must make the decision on behalf of the Department:
  - ~~(A) — To approve changing the *permanency plan* to APPLA prior to the caseworker recommending the plan to the court; and~~
  - ~~(B) — To identify the *substitute caregiver* as the appropriate permanency placement resource for the plan of APPLA.~~~~

A permanency committee must be scheduled when any of the following applies:

- (1) A caseworker recommends a change in *permanency plan* to guardianship, *fit and willing relative*, or APPLA.
- (2) A caseworker is considering a separation of siblings in *adoption* under OAR 413-110-0132.
- (3) A caseworker requests a *permanency committee* review the relationship between a *general applicant* and a *child* whose *permanency plan* is *adoption* under OAR 413-120-0750.
- (4) A *current caretaker* or *relative caregiver* requests consideration as a potential *adoptive resource* and the adoption home study regarding the *child* or *sibling group* has not been completed.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

## **413-070-0516**

### **Use of Permanency Committee Composition, Scheduling, Responsibilities, and Recommendations of the Permanency Committee**

*(Amended 07/17/15 10/01/15)*

THIS RULE IS REVISED IN ITS ENTIRETY

~~A *permanency committee* must be scheduled when any of the following sections applies:~~

- ~~(1) The caseworker is recommending a change in *permanency plan* to guardianship. The *permanency committee* provides a recommendation based upon the considerations in OAR 413-070-0660 and OAR 413-070-0665.~~
- ~~(2) The caseworker is recommending a change in *permanency plan* to APPLA. The *permanency committee* provides a recommendation based upon the considerations in OAR 413-070-0550(1).~~
- ~~(3) A foster parent's request to be considered an *adoptive resource* as a *current caretaker* pursuant to OAR 413-120-0500 to 413-120-0595. The *permanency committee* provides a recommendation based upon the considerations in OAR 413-120-0570.~~
- ~~(4) A caseworker is considering the separation of siblings in *adoption* under OAR 413-110-0132. The *permanency committee* provides a recommendation based upon the considerations in OAR 413-110-0132(2).~~
- ~~(5) The caseworker requests that a *permanency committee* review the relationship between a *general applicant* and a *child* whose *permanency plan* is *adoption*. The *permanency committee* provides a recommendation based upon the considerations in OAR 413-120-0750(5)(b).~~
- (1) A *permanency committee* is composed of the following individuals:
  - (a) Two individuals who have been appointed by a Child Welfare Program Manager to attend a *permanency committee*.
    - (A) A *committee facilitator*, who must be a Department staff member and who must ensure all of the following:
      - (i) The meeting is held according to the requirements of OAR chapter 413.
      - (ii) Individuals are informed of the responsibilities of the committee and the confidentiality of information presented during the meeting.
      - (iii) Committee recommendations are thoroughly and accurately documented.
    - (B) A second individual who may be either a community partner or another Department staff member.
    - (C) The individuals in this section must meet the following requirements:
      - (i) Be knowledgeable about permanency issues.

- (ii) Be knowledgeable of the importance of lifelong family attachment and cultural connections.
    - (iii) Have no current personal or professional relationship to the *child* or a potential placement resource or potential *adoptive resource* being considered.
  - (b) The following members of the child's team:
    - (A) The caseworker of the *child* or *young adult*;
    - (B) The attorney of the *child* or *young adult*;
    - (C) The CASA of the *child* or *young adult*;
    - (D) A tribal representative, if the *child* or *young adult* is an *Indian child*; and
    - (E) A member of the RCWAC, if the *child* or *young adult* is a *refugee child*.
- (2) The *substitute caregiver* of the *child* or *young adult*, or any other individual from the child's team who a caseworker, in consultation with the supervisor, believes can provide important input into the issue before the *permanency committee*, may be invited to come and present information to the *permanency committee*, but is excused after presenting information and responding to questions.
- (3) The Child Welfare Program Manager or *designee* responsible for making the decision on behalf of the Department attends the *permanency committee* and may ask clarifying questions, but does not participate in the deliberation and recommendation.
- (4) The Department is responsible for scheduling and notifying the following individuals of the date, time, and location of the *permanency committee*:
  - (a) Appointed *permanency committee* members;
  - (b) The Child Welfare Program Manager or *designee* making a recommendation or decision on the issue before the *permanency committee*;
  - (c) Each member of the child's or young adult's team identified in subsection (1)(b) of this rule; and
  - (d) Any other individual invited to present specific information to the *permanency committee*.
- (5) Each individual attending a *permanency committee* is bound by Oregon statutes regarding confidentiality and OAR 413-010-0010 to 413-010-0075.

(6) Consideration, review, and recommendation.

- (a) The *permanency committee* must consider and review the information presented by any individual invited to the *permanency committee*, whether the information is presented in person, by phone, through other electronic communication, or in writing.
- (b) The *permanency committee* may seek clarification of information presented, and may request additional information during the presentations.
- (c) The *permanency committee* must consider the safety, permanency, and well-being needs of the *child* or *young adult* and, when there are siblings, the safety, permanency, and well-being needs of each *sibling* and make a recommendation regarding the issue brought before the committee to the Child Welfare Program Manager or *designee* as follows:
  - (A) When the caseworker recommends a change in *permanency plan* to guardianship, the *permanency committee* provides a recommendation based upon the considerations in OAR 413-070-0660 and OAR 413-070-0665.
  - (B) When the caseworker recommends a change in *permanency plan* to placement with a *fit and willing relative*, the *permanency committee* provides a recommendation based upon the considerations in OAR 413-070-1020.
  - (C) When a caseworker recommends a change in *permanency plan* to APPLA, the *permanency committee* provides a recommendation based upon the considerations in OAR 413-070-0550(1).
  - (D) When a caseworker considers the separation of siblings in *adoption* under OAR 413-110-0132, the *permanency committee* provides a recommendation based upon the considerations in OAR 413-110-0132(2).
  - (E) When the caseworker requests a *permanency committee* review the relationship between a *general applicant* and a *child* whose *permanency plan* is *adoption*, the *permanency committee* provides a recommendation based upon the considerations in OAR 413-120-0750(6)(b).
- (d) When members of the *permanency committee* have not come to consensus on a recommendation, the *committee facilitator* must document all recommendations and the basis provided by the *permanency committee* member for that recommendation.

- (e) The *committee facilitator* must provide the written documentation of the permanency committee's recommendation or recommendations to the Child Welfare Program Manager or *designee* within three business days of the date on which the *permanency committee* was held.
- (7) For the purpose of OAR 413-070-0514(4), a *current caretaker* or *relative caregiver* request for consideration as an *adoptive resource*, the following also apply:

  - (a) The *permanency committee* is composed of the individuals in sections (1) and (3) of this rule, and:

    - (A) The assigned certifier for the *current caretaker* or *relative caregiver*.
    - (B) The assigned adoption worker for the *current caretaker* or *relative caregiver*.
  - (b) The *current caretaker* or *relative caregiver* of the *child* or *sibling* group under consideration for *adoption*, or any other individual from the child's team who a caseworker, in consultation with the supervisor, believes can provide important input into the issue before the *permanency committee*, may be invited to present information to the *permanency committee*, but is excused after presenting information and responding to questions.
  - (c) The *permanency committee* must review the following:

    - (A) The safety, attachment, and well-being needs of the *child* or *sibling* group under consideration for adoption together and how the *current caretaker* or *relative caregiver* has met those needs to date;
    - (B) The *current caretaker* or relative caregiver's history of meeting the standards of certification pursuant to OAR 413-200-0301 to 413-200-0396;
    - (C) Any child abuse and neglect reports made to the Department that were assigned for assessment, closed at screening, or documented in the Department's paper or electronic information system;
    - (D) Recommendations for continued contact with birth parents, birth family, or other significant persons for the *child* or *sibling* group under consideration for *adoption*; and
    - (E) Any other information pertinent to the evaluation of the ability of the *current caretaker* or *relative caregiver* to meet the lifelong safety, attachment, and well-being needs of the *child* or *sibling* group under consideration.

- (d) The *permanency committee* must document and provide to the assigned adoption worker any specific information they determine must be explored in the adoption home study for the *current caretaker* or *relative caregiver*.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

## **413-070-0518**

### **Composition, Scheduling, Responsibilities and Recommendations of the Permanency Committee** **Exceptions to Scheduling a Permanency Committee** (Amended ~~07/17/15~~ 10/01/15)

#### THIS RULE IS REVISED IN ITS ENTIRETY

(1) — ~~Composition. A *permanency committee* includes the following individuals.~~

(a) — ~~Two individuals who have been appointed by a Child Welfare Program Manager to attend a *permanency committee*.~~

(A) — ~~A *committee facilitator*, who must be a Department staff member and who must ensure all of the following:~~

(i) — ~~The meeting is held according to the requirements of OAR chapter 413.~~

(ii) — ~~Individuals are informed of the responsibilities of the committee and the confidentiality of information presented during the meeting.~~

(iii) — ~~Committee recommendations are thoroughly and accurately documented.~~

(B) — ~~A second individual who may be either a community partner or another Department staff member.~~

(C) — ~~The individuals in this section must meet the requirements of all of the following paragraphs:~~

(i) — ~~Be knowledgeable about permanency issues.~~

(ii) — ~~Be knowledgeable of the importance of lifelong family attachment and cultural connections.~~

- ~~(iii) — Have no current personal or professional relationship to the *child* or a potential placement resource or potential *adoptive resource* being considered.~~
    - ~~(b) — The following members of the child's team:
      - ~~(A) — The caseworker of the *child* or *young adult*;~~
      - ~~(B) — The attorney of the *child* or *young adult*;~~
      - ~~(C) — The CASA of the *child* or *young adult*;~~
      - ~~(D) — A tribal representative, if the *child* or *young adult* is an *Indian child*; and~~
      - ~~(E) — A member of the RCWAC, if the *child* or *young adult* is a *refugee child*.~~~~
  - ~~(2) — The *substitute caregiver* of the *child* or *young adult*, or any other individual from the child's team who a caseworker, in consultation with the supervisor, believes can provide important input into the issue before the *permanency committee*, may be invited to come and present information to the *permanency committee*, but is excused after presenting information and responding to questions.~~
  - ~~(3) — The Child Welfare Program Manager or *designee* responsible for making the decision on behalf of the Department attends the *permanency committee* and may ask clarifying questions, but does not participate in the deliberation and recommendation.~~
  - ~~(4) — Scheduling. The Department is responsible for scheduling and notifying the following individuals of the date, time, and location of the *permanency committee*.
    - ~~(a) — Appointed *permanency committee* members;~~
    - ~~(b) — The Child Welfare Program Manager or *designee* making a decision on the issue before the *permanency committee*;~~
    - ~~(c) — Each member of the *child's* or *young adult's* team identified in subsection (1)(b) of this rule; and~~
    - ~~(d) — Any other individual invited to present specific information to the *permanency committee*.~~~~
- ~~(5) — Confidentiality. Each individual attending a *permanency committee* is bound by Oregon statutes regarding confidentiality and OAR 413-010-0000 to 413-010-0075.~~
- ~~(6) — Consideration, review, and recommendation.~~

- ~~(a) The *permanency committee* must consider and review the information presented by any individual invited to the *permanency committee*, whether the information is presented in person, by phone, through other electronic communication, or in writing.~~
  - ~~(b) The *permanency committee* may seek clarifying and request additional information during the presentations.~~
  - ~~(c) The *permanency committee* must consider the safety, permanency, and well-being needs of the *child* or *young adult* and when there are siblings; the safety, permanency, and well-being needs of each *sibling*; and make a recommendation regarding the issue brought before the committee to the Child Welfare Program Manager or *designee*.~~
  - ~~(d) When members of the *permanency committee* have not come to consensus on a recommendation, the *committee facilitator* must document all recommendations and the basis provided by the *permanency committee* member for that recommendation.~~
  - ~~(e) The *committee facilitator* must provide the written documentation of the permanency committee's recommendation or recommendations to the Child Welfare Program Manager or *designee* within three business days of the date on which the *permanency committee* was held.~~
- (1) An exception to scheduling a *permanency committee* exists when:
- (a) The *permanency plan* for a *child* under the age of 16 is being changed from APPLA to an approved *permanency plan* of guardianship or placement with a *fit and willing relative* for the purpose of complying with federal and state law but before a resource has been identified; or
  - (b) The court changes a *permanency plan* for a *child* or *young adult* before the Department makes a recommendation pursuant to OAR 413-070-0512 to 413-070-0516.
- (2) When an exception to scheduling a *permanency committee* applies, the caseworker does the following:
- (a) If the new *permanency plan* for the *child* or *young adult* is guardianship:
    - (A) Change the *permanency plan* to guardianship;
    - (B) Diligently recruit and identify a *potential guardian* resource for the *child* or *young adult*; and

- (C) Approve the guardian for the child or young adult as outlined in OAR 413-070-0665 and 413-070-0670.
- (b) If the new permanency plan for a child or young adult is placement with a fit and willing relative:
  - (A) Change the permanency plan to placement with a fit and willing relative;
  - (B) Diligently recruit and identify a potential relative resource for the child or young adult; and
  - (C) Approve the relative for placement with a fit and willing relative as outlined in OAR 413-070-1020.
- (3) After complying with OAR 413-070-0512 to 413-070-0516, if the Department recommendation is something other than the court-approved permanency plan, the Department will schedule a judicial review of the child's or young adult's permanency plan.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

## **413-070-0519**

### **Decision and Notice**

(Amended ~~07/17/15~~ 10/01/15)

- (1) ~~Except to the extent that section (2) of this rule indicates otherwise, when a permanency committee is scheduled for the purpose of a current caretaker or relative caregiver request to be considered as a potential adoptive resource, the Child Welfare Program Manager or designee must:~~
  - (a) Consider the recommendations of the permanency committee;
  - (b) Make a decision within one business day following the receipt of the written recommendations of the permanency committee; and
  - (c) Provide written notification of the decision and the basis of the decision to the caseworker on a form approved by the Department.
- ~~(2) When the decision of the permanency committee applies to changing a permanency plan to APPLA, the Child Welfare Program Manager must make the decision and may not appoint a designee.~~
- (~~3~~2) The caseworker must notify the following individuals of the decision under section (1) of this rule:

- (a) Each *child* or *young adult*, when required by law and developmentally appropriate;
- (b) The attorney of eEach *child's* or *young adult's* ~~attorney~~, if one has been appointed;
- (c) The CASA of eEach *child's* or *young adult's* ~~CASA~~, if one has been appointed;
- (d) The tribal representative of eEach *child's* or *young adult's* ~~tribal representative~~, when a *child* or *young adult* is an *Indian child*;
- (e) The member of the RCWAC when a *child* or *young adult* is a *refugee child*; and
- (f) The substitute caregiver of Eeach *child's* or *young adult's* ~~substitute caregiver~~.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

# Another Planned Permanent Living Arrangement

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## 413-070-0520

### Purpose

(Amended ~~12/29/10~~ 10/01/15)

The purpose of ~~these rules~~ (OAR 413-070-0520 to 413-070-0565) is to describe the responsibilities of the Department in case planning and the appropriate use of APPLA as a *permanency plan* for a *child* or *young adult*.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

## 413-070-0532

### Types of APPLA

(Amended ~~12/29/10~~ 10/01/15)

The caseworker considers one of the following types of APPLA when considering APPLA as a *permanency plan* for a *child* who has reached the age of 16 or *young adult*:

- (1) APPLA - permanent foster care. ~~An~~ APPLA - *permanent foster care* is a plan in which the *child* or *young adult* remains in a *substitute care* placement with a *substitute caregiver* who has:
  - (a) Committed to the care and well-being of the *child* or *young adult*; and
  - (b) Entered into a *permanent foster care* agreement.
- (2) APPLA - permanent connections and support. An APPLA - permanent connections and support plan is a plan in which:
  - (a) A *child* or *young adult* is in *substitute care* living with a *substitute caregiver* or living independently and receiving an *independent living housing subsidy* and the plan focus is not only on the ~~child's or young adult's~~ educational, vocational, health, and treatment needs of the child or young adult, but also on the needs of the *child* or *young adult* to develop or maintain relationships with adults, including relatives and persons with a *caregiver relationship*, who can play a significant role in the ~~child's or young adult's~~ life of the child or young adult after the *child* or *young adult* leaves *substitute care*; or
  - (b) A *child* or *young adult* is in a psychiatric residential facility, ~~D~~developmental ~~D~~disabilities placement, or residential treatment facility and is not going to be discharged from the facility while the Department maintains legal custody of the *child* or *young adult*.

Stat. Auth.: ORS 418.005  
Stats Implemented: ORS 418.005, 419A.004

## 413-070-0536

### Consideration of APPLA as a Permanency Plan

(Amended ~~01/15/13~~ 10/01/15)

- (1) Department consideration of APPLA as a permanency plan must be based on the individual safety, permanency, and well-being needs of a child who has reached the age of 16 or young adult. The age or disability of a child or young adult is never a disqualifier for a more preferred permanency plan.
- (~~12~~) The Department may only consider APPLA as a permanency plan for a child who has reached the age of 16 or a young adult only if the Department has determined ~~that there is a compelling reason that~~ it is not in the best interests of the child or young adult to implement one of the following preferred permanency plans, ~~listed in order of preference:~~
  - (a) Placement with a *parent*;
  - (b) Placement in an adoptive home ~~which includes permanent placement with a fit and willing relative through the adoption; or~~
  - (c) Placement with a legal guardian ~~which includes permanent placement with a fit and willing relative as a guardian; or~~
  - (d) Placement with a fit and willing relative.
- (~~23~~) Prior to consideration of a *foster parent* as the APPLA resource, the caseworker and ~~the caseworker's his or her supervisor have complied with the requirements of both of the following subsections must:~~
  - (a) Reviewed the ~~Department's diligent efforts~~ of the Department to ~~identify, contact, and place a child or young adult with relatives and to place siblings together as required under~~ Child Welfare Policy I-E.1.1, "Search for and Engagement of Relatives", OAR 413-070-0060 to 413-070-0087.
  - (b) ~~Confirmed~~ there are no current Department actions to identify or assess a child's or young adult's relative of a child or young adult who has ~~either~~ expressed an interest in ~~and needs to be or currently is being assessed as~~ a permanency resource.
- (~~3~~) ~~The Department must base consideration of each permanency plan on the individual safety, permanency, and well-being needs of a child or young adult. A child's age or disability is never a disqualifier for a more preferred permanency plan.~~

Stat. Auth.: ORS 409.050, 418.005  
Stats. Implemented: ORS 109.328, 409.010, 418.005

### 413-070-0540

#### Determination of APPLA as a ~~Child's or Young Adult's~~ Permanency Plan

(Amended ~~12/29/10~~ 10/01/15)

- (1) When the Department is considering a change in ~~a child or young adult's~~ the permanency plan of a child or young adult, the Department makes the determination pursuant to ~~Child Welfare Policy I.E.3.6, "Legal Permanency, Concurrent Planning, and Use of Permanency Committee"~~, OAR 413-070-0500 to 413-070-0519.
- (2) Prior to the *permanency committee*, when APPLA - *permanent foster care* is being considered as the most appropriate *permanency plan* for a *child* or *young adult*, the caseworker must:
  - (a) Meet with the *substitute caregiver* to:
    - (A) Assess interest in and commitment to a *permanent foster care* agreement with each *substitute caregiver* as long as APPLA - *permanent foster care* is the *permanency plan* for the *child* or *young adult*; and
    - (B) Review the requirements, responsibilities, and approval process for the *permanent foster care* agreement with each *substitute caregiver*.
  - (b) Meet with the *child* or *young adult*, as developmentally appropriate; and, at the option of the child or young adult, up to two members of the case planning team who are chosen by the child or young adult to assess interest in APPLA - *permanent foster care* as the *permanency plan*.

Stat. Auth.: ORS 418.005  
Stats Implemented: ORS 418.005, 418.937, 418.941, 419A.004

### 413-070-0550

#### Approval and Implementation of an APPLA Permanency Plan

(Amended ~~09/19/11~~ 10/01/15)

- (1) The *permanency committee* must consider the best interests of the *child* who has reached the age of 16 or *young adult* ~~under consideration~~ and ~~consider~~ each of the following factors when ~~making~~ developing a recommendation regarding APPLA to the Child Welfare Program Manager or designee:

- (a) ~~How an APPLA permanency plan meets~~ The safety, permanency, and well-being needs of the *child* or *young adult*, ~~and is in the best interests of the *child* or *young adult*.~~
  - (b) ~~Whether~~ The opportunities the Department has provided the *child* or *young adult*, and the ~~*child* or *young adult's* parents~~ of the *child* or *young adult*, ~~an opportunity~~ to identify ~~available~~ permanency resources.
  - (c) The parents' acceptance of APPLA as a *permanency plan* and their ~~desire~~ preference for continued contact with the *child* or *young adult*.
  - (d) ~~Whether the *child* or *young adult's*~~ The ability of the *substitute caregiver* is able to meet the ~~*child* or *young adult's* needs~~ of the *child* or *young adult* pursuant to OAR 413-070-0640 ~~in Child Welfare Policy I E.3.1, "Placement Matching"~~.
  - (e) ~~Consideration of each of the more preferred permanency plans described in OAR 413-070-0536(1) and identification of the~~ The compelling reasons ~~why return home reunification, adoption, or guardianship, or placement with a fit and willing relative~~ cannot be achieved.
  - (f) ~~When the *child* or *young adult* has siblings, the~~ The sufficiency of the plan for continued contact ~~with siblings unless such contact is not in the best interests of the *child* or *young adult* and each sibling.~~
- (2) ~~After completing the review under section (1) of this rule, the *permanency committee* considers all of the information, deliberates, and, when committee members agree, makes a recommendation to the Child Welfare Program Manager.~~
- (3) ~~When the *permanency committee* cannot reach agreement, each *permanency committee* member makes his or her respective recommendations known to the *committee facilitator*.~~
- (42) The Child Welfare Program Manager ~~or *designee* who makes the decision on behalf of the Department~~ must consider all of the following when making the decision regarding APPLA:
- (a) The considerations in section (1) of this rule.
  - (b) The information presented to the *permanency committee*.
  - (c) The recommendation of the *permanency committee*.
- (53) Within 30 days of the Department's decision to approve an APPLA *permanency plan* under OAR 413-070-0519, the caseworker must request a permanency hearing before the court. ~~At the court hearing, the caseworker must:~~

- (4) The caseworker must encourage the *child or young adult* to attend the APPLA permanency hearing, offer to provide transportation, and request the court inquire with the *child or young adult* about his or her desired permanency outcome.
- (5) At the hearing, the caseworker must provide the court:
- (a) The intensive, ongoing efforts by the Department to achieve reunification, adoption, guardianship, or placement with a *fit and willing relative*;
  - (b) The compelling reasons reunification, adoption, guardianship, and placement with a *fit and willing relative* would not be in the best interests of the *child or young adult*;
  - (ac) Recommend ~~A recommendation~~ that the court issue an order approving the APPLA plan;
  - (b) ~~Set forth the compelling reasons why it would not be in the best interests of the *child or young adult* to return home, be placed for adoption, or be placed with a guardian;~~
  - (d) The steps the Department has taken to ensure the *foster parent* applies the *reasonable and prudent parent standard* and provides opportunities for the *child or young adult* to engage in *age-appropriate or developmentally appropriate activities*;
  - (ee) Set forth ~~a~~ A timetable for ~~the *child or young adult*'s~~ placement of the *child or young adult* in another planned permanent living arrangement;
  - (df) ~~Set forth the~~ The reasonable services the Department may offer each *parent* to meet the best interests of the *child or young adult* until a more preferred *permanency plan* is achieved, the *child* reaches the age of majority, reaches independence, or the juvenile court relieves the Department of *legal custody* of the *child or young adult*; and
  - (eg) ~~Set forth the~~ The type and amount of contact and involvement between the *parent and -child or young adult* and between the *sibling and child-sibling or young adult* ~~contact and involvement~~ until a more preferred *permanency plan* is achieved, the *child* reaches age of majority, reaches independence, or the juvenile court relieves the Department of *legal custody* of the *child or young adult*.
- (6) When the ~~court previously has ordered or the~~ Department recommends ~~that no~~ contact be ~~allowed-limited or prohibited~~ between a *parent* and *child, or young adult* or ~~between a *sibling and child or young adult* and *sibling*~~, the caseworker must make the request that to the court, and issue a standing protective order, including include the reasons ~~why no~~ contact ~~is allowed-should be limited or prohibited~~.

- (7) ~~When~~ Within 30 days of the Department or court decision not to approve the APPLA plan does not receive Department approval, within 30 days the caseworker must:
- (a) Inform the *child or young adult*, and, at the option of the *child or young adult*, up to two members of the case planning team who are chosen by the *child or young adult* as described in OAR 413-040-0010(3)(c), the *child's or young adult's* substitute caregivers, the *child's or young adult's* parents, the *child's or young adult's* attorney, and the *child's* court appointed special advocate of the *child or young adult*, and other persons with significant involvement in the *child's or young adult's* life of the *child or young adult*; and
  - (b) Consult with the *child's* team to reconsider ~~the *child's or young adult's* other permanency options~~ for the *child or young adult*.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005, 419A.004

#### **413-070-0551**

#### **Contents of an APPLA Case Plan**

(Amended ~~01/15/13~~ 10/01/15)

- (1) ~~When requesting the change to a permanency plan of APPLA to the court, the caseworker must document how the Department plans to address each subsection of this section in the *child or young adult's case plan*. The case plan must include the following information~~ When APPLA is the permanency plan for a *child or young adult*, the caseworker must address each of the following in the case plan of the *child or young adult*:
- (a) Family composition, which includes the identifying information of each *parent*, ~~(except when parental rights have been terminated)~~, *guardian*, and sibling.
  - (b) Except when parental rights have been terminated, the identified impending danger safety threats ~~identified in a CPS assessment under Child Welfare Policy I-AB.4, "CPS Assessment", OAR 413-015-0400 to 413-015-0485.~~
  - (c) Except when parental rights have been terminated, the ongoing safety plan as described in Child Welfare Policy I-AB.4, "CPS Assessment" OAR 413-015-0400 to 413-015-0485 and recorded in the electronic Department's information system of the Department.
  - (d) A description of how the Department determined the APPLA is the most appropriate *permanency plan* for the *child or young adult*, and each *compelling reason* why the more preferred *permanency plan* options were not selected for the *child or young adult*.

- (e) The steps the Department has taken to ensure the *substitute caregiver* is applying the *reasonable and prudent parent standard* and the *child or young adult* has regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities.
- (ef) A description of how the ~~*child or young adult's*~~ attachments and relationships of the *child or young adult* with each *parent, sibling*, other *family member*, advocate, *substitute caregiver*, and other person who provides continuity, belonging, stability, support, nurturing, and caring relationships and cultural connections for the *child or young adult* may be developed while the *child or young adult* is in *substitute care* and maintained when the *child or young adult* reaches the age of majority or the juvenile court relieves the Department of *legal custody* of the *child or young adult*. When appropriate, the description may include the following:
- (A) A description of how each *parent* and *sibling* of the *child or young adult* may participate actively in the life of the *child or young adult*.
- (B) For each existing relationship the *child or young adult* has with a permanent adult caregiver or adult parental figure who is capable of sustaining a significant relationship with the *child or young adult*, a description of how the relationship may be maintained.
- (C) A description of how relationships with relatives and other persons involved in the *child or young adult's* life may be developed and maintained.
- (D) Current placement information including the location of the *child or young adult* when the *substitute caregiver* authorizes release of the address, except when doing so would jeopardize the safety of the *child*.
- (E) The ~~*child or young adult's*~~ record of visits ~~with his or her parents or siblings~~ between the *child or young adult* and his or her parents or siblings.
- (fg) When applicable, a description of the plan to transition a *child or young adult* with intellectual or developmentally delayed ~~child~~ disabilities to an appropriate program for adults ~~who are developmentally delayed have with intellectual or developmental disabilities~~.
- (gh) The comprehensive transition plan ~~required by Child Welfare Policy I B.2.3.5, "Youth Transitions", described in~~ OAR 413-030-0400 to 413-030-0460 for any *child* 14 years of age or older *or young adult* and services that prepare the *child or young adult* to transition to adulthood.

- (hi) A description of the reasonable efforts made by the Department to put the services and structures described in this rule in place to meet the needs of the *child* or *young adult* and to enhance the stability of the living arrangement of the child's or young adult living arrangement when the *child* or *young adult* is not living with a specified adult.
  - (hj) A description of the services the Department must provide to ensure the emotional, medical, educational, cultural, and physical needs of the *child* or *young adult* are being met, including:
    - (A) The ~~child or young adult's~~ health information of the child or young adult, which documents the ~~child or young adult's~~ specialized medical, dental, and mental health services of the child or young adult; and
    - (B) The ~~child or young adult's~~ education services of the child or young adult, including the school or educational placement history of the *child* or *young adult*, high school credits earned for a *child* over 14 years of age or ~~a young adult~~, and any special educational needs.
  - (jk) The services required to prepare the *child* or *young adult* to live in the least restrictive setting possible at the most appropriate time.
  - (kl) The services that may make it possible to achieve a more preferred *permanency plan* listed in OAR 413-070-0536(~~12~~) for the *child* or *young adult*.
  - (lm) The services the Department may continue to make available to the parents of the child or young adult's parents, upon request, that continue to be in the best interests of the *child* or *young adult*.
  - (mn) For any child who has attained 14 years of age or young adult, the documents described in OAR 413-040-0010(1)(j)(A) and (B).
- (2) Except when parental rights have been terminated or the Department is unable to obtain the signature of the *parent* or *guardian*, the case plan must include the signature of the caseworker, the supervisor, and each *parent* or *guardian* as described in Child Welfare Policy I-B.3.1, "Developing and Managing the Case Plan", OAR 413-040-000~~10~~10 to 413-040-0032.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005, 419A.004

## 413-070-0552

### Ongoing Department Responsibilities When APPLA is the Child's or Young Adult's Permanency Plan

(Amended ~~01/15/13~~ 10/01/15)

- (1) When APPLA is the court-approved *permanency plan* for a *child* or *young adult* in the Department's legal custody, the ~~*child or young adult's*~~ caseworker must do all of the following:
  - (a) Discuss the needs of the *child* or *young adult's* needs with the *substitute caregiver* and the *child or young adult* during face-to-face and other contacts, and routinely discuss needs, benefits, barriers, and solutions towards achieving a more preferred permanency option;
  - (b) Have contact with the *child or young adult*, with the *substitute caregiver*, and monitor *child or young adult* safety as described in Child Welfare Policy I-B.1, "Monthly Contact and Monitoring Child and Young Adult Safety", OAR 413-080-0040 to 413-080-0067;
  - (c) Provide timely assessment and services for identified needs of the *child or young adult*, and the ~~*child or young adult's*~~ substitute caregiver, or the ~~*child or young adult's*~~ parents of the *child or young adult*;
  - (d) As soon as possible after the *child* reaches 14 years of age initiate comprehensive transition planning as described in Child Welfare Policy I-B.2.3.5, "Youth Transitions", OAR 413-030-0400 to 413-030-0460;
  - (e) Ensure an annual review of Department efforts to identify and contact relatives of a *child* or *young adult's* relatives and efforts to place with or develop and maintain a *child* or *young adult's* connection and support with relatives is completed;
  - (f) Monitor the case plan and complete the required case plan reviews; ~~and~~
  - (g) Submit to the court and to the citizen review board the case plan updates required in Child Welfare Policy I-I.2, "Narrative Recording"; and, when the APPLA plan is APPLA - *permanent foster care*, submit a copy of the *permanent foster care* agreement.
- (2) In addition to the requirements of section (1) of this rule, when the *child* or *young adult* has an approved APPLA - *permanent foster care* plan:
  - (a) The Department must continue to assess requirements for certification of a foster home pursuant to Child Welfare Policy II-B.1.1, "Responsibilities for Certification and Supervision of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0270 to 413-200-0296; and
  - (b) The *substitute caregiver* must--

- (A) Maintain a current Certificate of Approval and follow the requirements of the Department pursuant to ~~Child Welfare Policy II-B.1, "Standards for Certification of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources"~~, OAR [http://www.dhs.state.or.us/policy/childwelfare/manual\\_1/division\\_80.pdf](http://www.dhs.state.or.us/policy/childwelfare/manual_1/division_80.pdf);
- (B) Follow the requirements of the Department regarding ~~a child or young adult's~~ education, medical care, mental health care, and other services requested by the Department to meet the needs of the *child* or *young adult*;
- (C) Maintain residence in the state of Oregon unless the ICPC referral has been submitted to the receiving state and approval to move has been obtained from the Department and the court prior to the move outside of Oregon; and
- (D) Maintain residence in the ICPC approved state if the *substitute caregiver* lives in another state.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005, 419A.004

## 413-070-0556

### APPLA Permanency Plan Reviews

(Amended ~~01/15/13~~ [10/01/15](#))

- (1) The caseworker must review the APPLA case plan at least every six months and the review must occur prior to a review by the court or citizen review board as required by ORS 419B.470 and 419A.106(1) respectively.
  - (a) The review must take place in a face-to-face meeting with the *child* or *young adult*, and may include members of the team of the *child* or *young adult*.
    - (A) When appropriate, the meeting may include a *parent* or *guardian*, unless the *parent* or *guardian* is not available for the review. When a *parent* or *guardian* is unavailable, the caseworker must document the reason the *parent* or *guardian* was unavailable and the efforts made to involve the *parent* or *guardian*.
    - (B) During the meeting the caseworker must consider input received from the *child* or *young adult*; and, at the option of the *child* or *young adult*, up to two members of the case planning team who are chosen by the *child* or *young adult* as described in OAR 413-040-0010(3)(c), other participants in the meeting, and other information received from service providers, substitute caregivers, an attorney of the *child* or *young adult*'s attorney, a ~~*child* or *young adult*'s~~ court appointed special advocate of the *child* or

young adult, the tribe if the *child* is an ICWA *child*, persons with significant attachments to the *child* or *young adult*, and ~~a~~relatives of the child or young adult's relatives.

- (b) After the meeting described in subsection (a) of this section, the caseworker must document in the case record:
  - (A) Whether the current placement continues to be the least restrictive setting available to meet the safety and permanency needs of the *child* or *young adult*; or
  - (B) Whether a more permanent *permanency plan*, such as reunification, ~~or~~ adoption, guardianship, or placement with a fit and willing relative is more appropriate for the *child* or *young adult*.
- (2) When an APPLA has been approved by the court as the *permanency plan* for a *child* or *young adult* in the legal custody of the Department, the Department must notify the court and request a review or permanency hearing:
  - (a) ~~No~~ less frequently than once every 12 months while the *child* or *young adult* remains in *substitute care* in accordance with ORS 419B.470(2).
  - (b) Unless good cause is shown, at any time upon the request of the Department, a *substitute caregiver* directly responsible for the care of the *child* or *young adult*, a *parent* of the *child* or *young adult*, an attorney for the *child* or *young adult*, a court appointed special advocate, a citizen review board, or a *tribal court* in accordance with ORS 419B.470(5).
  - (c) By the citizen review board no less frequently than every six months in accordance with ORS 419A.106(1)(a) unless the court has relieved the citizen review board of its responsibility to review a case in accordance with ORS 419A.106(1)(b).
  - (d) Within 90 days of a change of *substitute care* placement.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005, 419A.004, 419B.470

## **413-070-0565**

### **Termination of APPLA**

(Amended ~~01/15/13~~ 10/01/15)

- (1) The APPLA - ~~P~~ermanent ~~C~~onnections and ~~S~~upport must be terminated when:
  - (a) Court wardship is terminated;

- (b) The court relieves the Department of legal custody of the *child* or *young adult*; or
  - (c) The court determines that APPLA - Permanent Connections and Support is no longer the appropriate *permanency plan* for the *child* or *young adult*.
- (2) The APPLA - *permanent foster care* plan and agreement must be terminated when:
- (a) The *child* reaches the age of majority ~~under as provided in~~ ORS 419A.004(17);
  - (b) Court wardship is terminated;
  - (c) The court determines that APPLA - *permanent foster care* is no longer the appropriate *permanency plan* for the *child*;
  - (d) One of the more preferred permanency plans described in OAR 413-070-0536~~(4)~~(2) is achieved;
  - (e) The Department and the *substitute caregiver* mutually consent to termination;
  - (f) The *foster parent* or *relative caregiver* fails to maintain a current Certificate of Approval in accordance ~~to Child Welfare Policies II-B.1, "Standards for Certification of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources", with~~ OAR 413-200-0301 to 413-200-0396 and II-B.1.1, "Responsibilities for Certification and Supervision of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0270 to 413-200-0296, including when the certificate has been revoked or denied;
  - (g) The *child* or *young adult* is removed from the *substitute caregiver* by the Department; or
  - (h) The *child* or *young adult* requests, and a Child Welfare Program Manager approves, termination of the agreement because of serious or extraordinary circumstances.
- (3) The Department must provide written notification to the court of any change in the placement of the *child* or *young adult*.
- (4) If a *child* or *young adult* is removed from court-~~approved~~ APPLA - *permanent foster care*, the caseworker must request a permanency hearing within 90 days after the date of the change in placement to review the *permanency plan* for the *child* or *young adult* under ORS 419B.470(3).

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 419A.004, 419B.470

# Placement Matching

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## 413-070-0625

### Identifying and Assessing the Needs of the Child or Young Adult When Placement in Substitute Care Is Required

(Amended ~~01/15/13~~ 10/01/15)

- (1) To select a *substitute care* placement that will meet the safety, permanency, and well-being needs of the *child* or *young adult*, the caseworker must:
  - (a) Involve the *parent* or *guardian* of the *child* or *young adult* and the *child* or *young adult* as developmentally appropriate in identifying *substitute care* placement resources whenever possible.
  - (b) Assess the ability of each potential *substitute caregiver* to provide safety for the *child* or *young adult*.
  - (c) Assess the potential *substitute care* placements in the order of preference under OAR 413-070-0220 and 413-070-0320, when the *child* or *young adult* is an *Indian child* or *refugee child*.
  - (d) Except as provided in subsection (c) of this section, assess the potential *substitute care* placements in the following order of preference:
    - (A) A *relative* of the *child* or *young adult* who can be certified by the Department~~;~~
    - (B) A person who has a *caregiver relationship* with the *child* or *young adult* and can be certified by the Department~~;~~
    - (C) A *foster parent* who is certified by the Department, or a *provider* who is approved through a licensed child-caring agency.
  - (e) Consider the use of a family meeting to seek the ~~family's~~ placement preferences of the family if more than one person requests to have the *child* or *young adult* placed with them; and
  - (f) Consider whether the potential *substitute care* placement --
    - (A) Has the ability to provide safety for the *child* or *young adult* and, when there are one or more siblings, each of the siblings;
    - (B) Is willing to cooperate with any restrictions placed on contact between the *child* or *young adult*~~;~~ and others;

- (C) Has the ability to prevent anyone from influencing the *child* or *young adult* in regard to the allegations of the case;
  - (D) Has the ability to support the efforts of the Department to implement the permanent plan for the *child* or *young adult*; ~~and~~
  - (E) Has the ability to meet the physical, emotional, and educational needs of the *child* or *young adult*, including the need of the *child* or *young adult* to continue in the same school or educational placement; ~~;~~ and
  - (F) Has the ability to support the interests of the *child* or *young adult* to participate in age-appropriate or developmentally appropriate activities, including extracurricular, enrichment, cultural, and social activities.
  - (g) Ensure that the *substitute care* placement is the most home-like, least restrictive available to meet the needs of the *child* or *young adult*.
  - (h) Assure that the race, color, or national origin of the *child*; or *young adult*; or *substitute care* placement is not a consideration when assessing a *substitute care* placement.
- (2) When a *child* or *young adult* is placed in *substitute care* and has a *sibling* who is currently in or also needs *substitute care*, the caseworker must make diligent efforts to place siblings together unless placing the siblings together is not in the best interests of the *child* or *young adult*; or the *sibling* of the *child* or *young adult*.
- (3) Within one month of the placement of the *child* or *young adult* in a *substitute care* setting, the caseworker must reconsider whether the *substitute caregiver* is able to meet the requirements in subsection (1)(f) of this rule and assess whether the following placement considerations are met:
- (a) The placement is in close proximity to the parents or guardians of the *child* or *young adult*;
  - (b) The placement is in close proximity to the community of the *child* or *young adult*;
  - (c) If in the best interests of the *child* and siblings as set forth in section (2) of this rule, the siblings are together in placement; and
  - (d) The culture and family identity of the *child* or *young adult* are supported by the placement.
- (4) After consultation with the supervisor, when the caseworker determines the *substitute care* placement does not meet one or more of the placement considerations in subsection (1)(f) or section (3) of this rule, the caseworker must:

- (a) Determine whether remaining in the *substitute care* placement is in the best interests of the *child* or *young adult*;
- (b) Work with Department staff to secure another *substitute care* placement for the *child* or *young adult* when appropriate; and
- (c) Document the basis for the determination and subsequent actions in the ~~Department's~~ information system of the Department.

Stat. Auth.: ORS ~~409.050~~, 418.005

Stats. Implemented: ORS 409.010, 418.005, 419B.192

### **413-070-0630**

#### **Monitoring the Ongoing Substitute Care Placement Needs of the Child or Young Adult**

(Amended ~~01/15/13~~ 10/01/15)

- (1) The caseworker must monitor the *substitute care* placement of the *child* or *young adult* and determine whether the *relative caregiver*, *foster parent*, or *provider*:
  - (a) Meets the placement considerations of OAR 413-070-0625; and
  - (b) Manages the supervision needs of the *child* or *young adult* as identified in the *CANS screening* and other current assessments or evaluations of the *child* or *young adult*.
- (2) The caseworker must assess the ongoing and permanency needs of the *child* or *young adult*:
  - (a) For physical and emotional safety;
  - (b) To promote and preserve existing attachments to family;
  - (c) For continuity and familiarity;
  - (d) For appropriate educational, developmental, emotional, and physical support;
  - (e) For stability and permanency; ~~and~~
  - (f) For maintaining his or her identity and cultural and religious heritage; and
  - (g) For opportunities to participate in age-appropriate or developmentally-appropriate activities, including extracurricular, enrichment, cultural, and social activities.

- (3) During the required face-to-face contacts with the *child* or *young adult*, the caseworker must:
- (a) Confirm that the *substitute caregiver* can maintain the safety and well-being of the *child* or *young adult*;
  - (b) Develop and maintain a good working relationship with the *child* or *young adult*;
  - (c) Observe the *child* or *young adult* in an age-appropriate and comfortable setting;
  - (d) Gather updated information on the physical and mental health as well as educational, behavioral, and developmental progress of the *child* or *young adult*;
  - (e) Share updated information about the case plan and *permanency plan* for the *child* or *young adult* with the *substitute caregiver* and as permitted by state or federal law; and
  - (f) Document the date, time, and location of the contact, observations, and updated information in the Department's information system.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005, 419B.192

# Guardianship as a Permanency Plan

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**413-070-0651**

**Purpose**

*(Amended 07/17/15)*

THIS RULE IS REPEALED

~~This topic is addressed in OAR 413-070-0655.~~

Stat. Auth.: ORS 418.005, 419B.369

Stats. Implemented: ORS 418.005, 419B.192, 419B.369

# Visits and Other Types of Child and Family Contact

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## 413-070-0800

### Purpose

(Amended ~~01/01/14~~ 10/01/15)

The purpose of ~~these rules~~ (OAR 413-070-0800 to 413-070-0880) is to describe the Department's responsibilities in arranging frequent contact between the *child* or *young adult* in *substitute care*, ~~and the *child* or *young adult's*~~ parents or guardians of the *child* or *young adult*, siblings, and other people with whom the *child* or *young adult* has a significant connection. In all cases, the contact is intended to --

- (1) Be in the best interests of the *child* or *young adult*, develop or enhance attachment with the ~~*child* or *young adult's*~~ family of the *child* or *young adult*, including siblings, and continue ~~the *child* or *young adult's*~~ relationships with significant others, including siblings;
- (2) Reduce the trauma to the *child* or *young adult* associated with separation from primary attachment figures; and
- (3) Assure that the safety and well-being of the *child* or *young adult* are the paramount concerns in developing a *child-family contact* plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

## 413-070-0830

### The Right to Visit Visitation Rights

(Amended ~~01/01/14~~ 10/01/15)

~~Subject to the limitation of section (4) of this rule:~~

- (1) The *child* or *young adult*, a *parent* or *guardian*, and each *sibling* have the right to *visit* each other while the *child* or *young adult* is in *substitute care*. The *child* or *young adult*, the *parent* or *guardian*, and each *sibling* have ~~a~~ the right to *visit* as often as reasonably necessary to develop and enhance their attachment to each other.
- (2) The Department will prohibit or cancel visits, unless otherwise ordered by the court, when:
  - (a) There is reason to believe ~~a *parent* or *guardian's*~~ acts or omissions of a *parent* or *guardian* would result in child abuse or neglect during the *visit*;

- (b) The ~~child or young adult's~~ safety of the child or young adult cannot be managed by supervision;
  - (c) The *visit* does not meet the best interests of the *child or young adult*; or
  - (d) A court order prohibits visits.
- (3) When Department resources alone cannot meet the family contact and visitation needs of the *child or young adult*, the caseworker must solicit help from family and community resources.
- (4) If a *parent* or *guardian* objects to the contact and *visit* requirements and limitations that the Department imposes, the *parent* or *guardian* may seek ~~the~~ juvenile court's review of the requirements and limitations.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005

#### **413-070-0840**

##### **Orientation Activities**

(Amended ~~01/01/14~~ 10/01/15)

Prior to the first contact and after each revision of the Visit and Contact Plan developed under OAR 413-070-0860, the Department must explain ~~to the child or young adult's family and substitute caregiver (and the child or young adult when appropriate)~~ the following to the family, substitute caregiver, and, when appropriate, the child or young adult:

- (1) ~~¶~~ The rights and expectations regarding child-family visitation and contact, including its importance to the *child or young adult*.
- (2) The Department ~~must explain the~~ reason for arranging supervised or unsupervised visits ~~to the involved parties.~~

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005

#### **413-070-0855**

##### **Determining Priority in Visit and Contact Plans**

(Amended ~~01/01/14~~ 10/01/15)

- (1) Unless the court has entered an order regarding visitation by the ~~child or young adult's~~ parents, guardians, siblings, or grandparents of the child or young adult, the caseworker determines a hierarchy of the ~~child or young adult's~~ attachments of the child or young adult and prioritizes visits with the ~~child or young adult's~~ parents or guardians, and siblings. The caseworker may consider the preferences expressed by the *child or young adult*.

- (2) When the *permanency plan* is reunification with a *parent* or *guardian*, the first priority of the caseworker ~~will be is~~ to provide visits with parents or guardians, siblings, and each intervenor granted visitation by the court.
- (3) When the *permanency plan* is a plan other than ~~return to reunification with~~ the parents or guardians, the visitation priority of the caseworker ~~shall be is~~ to ~~both~~ preserve ~~the child or young adult's~~ attachment to parents or guardians and siblings and promote ~~the child or young adult's~~ attachment of the child or young adult to the permanent placement resource.
- (4) When appropriate, the caseworker may ~~consider~~ ~~establishing~~ visits ~~with~~ between the *child* or *young adult's* and family members.
- (5) When appropriate, the caseworker may ~~consider~~ ~~establishing~~ visits ~~with~~ between the *child* or *young adult* and non-related persons with whom the *child* or *young adult* has a significant attachment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.876

# Guardianship Assistance

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## 413-070-0905

### Funding of Guardianship Assistance

(Amended ~~07/17/15~~ 10/01/15)

- (1) When grandparents or other approved relatives make a permanent commitment to and assume legal guardianship of a *child* for whom they have cared as a *substitute caregiver*, the Department provides *guardianship assistance* as described in OAR 413-070-0900 to 413-070-0974.
- (2) *Guardianship assistance* for Title IV-E children and young adults is funded in part with Title IV-E funds as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351).
- (3) A child who is ineligible for Title IV-E funded *guardianship assistance* may be eligible for state-funded *guardianship assistance* as described in OAR 413-070-0917(3).
- (4) State-funded *guardianship assistance* is subject to the availability of funds. When all available state funds are obligated, the Department will continue to:
  - (a) Accept new applications;
  - (b) Accept requests to adjust a *guardianship assistance* payment; and
  - (c) Establish a waiting list.
- (5) When state funds are unavailable and a new *guardianship assistance* application is received, the *guardian* may sign a *guardianship assistance agreement* only to prevent delay in finalizing the guardianship, with the understanding that *guardianship assistance* may be available at a later date.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-0909

### Funding of Guardianship Assistance

(Amended ~~07/17/15~~)

~~This topic is addressed in OAR 413-070-0905.~~

THIS RULE IS REPEALED

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-0917

### Eligibility and Extension of for Guardianship Assistance

*(Temporary Effective 8/19/15 – 2/14/16)(Amended 10/01/15)*

~~(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).

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

~~(c)~~ 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.

~~(d)~~ Be placed with the *potential guardian* who meets the *relative* definition as described in OAR 413-070-0000(78)(a) to (e).

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

~~(f)~~ 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*.

~~(g)~~ Be eligible for Title IV-E foster care maintenance payments.

~~(h)~~ Be in the care or custody of the Department or *participating tribe*.

~~(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.~~

~~(e) — 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) Each sibling of a *child* or *young adult* eligible for Title IV-E guardianship assistance is also eligible for Title IV-E guardianship assistance without meeting the eligibility requirements in subsections (c) to (g) 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 placing the child's sibling in the home of the *potential guardian* or *guardian* is appropriate.

- ~~(32)~~ 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; and.
  - (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).~~
- (4) Each *sibling* of a *child* or *young adult* eligible for state-funded *guardianship assistance* as described in section (3) of this rule is also eligible for state-funded *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 placing the *child's sibling* in the home of the *potential guardian* or *guardian* ~~both of the following are~~ is 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*.~~
- (5) The *child* must be consulted regarding the *guardianship* arrangement when the *child* has attained 14 years of age.
- (6) 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.
- ~~(27)~~ 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.
- (8) 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

## **413-070-0918**

### **Extension of Guardianship Assistance for a Young Adult**

*(Adopted 10/01/15)*

#### **THIS IS A NEW RULE**

The Department may approve an extension of a *guardianship assistance agreement* for an individual under the age of 21 when the individual meets the following criteria:

- (1) 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*:

  - (a) Qualifies as an individual with a developmental disability as determined by the local County Community Developmental Disabilities Program in Oregon;
  - (b) 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
  - (c) Qualifies for Supplemental Security Income (SSI) as determined by the Social Security Administration.
  
- (2) 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:

  - (a) Completing secondary school (or equivalent);
  - (b) Enrolled in post-secondary or vocational school;
  - (c) Participating in a program or activity that promotes or removes barriers to employment;
  - (d) Employed for at least 80 hours a month; or
  - (e) Determined incapable of any of the above due to a documented medical condition, physical disability, or mental disability.
  
- (3) In order for the extension of *guardianship assistance* under section (1) of this rule 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 subsections (1)(a) to (c) of this rule.
  
- (4) In order for the extension of *guardianship assistance* under section (2) of this rule to be approved on behalf of a *young adult*, the *guardian* must submit to the Department documentation verifying the circumstances described in subsections (2)(a) to (e) of this rule. Documentation of circumstances described in subsection (1)(e) of this rule must be from a medical or mental health professional.
  
- (5) The Department must receive the request for extension of the *guardianship assistance agreement* and the documentation described in sections (3) and (4) of this rule:

  - (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.

- (6) If the Department does not receive the documentation as required by sections (3) to (4) of this rule, the Department may not approve an extension of a *guardianship assistance agreement*.
- (7) When an extension of *guardianship assistance* has been approved under section (1) of this rule, *guardianship assistance* will continue until the *young adult* turns 21 years old.
- (8) When an extension of *guardianship assistance* has been approved under section (2) of this rule, 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.
- (9) 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

Stats. Implemented: ORS 409.010, 411.141, 418.005

## **413-070-0919**

### **Eligibility and Requirements for a Child or Young Adult in the Care or Custody of a Participating Tribe**

*(Amended ~~07/17/15~~ 10/01/15)*

- (1) In addition to *guardianship assistance* program criteria in OAR 413-070-0900 to 413-070-0974, the following requirements apply to a *child* in the care or custody of a *participating tribe*:
  - (a) The *child* must be placed in a foster home approved by the *participating tribe* that meets the certification and licensing standards of the *participating tribe*; and
  - (b) The *participating tribe* must document how continued placement with the *potential guardian* is in the best interests of the *child* and meets the safety and permanency needs of the *child*.

- (2) The *participating tribe* must:
- (a) Conduct and prepare a written home study of the *guardian*;
  - (b) Have a current Title IV-E agreement with the Department which includes participation in the *guardianship assistance* program;
  - (c) Notify the Adoption Assistance and Guardianship Assistance Unit within 30 calendar days after reestablishing custody of a *child* or *young adult* in a guardianship placement established under OAR 413-070-0900 to 413-070-0974; and
  - (d) Provide the Adoption Assistance and Guardianship Assistance Unit with a copy of the court order terminating the guardianship within 30 calendar days of the termination, when applicable.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

#### **413-070-0925**

### **Guardianship Assistance Eligibility for Potential Guardian and Successor Legal Guardian**

(Amended ~~07/17/15~~ 10/01/15)

- (1) The Department may approve a *potential guardian* for *guardianship assistance* when the *potential guardian* --
- (a) Meets the requirements of OAR 413-070-0665(2); and
  - (b) Agrees to ensure that, if the *child* has attained the minimum age for compulsory attendance under the law of the state of residence but has not completed secondary school, the *child* is:
    - (A) Enrolled in an elementary or secondary school as determined by the law of the state of residence;
    - (B) Home schooled in accordance with the law of the state of residence;
    - (C) Enrolled in an independent study program in accordance with the law of the state of residence; or
    - (D) Incapable of attending school due to a documented medical condition.

- (2) In the event of the death or *incapacity* of the *guardian*, before the *successor legal guardian* may receive a *guardianship assistance* payment, all of the following requirements must be met:
- (a) The *successor legal guardian* must be named in the *guardianship assistance agreement*, prior to the death or *incapacity* of the *guardian*. A *successor legal guardian* may be added, removed, or replaced by amending the *guardianship assistance agreement* any time prior to the death or *incapacity* of the *guardian*.
  - (b) The *successor legal guardian* and the Department must negotiate and enter into a written *guardianship assistance agreement* as described in OAR 413-070-0949.
  - (c) ~~A fingerprint criminal background check and a child abuse and neglect registry check must be completed on each successor legal guardian and other adults living in the home of any successor legal guardian; and provided to the court.~~ The successor legal guardian and all adults living in the home of the successor legal guardian must have a Department-approved, fingerprint-based criminal records check of the National Crime Information Databases (NCID) and a Child Abuse and Neglect (CAN) registry check.
  - (d) ~~A~~ The *successor legal guardian* must be granted guardianship of the *child* or *young adult* through a judgment of the court.
- (3) A guardianship assistance payment to a successor legal guardian begins on the date all requirements in section (2) of this rule are met.

Stat. Auth.: ORS 411.141, 418.005

Stats. Implemented: ORS 411.141, 418.005

## **413-070-0934**

### **Application Requirements**

(Amended ~~07/17/15~~ 10/01/15)

- (1) Except as described in subsections (a) and (b) of this section, the Adoption Assistance and Guardianship Assistance Unit must begin negotiation of the *guardianship assistance agreement* no later than 60 calendar days after receipt of the completed *guardianship assistance* application.
- (a) The Adoption Assistance and Guardianship Assistance Unit may delay negotiation of the *guardianship assistance base rate* when the *child* is due for an updated *CANS screening*, a new *CANS screening* is warranted, or a *CANS screening* is in process or completed but a decision is pending regarding the *level of care payment* under OAR 413-020-0230. The unit must begin negotiation no later than 30 calendar days from receipt of the final decision regarding the *level of care payment*.

(b) The Adoption Assistance and Guardianship Assistance Unit may delay negotiation following a request by the caseworker, *guardian*, or *potential guardian* when there are extenuating circumstances regarding the *child* or family. The unit must begin negotiation no later than 30 calendar days from notification that the extenuating circumstance causing the delay has been resolved.

(c) The Adoption Assistance and Guardianship Assistance Unit will begin negotiation with the *successor legal guardian* no later than 30 days after receipt of the Department approved fingerprint-based criminal records check of the National Crime Information Databases (NCID) and a Child Abuse and Neglect (CAN) registry check of the *successor legal guardian* and all adults living in the *successor legal guardian's* home.

(2) A *guardianship assistance* application is considered complete when the Adoption Assistance and Guardianship Assistance Unit has received a signed application and all supporting documentation.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

### **413-070-0939**

#### **Guardianship Assistance Payments, Medical Assistance, and Nonrecurring Guardianship Expenses**

(Amended ~~07/17/15~~ 10/01/15)

(1) When a *guardianship assistance payment* or medical assistance is not being provided, a *potential guardian*, *guardian* or *successor legal guardian* may enter into a *guardianship assistance agreement* only.

(2) The monthly *guardianship assistance payment* may not exceed the total of:

(a) The *guardianship assistance base rate*; and

(b) When applicable, the *level of care payment* determined by the *CANS screening* conducted under OAR 413-020-0230.

(3) The monthly *guardianship assistance base rate*:

(a) Is determined through discussion and negotiation between the Department and the *potential guardian*, *guardian* or *successor legal guardian*.

(b) May not exceed the current foster care *base rate payment* the *child* or *young adult* would be eligible to receive in foster care as determined under OAR 413-090-0010(1)(b).

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- (c) Is negotiated between the *potential guardian, guardian or successor legal guardian* of a *child or ~~guardian of a child or~~ young adult* and the Department, taking into consideration relevant factors which include, but are not limited to:
- (A) The ordinary and special needs of the *child or young adult*.
  - (B) The services and goods required to meet the needs of the *child or young adult*.
  - (C) The cost of the services and goods required to meet the needs of the *child or young adult*.
  - (D) The circumstances of the *potential guardian, guardian or successor legal guardian* and their ability to provide the required services and goods for the *child or young adult*.
  - (E) The resources available to the *potential guardian, guardian or successor legal guardian* such as medical coverage, private health insurance, public education, other income sources, and community resources.
  - (F) A *guardianship assistance payment* may be reduced when other sources of income are received by the *potential guardian, guardian or successor legal guardian* or the *child or young adult*.
- (d) Is intended to combine with the resources of the *potential guardian or guardian* to provide for the needs of the *child or young adult*.
- (4) When, during negotiation of the *guardianship assistance base rate* payment, the Adoption Assistance and Guardianship Assistance Coordinator and the *potential guardian, guardian, or the successor legal guardian* are unable to reach agreement, the Adoption Assistance and Guardianship Assistance Coordinator, the *potential guardian, guardian, or the successor legal guardian* may request a review by the *Guardianship Assistance Review Committee*. When a review is requested:
- (a) An Adoption Assistance and Guardianship Assistance Coordinator must:
    - (A) Prepare documentation for the scheduled *Guardianship Assistance Review Committee*;
    - (B) Notify the *potential guardian, guardian, or successor legal guardian* ~~and the assigned caseworkers~~ of the date of the committee; ~~and~~
    - (C) Notify the assigned caseworkers of the date of the committee; and
    - (D) Attend and participate in the *Guardianship Assistance Review Committee*.

- (b) The *potential guardian*, *guardian*, or *successor legal guardian* may provide written documentation to the Adoption Assistance and Guardianship Assistance Coordinator for review and consideration by the *Guardianship Assistance Review Committee*.
- (c) The certification worker for the *potential guardian* and the caseworker for the *child* may participate in a *Guardianship Assistance Review Committee* meeting and may present information and respond to questions. The workers may not participate in the deliberations of the *Guardianship Assistance Review Committee*.
- (d) The *Guardianship Assistance Review Committee* members must:
  - (A) Consider written documentation provided by the *potential guardian*, *guardian*, or *successor legal guardian*, caseworkers, and the Adoption Assistance and Guardianship Assistance Coordinator.
  - (B) Review materials submitted to the *Guardianship Assistance Review Committee*, deliberate, and make one or more recommendations regarding the *guardianship assistance base rate*.
- (e) At the conclusion of the *Guardianship Assistance Review Committee*, the Adoption Assistance and Guardianship Assistance Coordinator must:
  - (A) Document the recommendations of the *Guardianship Assistance Review Committee*; and
  - (B) Submit the documentation to the Post Adoption Services ~~Program~~ Manager or *designee* within one business day of the *Guardianship Assistance Review Committee* meeting.
- (f) The Post Adoption Services ~~Program~~ Manager or *designee* must complete each of the following actions:
  - (A) Attend the *Guardianship Assistance Review Committee* and ask any clarifying questions, but not participate in the deliberation or recommendation of the *Guardianship Assistance Review Committee*;
  - (B) Review and consider:
    - (i) The materials submitted to the *Guardianship Assistance Review Committee*;
    - (ii) The recommendations of the committee; and

- (iii) The information presented by the *potential guardian*, *guardian*, or *successor legal guardian* under subsection (4)(b) of this rule.
  - (C) Make a decision within 30 calendar days of the date of the request for review; and
  - (D) Provide written notification to the *potential guardian*, *guardian*, or *successor legal guardian* and the Adoption Assistance and Guardianship Assistance Coordinator within ten business days of the decision.
- (5) The monthly *level of care payment*:
  - (a) Is determined based on the results of a *CANS screening* conducted under OAR 413-020-0230.
  - (b) Cannot exceed the amount of the *level of care payment* set forth in OAR 413-090-0010(2)(g).
  - (c) Is included in the *guardianship assistance payment* when the *child* or *young adult* qualifies for a *level of care payment* and when requested by the *potential guardian*, *guardian*, or *successor legal guardian*.
- (6) When a *potential guardian*, *guardian*, or *successor legal guardian* is not satisfied with the final *guardianship assistance* offer from the Department, consisting of the *guardianship assistance base rate* and, when applicable, a *level of care payment*, the *potential guardian*, *guardian*, or *successor legal guardian* has the right to a contested case hearing under OAR 413-010-0500 to 413-010-0535.
- (7) An initial *guardianship assistance payment* begins on the date the state or *tribal court* legally establishes the guardianship provided there is a written *guardianship assistance agreement* signed by the Department and the *potential guardian*.~~all parties.~~
- (8) A *guardianship assistance payment* to a *guardian* for the *child* or *young adult* is inalienable, not assignable or transferable, and exempt from execution, levy, attachment, garnishment, and other legal process under the laws of Oregon, as long as the payment can be identified as a *guardianship assistance payment* and is kept separate from other money in the guardian's possession.
- (9) The *guardian* may apply to be the designated payee for any benefit the *child* or *young adult* receives if the benefit program allows such application.
- (10) Medical assistance and social services.
  - (a) A *child* or *young adult* who is the subject of a *guardianship assistance agreement* funded by Title IV-E funds as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) is

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categorically eligible for medical assistance through Title XIX and social services under Title XX when --

- (A) The guardianship is in effect; and
  - (B) A *guardianship assistance payment* is being made to the *guardian*.
- (b) A *child* or *young adult* who is not eligible for Title XIX medical assistance is eligible for medical assistance under OAR 413-100-0400 to 413-100-0530, when:
- (A) The *child* or *young adult* resides in Oregon; or
  - (B) The *child* or *young adult* resides outside of Oregon but in the United States ~~or a territory~~ or possession thereof and is not able to obtain medical assistance in his or her place of residence.
- (c) Medical assistance is not provided for a *child* or *young adult* who resides outside of the United States ~~or a territory~~ or possession thereof.
- (11) Nonrecurring guardianship expenses.
- (a) The Department will reimburse a *guardian* up to \$2,000 per eligible *child* for approved *nonrecurring guardianship expenses*, including but not limited to:
    - (A) The cost of a home study;
    - (B) Court costs;
    - (C) Attorney fees;
    - (D) Physical and psychological examinations required for the guardianship; and
    - (E) Travel to visit with the *child* prior to placement.
  - (b) Payment for *nonrecurring guardianship expenses* may not duplicate expenses covered by ORS 417.200 - 417.260 or another resource available to the *potential guardian* or successor legal guardian.
  - (c) Documentation of *nonrecurring guardianship expenses* is required and must be submitted prior to execution of the *nonrecurring guardianship assistance agreement*. The *nonrecurring guardianship assistance agreement*, indicating the nature and amount of the *nonrecurring guardianship expenses*, must be signed by the *potential guardian* and a Department representative prior to the establishment of the guardianship.

- (d) Payment for *nonrecurring guardianship expenses* is made when the Department receives the court order establishing the guardianship.

(12) Overpayment.

- (a) If the Department issues a *guardianship assistance payment* on behalf of a *child* or *young adult* after the date the *guardianship assistance agreement* automatically expires, the Department may seek reimbursement of the overpayment and the *guardian* must repay the Department.
- (b) If the *guardian* fails to comply with any provisions of the *guardianship assistance agreement*, including failing to notify the Department of any of the events or circumstances described in OAR 413-070-0964 and 413-070-0974(6) and (8), the Department may collect any *guardianship assistance payment* or medical assistance which the Department would not have provided had the *guardian* complied with the provisions of the *guardianship assistance agreement*.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

#### **413-070-0944**

##### **Legal Expenses of a Guardian**

(Amended ~~12/28/11~~ 10/01/15)

The Department may not authorize payment for legal services provided:

- (1) For the *potential guardian*, *guardian*, or *successor legal guardian* in connection with a contested case hearing; or
- (2) To defend or retain a guardianship upon challenge by another party once a guardianship is established.

Stat. Auth.: ORS 411.141, 418.005

Stats. Implemented: ORS 411.141, 418.005

#### **413-070-0949**

##### **Guardianship Assistance Agreement Requirements**

(Amended ~~07/17/15~~ 10/01/15)

- (1) Before a *guardian* may receive *guardianship assistance*, there must be a negotiated written *guardianship assistance agreement* between the Department and the *potential guardian* or *guardian* signed by all parties prior to the court order establishing the legal guardianship.

- (2) The *guardianship assistance agreement* must include each of the following:
- (a) A statement indicating that a *guardianship assistance agreement* remains in effect without regard to the state of residency of the *guardian*.
  - (b) The effective date of the ~~initial~~ *guardianship assistance agreement* ~~is the date of the court order of guardianship~~.
  - (c) That the Department will pay the *nonrecurring guardianship expenses* associated with obtaining legal guardianship of the *child*, to the extent the *nonrecurring guardianship expenses* do not exceed \$2,000 per *child*.
  - (d) That the *child* or *young adult* for whom the Department is providing a *guardianship assistance payment* remains eligible for medical assistance provided:
    - (A) The guardianship remains in effect;
    - (B) A payment is being made; and
    - (C) The *child* or *young adult* is placed in the United States ~~, a territory or~~ possession thereof.
  - (e) Information regarding garnishment of *guardianship assistance* payments as set forth in OAR 413-070-0939(8).
  - (f) That the *guardian* agrees to comply with the reporting requirements under OAR 413-070-0964.
  - (g) That the *guardian* understands that a *guardianship assistance agreement* may be reviewed and the *guardianship assistance* may be adjusted, suspended, or terminated under OAR 413-070-0974.
  - (h) A statement indicating that the *guardian* understands that the provisions of ORS 192.558 allow the Oregon Health Plan (OHP) and the OHP managed care plans without the authorization of the *guardian*, ~~or child~~, or *young adult* to exchange the following protected health information for the purpose of treatment activities related to the behavioral or physical health of the *child* or *young adult* when the *child* or *young adult* is the recipient of OHP services:
    - (A) The name and Medicaid recipient number of the *child* or *young adult*;
    - (B) The name of the hospital or medical provider of the *child* or *young adult*;
    - (C) The Medicaid number of the hospital or medical provider;

- (D) Each diagnosis for the *child* or *young adult*;
  - (E) Each treatment activity's date of service;
  - (F) Each treatment activity's procedure or revenue code;
  - (G) The quantity of units or services provided; and
  - (H) Information about medication prescription and monitoring.
- (i) The amount of the *guardianship assistance* and the manner in which it is to be provided.
  - (j) The basis and requirements for periodic changes in the *guardianship assistance payment*, in consultation with the *guardian*, based on the circumstances of the *guardian* and the needs of the *child* or *young adult*.
  - (k) The additional services and assistance for which the *child* or *young adult* and *guardian* are eligible under the agreement and the procedure by which the *guardian* may apply for such services.
  - (L) When the Department has agreed to include such language, that the Department may continue to provide *guardianship assistance* for a *child* or *young adult* when the *child* or *young adult* moves out of the home of the *guardian* to attend college or live independently.
- (3) The potential guardian or guardian may name a *successor legal guardian* in the guardianship assistance agreement, to replace the *guardian* in the event of the death or *incapacity* of the *guardian*.
  - (4) The Department must provide the *guardian* with a copy of the *guardianship assistance agreement*.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-0964

### Required Reports and Communication

(Amended ~~02/01/14~~ 10/01/15)

- (1) A *guardian* receiving *guardianship assistance* must immediately report, orally or in writing, to the Adoption Assistance and Guardianship Assistance Unit any changes in circumstances of the *child*, or *young adult*, or *guardian* that makes the *child* or *young adult* ineligible for *guardianship assistance* including when:

- (a) The *child* or young adult:
    - (A) Is emancipated;
    - (B) Dies;
    - (C) Marries; or
    - (D) Is adopted.
  - (b) The court:
    - (A) Vacates the guardianship; or
    - (B) Terminates wardship over the *child* or *young adult*, unless the guardianship is a *tribal court* guardianship and the guardianship remains in effect under tribal law.
- (2) A *guardian* receiving *guardianship assistance* must immediately report, orally or in writing, to the Department's Adoption Assistance and Guardianship Assistance Unit any changes in circumstances of the *child*, or *young adult*, or *guardian* that may make the *child* or *young adult* ineligible for *guardianship assistance* including when --
- (a) The *child* or *young adult*:
    - (A) Is out of the home of a *guardian* for more than a thirty-day period or, if more than one *guardian*, is out of the home of both guardians for more than a thirty-day period;
    - (B) Has a change in needs including but not limited to eligibility for a change in the *level of care payment* based on a new CANS screening;
    - (C) Is placed in *substitute care*;
    - (D) Is no longer receiving financial support from a *guardian* or, if there is more than one *guardian*, both guardians;
    - (E) Is incarcerated for more than three consecutive months; or
    - (F) Has a change in any benefit received other than tribal dividend payments.
  - (b) A *guardian* is, or if more than one *guardian*, both guardians are:
    - (A) No longer legally responsible for the financial support of the *child* or *young adult*;

- (B) No longer responsible for the *child or young adult*; or
- (C) No longer providing support to the *child or young adult*.
- (c) A *guardian* seeks to terminate or modify the guardianship.
- (d) The court:
  - (A) Modifies the guardianship, or
  - (B) Awards child custody or guardianship to another individual.
- (3) A *guardian* receiving a *guardianship assistance payment* must immediately report, orally or in writing, to the Adoption Assistance and Guardianship Assistance Unit the following:
  - (a) When there are two guardians and one *guardian* dies, the surviving *guardian* must notify the Department.
  - (b) When there is a change in address.
  - (c) When a *guardian, child, or young adult* is planning to move from his or her state of residency.
- (4) Guardians appointed under ORS 419B.367 are required to ~~submit file~~ an annual report ~~to~~ with the court within 30 calendar days after each annual anniversary of the court appointment of guardianship. Guardianships established under a ~~T~~tribal ~~C~~court may also have a requirement to send written reports to the court.
- (5) The Department may:
  - (a) Send notification to a *guardian* of any court reports required under section (4) of this rule;
  - (b) Request a *guardian* to submit a copy of the court report to the Department;
  - (c) Notify the court or *participating tribe* of circumstances that may affect a child's eligibility for *guardianship assistance*; and
  - (d) Send inquiries to a *guardian* to ensure the *child* continues to be eligible for *guardianship assistance*.
- (6) Guardians must respond to inquiries from the Adoption Assistance and Guardianship Assistance Unit within 30 calendar days or as required by the unit.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

## **413-070-0974**

### **Review, Adjustment, Suspension, Expiration, and Termination of Guardianship Assistance**

(Amended ~~07/17/15~~ 10/01/15)

- (1) The Department may review a *guardianship assistance agreement* when the Department:
  - (a) Receives information indicating that the *child* or *young adult* may no longer be eligible for *guardianship assistance* or may be eligible for *guardianship assistance* in a different amount, including when the Department receives information regarding any of the circumstances described in OAR 413-070-0964;
  - (b) Determines, when the *child* or *young adult* is not residing in the home of the *guardian*, that a periodic review of the *guardianship assistance agreement* is required;
  - (c) Receives information that indicates a review is necessary based on a change in the needs of the *child* or *young adult* or circumstances of the family;
  - (d) Receives information that the *young adult* no longer meets the requirements for continued assistance, if the Department has agreed to extend guardianship assistance under OAR 413-070-09187(4); or
  - (e) Determines that the *guardian* has not complied with the requirements of the *guardianship assistance agreement*.
- (2) Department review of a *guardianship assistance agreement* may result in a renegotiation, suspension, adjustment, or termination of the *guardianship assistance agreement* or *guardianship assistance* payments.
- (3) *Guardianship assistance* may be adjusted at any time by mutual agreement between the *guardian* and the Department.
- (4) When there is an across-the-board reduction or increase in the *base rate payment* or *level of care payment* that the *child* or *young adult* would be eligible to receive if the *child* or *young adult* were in foster care, the Department may, after a case-by-case review and without concurrence of the *guardian*, adjust the monthly *guardianship assistance payment* to an amount that does not exceed the new foster care payment the *child* or *young adult* would be eligible to receive if currently in foster care, as follows:
  - (a) In the case of a reduction, only those payments that exceed the amount the *child* or *young adult* would be eligible for if currently in foster care would be reduced,

and the reduction would only be to the amount that the *child* or *young adult* would be eligible to receive if currently in foster care.

- (b) In the case of an increase, the Department, considering the needs of the *child* or *young adult* and the circumstances of the *guardian*, may increase the *guardianship assistance payment* to an amount that does not exceed the new foster care payment the *child* or *young adult* would receive if currently in foster care.
- (5) If, upon review under section (1) of this rule or an adjustment under section (4) of this rule, the Department intends to adjust *guardianship assistance* without the concurrence of the *guardian*, the Department will provide the *guardian* and the *child* or *young adult* with written notice as described in OAR 413-010-0500 to 413-010-0535.
- (6) Unless terminated under sections (7) or (8) of this rule, the *guardianship assistance agreement* and the Department's obligation to provide *guardianship assistance* expires automatically on the date any of the following events occur:
- (a) When the *child*:
    - (A) Reaches the age of 18 or, when an extension has been granted under OAR 413-070-09187(4), no later than the date identified in the *guardianship assistance agreement*;
    - (B) Is emancipated;
    - (C) Dies;
    - (D) Marries;
    - (E) Is adopted; or
    - (F) No longer meets the requirements for continued *guardianship assistance* if the Department has agreed to continue *guardianship assistance* under OAR 413-070-09187(4).
  - (b) A *guardian* dies, or if more than one *guardian*, both die.
  - (c) The court:
    - (A) Vacates the guardianship order or otherwise terminates the guardianship;
    - (B) Terminates wardship over the *child* or *young adult*, unless the guardianship is a *tribal court* guardianship and the guardianship remains in effect under tribal law; or

- (C) Appoints another individual as *guardian* of the *child* or *young adult*.
- (7) *Guardianship assistance* may be suspended at any time by mutual agreement between the Department and the *guardian*.
- (8) After a review and on a case-by-case basis, the Department may terminate a *guardianship assistance agreement* upon ten calendar days written notice to the ~~*potential guardian or guardian*~~ when the Department determines that --
- (a) The ~~*potential guardian or guardian*~~ is no longer responsible for the *child* or *young adult*;
- (b) The ~~*potential guardian or guardian*~~ is no longer providing support to the *child* or *young adult*; or
- (c) The *child* or *young adult* is no longer eligible for *guardianship assistance* or is eligible for *guardianship assistance* in a different amount.
- (9) If a *child* receiving *guardianship assistance* is subsequently adopted by the *guardian*, the *child* may be eligible for adoption assistance under OAR 413-130-0000 to 413-0130-0130.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

# Placement with a Fit and Willing Relative

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## 413-070-0990

### Purpose

(Adopted 10/01/15)

THIS IS A NEW RULE

The purpose of OAR 413-070-0990 to 413-070-1060 is to describe the responsibilities of the Department to determine the appropriate use of placement with a *fit and willing relative* as a *permanency plan* for a *child* or *young adult* in the care or custody of the Department.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

## 413-070-1000

### Placement with a Fit and Willing Relative as a Permanency Plan

(Adopted 10/01/15)

THIS IS A NEW RULE

- (1) Placement with a *fit and willing relative* is a *permanency plan* for a *child* or *young adult* in the care and custody of the Department.
- (2) The Department may consider placement with a *fit and willing relative* as a *permanency plan* for a *child* or *young adult* in the care or legal custody of the Department based on the individual safety, permanency, and well-being needs of the *child* or *young adult*, when:
  - (a) A person who meets the requirements of OAR 413-070-1010 requests to be considered a *fit and willing relative*; and
  - (b) The Department has determined;
    - (A) The *child* or *young adult* is unable to safely return to the home of a *parent*;
    - (B) There are no current Department actions to identify or assess a *relative* of the *child* or *young adult* who has expressed an interest in being an *adoptive resource*, or *adoption* is not in the best interests of the *child* or *young adult*; and
    - (C) There are no current Department actions to identify or assess a *relative* of the *child* or *young adult* who has expressed an interest in being a

guardian, or guardianship is not in the best interests of the *child* or *young adult*.

- (3) When considering placement with a *fit and willing relative* as the *permanency plan*, the caseworker must:
- (a) Consult with and seek input from the *child* or *young adult* 14 years of age or older and, at the option of the *child* or *young adult*, up to two members of the case planning team who are chosen by the *child* or *young adult* as described in OAR 413-040-0010(3)(c);
  - (b) Consult with and seek input from the *child* or *young adult* as developmentally appropriate, regardless of the age of the *child* or *young adult*;
  - (c) Assess the parents' acceptance of the *fit and willing relative permanency plan*, and their preference for continued contact with the *child* or *young adult*; and
  - (d) Document in the electronic information system of the Department how the requirements of subsections (a) to (c) of this section were met.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 409.050, 418.005

## **413-070-1010**

### **Eligibility Requirements for a Fit and Willing Relative**

(Adopted 10/01/15)

#### THIS IS A NEW RULE

To be eligible for consideration as a *fit and willing relative*, a person must:

- (1) Meet the definition of *relative*; or
- (2) Meet the definition of a person with a caregiver relationship under ORS 419B.116(1) for a *child* or *young adult* in the care and custody of the Department and be placed in *foster care* through the Office of Developmental Disabilities Services; and
- (3) Be approved by the Department as a long term resource for the *child* or *young adult* until a higher level of permanency can be achieved;
- (4) Have a current Certificate of Approval from the Department, a licensed foster care agency, a *participating tribe*, or another state when the *relative* is currently certified or otherwise approved by the state in which the *relative* resides and approved as a placement for the *child* or *young adult* under the Interstate Compact on Placement of Children;

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- (5) Have a strong commitment to caring permanently for the *child* or *young adult* and any *sibling* under consideration; and
- (6) Agree to the requirements, responsibilities, and approval process for the Placement with a Fit and Willing Relative Agreement.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 409.050, 418.005

## **413-070-1020**

### **Approval and Implementation of a Fit and Willing Relative Permanency Plan**

*(Adopted 10/01/15)*

#### THIS IS A NEW RULE

- (1) When the Department is considering a change in the *permanency plan* of a *child* or *young adult*, the Department makes the determination pursuant to OAR 413-070-0500 to 413-070-0519.
- (2) The *permanency committee* must consider the best interests of the *child* or *young adult* and each of the following factors when developing a recommendation regarding placement with *fit and willing relative* to the Child Welfare Program Manager or *designee*:
  - (a) The safety, permanency, and well-being needs of the *child* or *young adult*.
  - (b) The opportunities the Department has provided the *child* or *young adult* and his or her parents to identify permanency resources.
  - (c) The parents' acceptance of *fit and willing relative* as a *permanency plan* and their preference for continued contact with the *child* or *young adult*.
  - (d) The ability of the *fit and willing relative* to meet the needs of the *child* or *young adult* pursuant to OAR 413-070-0640.
  - (e) The compelling reasons placement with a *parent, adoption, or guardianship* cannot be achieved.
  - (f) The sufficiency of the plan for continued contact with siblings.
- (3) The Child Welfare program manager or *designee* must consider all of the following when deciding whether placement with a *fit and willing relative* is the appropriate *permanency plan* for the *child* or *young adult*:
  - (a) The considerations in section (2) of this rule.

- (b) The information presented to the *permanency committee*.
- (c) The recommendation of the *permanency committee*.
- (4) Within 30 days of a Department decision to approve a *fit and willing relative permanency plan* under OAR 413-070-0519, the caseworker must request a *permanency hearing* before the court.
- (5) At the hearing, the caseworker must provide all of the following to the court:
  - (a) The intensive, ongoing efforts by the Department to return the *child* or *young adult* home, or secure a placement with an adoptive parent or *guardian*.
  - (b) The compelling reasons it would not be in the best interests of the *child* or *young adult* to return home, be placed for *adoption*, or be placed with a *guardian*.
  - (c) The type and amount of parent-child and child-sibling contact and involvement until a more preferred *permanency plan* is achieved, the *child* reaches age of majority, reaches independence, or the juvenile court relieves the Department of legal custody of the *child* or *young adult*.
  - (d) The reasonable services the Department may offer each *parent* to meet the best interests of the *child* or *young adult* until a more preferred *permanency plan* is achieved, the *child* reaches the age of majority, reaches independence, or the juvenile court relieves the Department of legal custody of the *child* or *young adult*.
  - (e) The steps the Department has taken to ensure the *foster parent* is following the *reasonable and prudent parent standard*, and opportunities the *child* has had to engage in *age-appropriate or developmentally appropriate activities*.
  - (f) A recommendation that the court issue an order approving the placement with a *fit and willing relative permanency plan*.
  - (g) A timetable for placement of the *child* or *young adult* with a *fit and willing relative*.
- (6) When the Department recommends that contact be limited or prohibited between a *parent* and *child* or *young adult*, or between a *sibling* and *child* or *young adult*, the caseworker must make the request to the court and include the reasons contact should be limited or prohibited in the court report.
- (7) The caseworker must ensure the Placement with a Fit and Willing Relative Agreement is signed by the *fit and willing relative* and the Child Welfare program manager within a

reasonable time after the court has approved the *permanency plan* and the *relative resource* has been identified and approved.

- (8) Within 30 days of the Department or court decision not to approve the *fit and willing relative permanency plan*, the caseworker must:
- (a) Inform the *child or young adult* and, at the option of the *child or young adult*, up to two members of the case planning team who are chosen by the *child or young adult* as described in OAR 413-040-0010(3)(c), the *child or young adult's relative caregivers, parents, attorney, court appointed special advocate, and other persons with significant involvement in the life of the child or young adult; and*
  - (b) Consult with the *child's or young adult's case planning team* to reconsider other *permanency options*.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 409.050, 418.005

## **413-070-1030**

### **Contents of a Placement with a Fit and Willing Relative Case Plan**

(Adopted 10/01/15)

#### THIS IS A NEW RULE

- (1) When a *child or young adult's permanency plan* is placement with a *fit and willing relative*, the caseworker must address each of the following in the *child or young adult's case plan*:
- (a) Family composition, which includes the identifying information of each *parent* except when parental rights have been terminated, *guardian*, and *sibling*.
  - (b) Except when parental rights have been terminated, the identified impending *danger safety threats*.
  - (c) Except when parental rights have been terminated, the ongoing safety plan as described OAR 413-015-0400 to 413-015-0485 and recorded in the electronic information system of the Department.
  - (d) A description of how the Department determined placement with a *fit and willing relative* is the most appropriate *permanency plan* for the *child or young adult*, and each compelling reason why the more preferred *permanency plan* options were not selected for the *child or young adult*.
  - (e) The steps the Department has taken to ensure the *relative caregiver* is applying the *reasonable and prudent parent standard*, and to ensure the *child or young*

adult has regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities.

- (f) A description of how the *child* or young adult's attachments and relationships with each *parent, sibling,* and other family members will be developed while the *child* or young adult is in a permanent placement with a *fit and willing relative.*
- (g) Current placement information including the location of the *child* or young adult when the *relative caregiver* authorizes release of the address, except when doing so would jeopardize the safety of the *child* or young adult.
- (h) The record of visits the *child* or young adult has had with parents or siblings.
- (i) When applicable, a description of the plan to transition a *child* or young adult with developmental or intellectual disabilities to an appropriate program for adults with developmental or intellectual disabilities.
- (j) The comprehensive transition plan required by OAR 413-030-0400 to 413-030-0460 for any child 14 years of age or older or *young adult* and services that prepare the *child* or young adult to transition to adulthood.
- (k) A description of the services the Department must provide to ensure the emotional, medical, educational, cultural, and physical needs of the *child* or young adult are being met, including:
  - (A) The health information of the *child* or young adult, which documents the specialized medical, dental, and mental health services of the *child* or young adult; and
  - (B) The education services of the *child* or young adult, including the school or educational placement history of the *child* or young adult, high school credits earned for a *child* over 14 years of age or young adult, and any special educational needs.
- (L) The services required to prepare the *child* or young adult to live in the least restrictive setting possible at the most appropriate time.
- (m) The services that may make it possible to achieve a more preferred permanency plan for the *child* or young adult.
- (n) The services the Department may continue to make available to the parents of the *child* or young adult, upon request, that continue to be in the best interests of the *child* or young adult.
- (o) For any *child* 14 years of age or older or young adult, the documents described in OAR 413-040-0010(1)(j)(A) and (B).

- (2) Except when parental rights have been terminated or the Department is unable to obtain the signature of the *parent* or *guardian*, the case plan must include the signature of the caseworker, the supervisor, and each *parent* or *guardian* as described in OAR 413-040-0000 to 413-040-0032.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

## **413-070-1040**

### **Ongoing Department Responsibilities When Placement with a Fit and Willing Relative is the Permanency Plan**

*(Adopted 10/01/15)*

- (1) When *placement with a fit and willing relative* is the court-approved *permanency plan* for a *child* or *young adult* in the legal custody of the Department, the caseworker must do all of the following:
- (a) Have monthly contact with the *child* or *young adult*, with the *relative caregiver*, and monitor the safety of the *child* or *young adult* as described in OAR 413-080-0040 to 413-080-0067.
  - (b) Evaluate the appropriateness of ongoing contact between the *child* or *young adult* with parents, siblings, and other people as described in OAR 413-070-0800 to 413-080-0880.
  - (c) Provide timely assessment and services for identified needs of the *child* or *young adult*, the *substitute caregiver*, or the parents of the *child* or *young adult*.
  - (d) Monitor the case plan and complete the required case plan reviews
  - (e) Submit to the court and to the citizen review board the case plan updates required in Child Welfare Policy I-I.2, "Narrative Recording".
  - (f) Continue to assess requirements for certification of the permanent *relative caregiver* pursuant to OAR 413-200-0270 to 413-200-0296.
  - (g) Develop a comprehensive transition plan as required by OAR 413-030-0400 to 413-030-0460 for any *child* 14 years of age or older.
- (2) In addition to the requirements of section (1) of this rule, when the *child* or *young adult* has an approved *fit and willing relative permanency plan*, the caseworker must:

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- (a) Routinely discuss with the *child* or *young adult* and the permanent *relative caregiver* during face-to-face and other contacts the needs, benefits, barriers, and solutions towards achieving a more preferred permanency option;
- (b) Include in the case plan of the *child* or *young adult* a description of how relationships with other relatives and persons involved in the life of the *child* or *young adult* may be developed and maintained; and
- (c) In the event a *relative* not previously identified as a potential adoptive or guardianship resource expresses an interest, determine whether it is in the best interests of the *child* or *young adult* to change the plan to a more preferred *permanency plan* and to assess the resource for placement.

(3) The permanent *relative caregiver* must:

- (a) Maintain a current Certificate of Approval and follow the requirements of the Department pursuant to OAR 413-200-0301 to 413-200-0396; and
- (b) Follow the requirements of the Department regarding the education, medical care, and mental health care of the *child* or *young adult*, and other services requested by the Department to meet the needs of the *child* or *young adult*.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

## **413-070-1050**

### **Placement with a Fit and Willing Relative Permanency Plan Reviews**

(Adopted 10/01/15)

#### **THIS IS A NEW RULE**

- (1) The caseworker must review the placement with a *fit and willing relative* case plan at least every six months and the review must occur prior to a review by the court or citizen review board as required by ORS 419B.470 and 419A.106(1) respectively.
  - (a) The review must take place in a face-to-face meeting with the *child* or *young adult*, and may include members of the team of the *child* or *young adult*.
    - (A) When appropriate, the meeting may include a *parent* or *guardian*, unless the *parent* or *guardian* is not available for the review. When a *parent* or *guardian* is unavailable, the caseworker must document the reason the *parent* or *guardian* was unavailable and the efforts made to involve the *parent* or *guardian*.

- (B) During the meeting the caseworker must consider input received from the child or young adult and, at the option of the child or young adult, up to two members of the case planning team who are chosen by the child or young adult as described in OAR 413-040-0010(3)(c), other participants in the meeting, and other information received from the child or young adult's service providers, substitute caregivers, attorney, court appointed special advocate, tribe if the child is an ICWA child, persons with significant attachments to the child or young adult, and relatives.
- (b) After the meeting described in subsection (a) of this section, the caseworker must document in the case record:
- (A) Whether the current placement continues to be the least restrictive setting available to meet the safety and permanency needs of the child or young adult; or
- (B) Whether a more permanent permanency plan, such as reunification, adoption, or guardianship is more appropriate for the child or young adult.
- (2) When a placement with a fit and willing relative plan has been approved by the court as the permanency plan for a child or young adult in the legal custody of the Department, the Department must notify the court and request a review or permanency hearing:
- (a) Not less frequently than once every 12 months while the child or young adult remains in substitute care in accordance with ORS 419B.470(2).
- (b) Unless good cause is shown, at any time upon the request of the Department, a relative caregiver directly responsible for the care of the child or young adult, a parent of the child or young adult, an attorney for the child or young adult, a court appointed special advocate, a citizen review board, or a tribal court in accordance with ORS 419B.470(5).
- (c) By the citizen review board no less frequently than every six months in accordance with ORS 419A.106(1)(a) unless the court has relieved the citizen review board of its responsibility to review a case in accordance with ORS 419A.106(1)(b).
- (d) Within 90 days of a placement change that removes the child or young adult from the placement with the fit and willing relative.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

## **413-070-1060**

### **Termination of Placement with a Fit and Willing Relative Permanency Plan**

(Adopted 10/01/15)

THIS IS A NEW RULE

- (1) The placement with a *fit and willing relative* plan must be terminated when:
- (a) Court wardship is terminated;
  - (b) The court relieves the Department of legal custody of the *child or young adult*;
  - (c) The court determines that placement with a *fit and willing relative* is no longer the appropriate *permanency plan* for the *child or young adult*;
  - (d) One of the more preferred permanency plans is achieved;
  - (e) The Department and the *relative caregiver* mutually consent to termination;
  - (f) The *relative caregiver* fails to maintain a current Certificate of Approval in accordance with OAR 413-200-0301 to 413-200-0396 and OAR 413-200-0270 to 413-200-0296, including when the certificate has been revoked or denied; or
  - (g) The *child or young adult* is removed from the *relative caregiver* by the Department.
- (2) The Department must provide written notification to the court of any change in the placement of the *child or young adult*.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

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