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# PERMANENT ADMINISTRATIVE RULES

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April 1, 2016 by the

Department of Human Services, Office of Child Welfare Programs

413

**Agency and Division**

**Chapter Number**

Kris Skaro

Human Services Building  
500 Summer St NE, E-48  
Salem, OR 97301

503-945-6067

[kris.a.skaro@state.or.us](mailto:kris.a.skaro@state.or.us)

**Rules Coordinator**

**Address**

**Telephone**

**Email Address**

To become effective April 1, 2016. Rulemaking Notice was published in the March 2016 Oregon Bulletin.

**Rule Caption:** *Amending rules relating to child support referrals for parents of children in substitute care*

## RULEMAKING ACTION

**AMEND:** 413-100-0800, 413-100-0810, 413-100-0820, 413-100-0830

**REPEAL:** 413-100-0840, 413-100-0850

ORS 418.005

Stat. Auth.

None.

Other Auth.

ORS 109.010, 109.015, 418.005, 418.032

Stats. Implemented

## Rule Summary

The Department is updating its rules governing child support referrals. Parents of children placed in substitute care with the Department may be required by law to pay child support in some circumstances. The rules governing this process are being updated and consolidated to improve organization and clarity for both internal and external stakeholders; no substantive policy changes are being made. Specifically:

OAR 413-100-0800 about the purpose of the child support referral is amended in its entirety to state the general provisions of child support referrals including when a parent may be required to make monthly child support payments; exceptions that apply when there is no existing child support order (previously address in OAR 413-100-0830 described below); treatment of adoption assistance payments; and Department notification requirements (previously addressed in OAR 413-100-0820 described below).

OAR 413-100-0810 about definitions is being amended in its entirety to address the treatment of child support arrears owed to the Department. (These definitions will be moved into OAR 413-100-0000.)

OAR 413-100-0820 about informing parents of financial obligations is amended in its entirety to address how the Department may obtain and handle information relating to child support cases. (Information previously in this rule is moved into OAR 413-100-0800 described above.)

OAR 413-100-0830 about referrals to the child support program is being revised in its entirety to state that the Department will refer cases to the Department of Justice Division of Child Support (DCS) for establishment of parentage when only one parent is listed on a child's birth record or when the Department has not begun the parentage establishment process through genetic testing. (Information previously in this rule is moved into OAR 413-100-0800 described above.)

OAR 413-100-0840 about existing support orders and OAR 413-100-0850 about notifications of changes are being repealed because the rules are no longer needed.

# Child Support Referrals

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**413-100-0800**

**Purpose Child Support Referrals**

*(Amended 01/01/02)*

THIS RULE IS AMENDED IN ITS ENTIRETY

~~These rules explain the mandatory referrals of children in substitute care to the Oregon Child Support Program.~~

- (1) The parents of a *child* in a paid *substitute care* placement may be required to make monthly *child support* payments to the state until one of the following occurs:
  - (a) The *child* is reunified with the *parent*.
  - (b) The *child* turns 18 or as long as the *child* is attending school as defined in ORS 107.108.
  - (c) Parental rights have been terminated or relinquished.
- (2) If there is an active *child support* case in which one *parent* is paying the other, the Department will refer the case to the Division of Child Support (DCS) to assign *support* payments to the Department.
- (3) If there is not an existing *child support* order, the Department will refer the case to the DCS to establish a *child support* order unless one of the following applies:
  - (a) The Post Adoption Program determined not to initiate a referral to DCS.
  - (b) The *parent* is deceased.
  - (c) The *parent* is receiving Supplemental Security Income (SSI) benefits.
  - (d) The *parent* is a Social Security Disability or Retirement beneficiary.
  - (e) The *parent* is under the age of 18.
  - (f) The *parent* has a developmental disability and is incapable of supporting the *child* or themselves.
  - (g) The *parent* has significant mental health issues that prevent gainful employment.
  - (h) The *parent* is homeless and incapable of supporting the *child* or themselves.

- (i) The *parent* is receiving Temporary Assistance for Needy Families (TANF) benefits.
- (j) The *parent* is or will be incarcerated for more than six months.
- (k) The *parent* is compliant with the reunification plan and the Department caseworker believes enforcement of a *support* order would negatively impact the plan.
- (l) The *parent* is actively participating in a treatment program.
- (m) There is a prior finding of "good cause" as defined under OAR 461-120-0350, and after re-evaluation remains in effect.
- (n) If reunification is no longer the plan and the plan changes to relinquishment or termination of parental rights.
- (o) The parents would be unable to comply with the permanency plan of reunification due to the financial hardship caused by paying *child support*.
- (p) The *child* is expected to be in paid *substitute care* for only a short period of time.
- (q) The noncustodial *parent* is a potential resource.
- (r) Other appropriate circumstances determined by the Department.
- (4) If a *child* enters paid *substitute care* following adoption in Oregon or another state or country and is receiving an *adoption assistance payment*:
  - (a) The Department must review the payment and may discuss renegotiation with the *parent*; and
  - (b) The Post Adoptions Program Manager or designee has authority to determine whether the Department would initiate a referral for *child support*. The following factors must be considered:
    - (A) Reason the *child* entered care;
    - (B) Amount of *adoption assistance payment*;
    - (C) *Parent* involvement in the permanency plan; and
    - (D) Any other considerations involving the best interests of the *child*.

- (5) A determination to not refer a *parent* to DCS does not prohibit the Department from making a *referral* in a subsequent episode of Department custody.
- (6) A determination to not refer a *parent* to DCS does not prohibit the Department from re-evaluating intermittently during the same episode of care.
- (7) The Department must inform a *parent* that the *parent* may be required to pay *child support*.
- (8) The Department must notify DCS when:
  - (a) The *child* or *young adult* exits paid *substitute care*; or
  - (b) Parental rights have been terminated or relinquished.

Stat. Auth.: ORS 412.024, 418.005

Stats. Implemented: ~~PL93.647~~, ORS ~~25.010–120~~, ~~ORS 109.010, 109.015~~, 180.320–370, 412.024, 418.005, 418.032

## **413-100-0810**

### **Definitions Child Support Arrears Owed to Department**

*(Amended 01/01/02)*

#### THIS RULE IS AMENDED IN ITS ENTIRETY

- (1) ~~"Assistant Director" means: the director of Children, Adults and Families (CAF) policy and programs of the Oregon Department of Human Services (DHS).~~
- (2) ~~"The Child Support Program" means: the Department of Human Services Children, Adults and Families (CAF) program that administers Social Security Title IV D (child support) for Oregon.~~
- (3) ~~"Department of Justice Division of Child Support (DCS)" means: the division of the Oregon Department of Justice that is contracted by the Child Support Program to provide child support services for children who are receiving or formerly received public assistance.~~
- (4) ~~"Support" means: cash payments or other benefits that each parent has been ordered by a court or by administrative process, or has voluntarily agreed to provide for the benefit and maintenance of a child:~~
  - (a) ~~"Child Support" means: payments that a parent has been ordered (or has agreed) to pay for the benefit of a child.~~

- (b) ~~"Medical Support" means: health insurance benefits, or payments for actual health services, that a parent has been ordered (or has agreed) to provide for the benefit of a child.~~
- (5) ~~"Referral" means: the actual notification to the Child Support Program that a child is in care; initiating the application for child support services. A referral may occur electronically or manually.~~
- (6) ~~"Exemption" means: excusing a parent from providing child support.~~
- (7) ~~"Perpetrator" means: an individual identified by DHS as responsible for child abuse or neglect in a Child Protective Services (CPS) Founded Disposition.~~
- (8) ~~"CPS Disposition" means: a finding that completes a Child Protective Services (CPS) Assessment. Dispositions are defined in OAR 413-020-0430(15) and are summarized as follows:
  - (a) ~~"Founded" means: there is reasonable cause to believe that the child abuse or neglect occurred;~~
  - (b) ~~"Unfounded" means: no evidence of child abuse or neglect was identified or disclosed; or~~
  - (c) ~~"Unable to determine" means: some indications of child abuse/neglect exist, but there is insufficient data to confirm whether or not child abuse/neglect occurred.~~~~
- (9) ~~Legal Parent means: a legal mother or a legal father.~~
- (10) ~~Legal Mother means: the woman who gave birth to the child or a woman who has legally adopted the child;~~
- (11) ~~Legal Father means: the man who has established his parental rights in one of the following ways:
  - (a) ~~The man was married to and cohabiting with the child's mother at the time of the child's conception is conclusively presumed to be the child's legal father unless he was sterile or impotent at the time of conception;~~
  - (b) ~~The child's biological father established legal paternity by marrying the child's mother either before or after the child's birth;~~
  - (c) ~~The biological father, with the child's mother, has filed a joint declaration of paternity with the Oregon Health Division Center for Health Statistics;~~
  - (d) ~~A biological father whose legal paternity has been established by filiation proceedings;~~~~

- ~~(e) A father whose legal paternity has been established by an order, including adoption of the child; or~~
- ~~(f) If the child was born in a state other than Oregon, legal paternity may have been established by other means according to the laws of that state (e.g., common-law marriage).~~
- ~~(10) "Subrogated" means the assumption by DHS of another's legal right to collect child support.~~
- (1) Child support arrearages resulting from nonpayment during an episode of Department custody will be assigned and payments disbursed as prescribed by law.
- (2) Any child support arrearages owed to the Department after termination of assignment to the Department will be collected by DCS and payments disbursed to the Department until the debt for past paid substitute care is fulfilled, or until the legal time frame for collection of the debt expires whichever is earlier. The legal time frame for collection of the debt expires 35 years from the judgment date.
- (3) With approval of the Child Permanency Program Manager or designee or the Federal Compliance Program Manager or designee, DCS may grant:
- (a) A file credit, wherein the child support arrearages are not actively pursued, but will remain on file, and the agency reserves the right to collect the arrearages at a later date; or
- (b) A satisfaction on the arrearages, wherein the child support arrearages are forgiven through the court and the agency may not attempt to collect from the parent.

Stat. Auth.: ORS 412.024, 418.005

Stats. Implemented: ~~PL93.647, ORS 25.010-120, ORS 109.010, 109.015, 180.320-370,~~  
412.024, 418.005, 418.032

## **413-100-0820**

### **Handling DCS Case Information**

*(Amended 01/01/02)*

#### THIS RULE IS REVISED IN ITS ENTIRETY

~~The DHS worker shall inform the legal parents of children placed in substitute care placement with the state, that they will be referred to the Child Support Program. DCS will contact the parent/s regarding the support they each will be required to provide and will enforce collection of the support obligation. Benefits from an existing child support order from one parent to the other parent or another person is subrogated by law to DHS while the child is in a paid substitute care~~

~~placement and child support arrears will be assigned as prescribed by law. When there is no legal parent, a referral so stating will be sent to the Child Support Program.~~

- ~~(1) The Department may obtain an absent parent's place of residence and demographic information from a *child support* case to be used for the administration of Department programs. This information may be entered in the Department's electronic information system when verified. However, *child support* case screens may not be printed or reproduced.~~
- ~~(2) The Department may make application through the Federal Parent Locate Service for the purpose of establishing paternity and enforcement when an absent parent's whereabouts are not readily available through an existing paternity establishment or *child support* case.~~

Stat. Auth.: ORS 412.024, 418.005

Stats. Implemented: ~~PL93.647, ORS 25.010—120, ORS 109.010, 109.015, 180.320—370, 419B,~~  
412.024, 418.005, 418.032

## **413-100-0830**

### **Referrals to the Child Support Program** **Paternity and Parentage** **Establishment**

*(Amended 01/01/02)*

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

~~Unless exempt, the legal parents of children placed in a paid substitute care placement in the care and custody of the DHS will be referred to the Child Support Program. Referral information will be reported to the Child Support Program electronically when substitute care information is entered on the DHS Integrated Information System (IIS). When legal parents are exempt from child support the reason for the exemption must be documented in the case file. Legal parents are exempt when:~~

- ~~(1) The legal parent of the child(ren) is deceased. DHS will, however, make application for survivors benefits and pursue resources for the child from the parent's estate where appropriate.~~
- ~~(2) The parent's rights are terminated by the court and DHS has permanent custody, or parent has voluntarily relinquished his/her rights for the purpose of adoption of the child.~~
- ~~(3) The parent has an exemption for good cause as follows:
  - ~~(a) Temporary exemption for good cause:
    - ~~(A) With the approval of the Assistant Director or Assistant Director's designee a child's legal parent may be exempt if the child's parent is~~~~~~

~~receiving counseling from a public or private licensed agency to determine whether to keep or relinquish the child for adoption. A written statement from the DHS caseworker/community office is required; and~~

~~(B) Exemption for good cause shall not be approved for more than three months unless after three months the exemption is reestablished and approved by the Assistant Director or Assistant Director's designee. A written statement from the DHS caseworker/community office is required.~~

~~(C) The above exemptions shall not apply if there is an existing order of support for one parent to pay the other parent or another person for the subject child.~~

~~(b) If a child adopted through Oregon's DHS Adoption Program subsequently requires substitute care placement and if the child is approved for an adoption subsidy agreement, the subsidy shall be suspended or modified while the child is in care with the approval of the Assistant Director or the Assistant Director's designee a permanent good cause exemption shall be granted except in the following circumstances;~~

~~(A) The child is in care because of a Founded CPS Disposition and the perpetrator is the legal parent; or~~

~~(B) The Assistant Director determines it is not in the best interest of the child to grant an exemption.~~

~~(C) The above exemptions shall not apply if there is an existing order of support for one parent to pay the other parent or another person for the subject child.~~

~~(c) Permanent exemption of legal parents may be approved for good cause in the following situations:~~

~~(A) When there is documented evidence that the child was conceived as the result of incest or rape or legal proceedings for adoption are pending and establishing paternity would be detrimental to the child, the Assistant Director or the Assistant Director's designee may approve an exemption for an alleged father. The mother will be referred unless she meets the criteria for an exemption.~~

~~(B) If a child adopted through Oregon's Adoption Program or some other state's adoption program subsequently requires substitute care placement, the case may be considered for a permanent exemption on a case-by-case basis. If it appears that the child's current need for placement can be attributed to the child's genetic, developmental or social history prior to adoption and it is in the child's best interest, a permanent exemption may~~

~~be granted. Such an exemption requires the approval of the Service Delivery Area manager and the Assistant Director;~~

~~(C) When it is in the best interest of a child, the Assistant Director may approve an exemption.~~

~~(D) The above exemptions shall not apply if there is an existing order of support for one parent to pay the other parent or another person for the care of the subject child.~~

~~(4) When the child has been legally adopted, the natural parent will be exempt effective the date of the adoption decree.~~

The Department will refer *substitute care* cases to DCS for establishment of parentage under any of the following circumstances:

(1) Only one *parent* is listed on the child's birth record; or

(2) The Department has not begun the parentage establishment process through genetic testing.

Stat. Auth.: ORS 418.005

Stats. Implemented: ~~PL93.647~~, ORS 25.010–120, 109.010, 109.015, 109.070, ORS 180.320, ORS 419B.875

## **413-100-0840**

### **Existing Support Orders**

*(Amended 01/01/02)*

#### THIS RULE IS REPEALED

~~Information may be obtained from a support case to be used for the administration of DHS programs. This information may be entered on the DHS Integrated Information System (IIS) when verified. Information from child support screens may not be used to locate relatives.~~

Stat. Auth.: ORS 418.005

Stats. Implemented: ~~PL93.647~~, ORS 25.010 - 120, ORS 180.320 - 370

## **413-100-0850**

### **Notification of Change**

*(Amended 01/01/02)*

#### THIS RULE IS REPEALED

~~An electronic referral to the Child Support Program is made when relevant data is entered on HS or FACIS and sent to CSEAS. Manual referral to the Child Support Program is made when relevant data is entered on the Child Support Enforcement Automated System (CSEAS) by authorized DHS staff or by any other means of communication between DHS and DOJ DCS.~~

Stat. Auth.: ORS 418.005

Stats. Implemented: PL 93.647, ORS 25.010 - 25.120, 180.320 - 180.370