

Oregon Secretary of State
Certificate and Order for Filing Temporary Administrative Rules and
Statement of Need and Justification

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on

September 2, 2016 by the

Department of Human Services, Office of Child Welfare Programs	413	
Agency and Division	Chapter Number	
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to become effective September 2, 2016 through February 28, 2017.*

**Temporary rules are effective for a maximum of 180 days including the effective date.*

Rule Caption: *Amending rules relating to guardianship assistance*

In the Matter of: *The temporary amendment of OAR 413-070-0900, 413-070-0917, and 413-070-0959*

AMEND: 413-070-0900, 413-070-0917, 413-070-0959

ORS 409.050, 418.005, 418.340

Stat. Auth.

None.

Other Auth.

ORS 409.010, 411.141, 418.005, 418.330, 418.335, 418.340

Stats. Implemented

Rule Summary

The Department of Human Services, Office of Child Welfare Programs, is adopting temporary rules relating to eligibility for guardianship assistance. The amendments state that to be eligible for guardianship assistance, a child must be determined to have special needs or be placed with a potential guardian who indicates an economic need to care for the child. The rule is also amended to allow the Director of DHS to waive some of the eligibility requirements for state-funded guardianship assistance when certain requirements are met.

Need for the Rules

These rules need to be amended because the Department's eligibility requirements for guardianship assistance must comply with state regulations. The amendments ensure the state requirements are reflected in the Department's rules. Additionally, these rules need to be amended because the Department needs the ability to

make exceptions to the eligibility requirements for state-funded guardianship assistance when it would be in the best interest of the child to do so. The current rule does not allow any exceptions. The amendments establish the circumstances under which the Director of the Department may authorize a waiver of the eligibility requirements for state-funded guardianship assistance.

Documents Relied Upon

None.

Justification of Temporary Rules

The Department finds that failure to act promptly by amending these will result in serious prejudice to the public interest, the Department, and children who would benefit from guardianship assistance. The Department needs to proceed by temporary rule because the public, the Department, and those children will immediately benefit when the Department is able to provide guardianship assistance consistent with the law and to make exceptions to the requirements to state-funded assistance in cases where it would be in the best interest of the child to do so.

Guardianship Assistance

413-070-0900

Purpose

(Amended 07/17/15)

- (1) The purpose of OAR 413-070-0900 to 413-070-0974 is to describe Department criteria for eligibility and receipt of *guardianship assistance* for:
 - (a) A *child* in the care or custody of the Department or a *participating tribe*;
 - (b) A *young adult* on whose behalf an initial *guardianship assistance agreement* was entered into when the *young adult* was a *child* of age 16 or 17;~~or~~
 - (c) A *young adult* who qualifies for disability services and on whose behalf an initial *guardianship assistance agreement* was entered into when the *young adult* was a *child*;~~;~~
 - (d) A subsequent legal guardianship of a *child* in the care of a *successor legal guardian* as described in OAR ~~413-070-0925~~; or
 - (e) A *child* whose eligibility was determined by the Director of the Department pursuant to OAR 413-070-0917(5).
- (2) *Guardianship assistance* for a *child* or *young adult* placed for guardianship in Oregon by a public child welfare agency other than the Department is not the responsibility of the state of Oregon.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

413-070-0917

Eligibility for Guardianship Assistance

(Amended 10/01/15)

- (1) To be eligible for Title IV-E *guardianship assistance*, a *child* must meet all of the following:
 - (a) 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).
 - (b) 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*.
 - (i) Be determined to have special needs or be placed with a potential guardian who indicates an economic need to care for the child.
- (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.
- (3) 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) and (i) of section (1) of this rule; and
 - (c) Be in the care or custody of the Department.

- (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 agree that placing the child's *sibling* in the home of the *potential guardian* or *guardian* is appropriate.
- (5) For state-funded guardianships only, the Director of the Department may authorize a waiver of the eligibility requirements in subsection (1)(c) to (h) of this rule when the following requirements are met:
- (a) The *child* had an open assessment or open case with the Department;
 - (b) The Department recommends the guardianship be established to prevent the *child* from entering Oregon foster care or to expedite the *child* leaving Oregon foster care;
 - (c) Pursuant to OAR 413-120-0440 to 413-120-0475, the guardian and all adults living in the home of the guardian have been approved through a Department-approved, fingerprint-based criminal records check of the National Crime Information Databases (NCID) and a Child Abuse and Neglect (CAN) registry check; and
 - (d) The Department reviews known information regarding the guardian and all adults living in the home and determines they have the ability to meet the safety, well-being, and permanency needs of the *child*.
- (6) For consideration of *guardianship assistance* under section (5) of this rule, the Child Welfare Program Manager must submit a written recommendation to the Child Permanency Program Manager outlining why it is in the best interest of the *child* to receive *guardianship assistance* pursuant to section (5) of this rule.
- (7) When a recommendation outlined in section (6) of this rule is received, the Child Permanency Program Manager must submit it to the Director of the Department for review and consideration.
- (58) The *child* must be consulted regarding the guardianship arrangement when the *child* has attained 14 years of age.
- (69) 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.

- (710) 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.
 - (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.

(811) 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*.

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

413-070-0959

Court Order of Guardianship

(Amended 07/17/15)

- (1) Except for guardianships established pursuant to OAR 413-070-0917(5), ~~G~~*guardianship assistance* may only be provided for a legal guardianship established under ORS 419B.365 or ORS 419B.366, as provided under ORS 419B.367 to 419B.369, or as provided by the statutory code or laws of a *participating tribe*.

- (2) The Department or *participating tribe* may not pursue a court order establishing an assisted guardianship until a *guardianship assistance agreement* between the Department and the *potential guardian* has been signed by all parties.
- (3) The Department or *participating tribe*, through counsel if the *child* is in the care or custody of the Department, must move the court for an order establishing the *guardianship* and, when the *child* is in the care or custody of the Department or *participating tribe*, directing one of the following:
 - (a) Termination of Department or participating tribe's care or custody and dismissal of the Department or *participating tribe* as a party to the case; or
 - (b) If the *child* has been committed permanently to the Department, an order setting aside the order of permanent commitment and relieving the Department of responsibility for the care, placement, and supervision of the *child*.
- (4) The Department may not provide *guardianship assistance* if the court establishes guardianship but orders the Department or *participating tribe* to continue supervision of the *child* or *guardian*.
- (5) The *guardian* is not eligible for payments provided under OAR 413-090-0000 to 413-090-0050 and OAR 413-090-0100 to 413-090-0210 once the guardianship is effective and the Department's or participating tribe's custody of the *child* is dismissed by court order.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005