

Policy Title:	Guardian and Legal Custodian Consents – OAR		
Policy Number:	I-B.1.4 413-020-0100 thru 0170		Effective Date: 1-09-03

Approved By: *on file*

Date Approved:

Policy

Forms, etc.

Definitions

References

Contact

History

Reference(s):

- ORS 109.640
- ORS 418.005
- ORS 419B.370, 419B.373, 419B.376, 419B.379
- ORS 436
- SOSCF Policy # I-B.1.3, "Voluntary Agreements"

Form(s) that apply:

- CF 242, "Consent for Medical/Surgical Care and Treatment"

Rules:

Purpose

413-020-0100 The purpose of OAR 413-020-0100 through 413-020-0170 is to:

- (1) Define the Department's authority as guardian and legal custodian of children in its care or in the care of its agents;
- (2) Specify how that authority will be exercised by the Department and its agents; and
- (3) Specify requirements to be met when this authority is exercised.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 109.640, 418.312

Definitions

413-020-0110

- (1) **"Child Placement Agreement"** means an agreement between the legal parent(s)/legal guardian of a child and the Department. The Parent(s) retain "all legal authority for child while services are being provided by the Department.
- (2) **"Department"** means Department of Human Services.
- (3) **"Guardian"** means a person or agency having the powers and responsibilities of a parent to make binding decisions for a child, including the authority to:
- (a) Authorize surgery for the child;
 - (b) Authorize enlistment in the armed forces;
 - (c) Consent to the child's adoption when the child is in the permanent custody of the agency;
 - (d) Make other decisions of substantial legal significance concerning the child; but
 - (e) A guardian is not a conservator of the child's property or estate.
- (4) **"Legal Custody"** means that a person or agency has legal authority:
- (a) To have physical custody and control of a child;
 - (b) To supply the child with food, clothing, shelter and other necessities;
 - (c) To provide the child with care, education and discipline;
 - (d) To authorize medical, dental, psychiatric, psychological, hygienic or other remedial care or treatment for the child, and in any emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care; and
 - (e) Legal custody includes temporary custody of a child under an order pursuant to ORS 419B.233 and 419B.331.
- (5) **"Permanent Custody"** means legal custody of a child:
- (a) Who has been permanently committed to the Department by the juvenile court after parental rights have been terminated under ORS 419B.527;
 - (b) Who has been released and surrendered to the Department by the parents under ORS 418.270.
- (6) **"Physical Custodian"** means a person or agency, including a child's legal or biological parent, a relative, foster parent, adoptive parent or a licensed child-caring agency who is authorized by the Department to provide a residence and day-to-day care for a child who is in the legal custody of the Department.
- (7) **"Service Worker"** means the agency staff person assigned primary responsibility for a child served by the Department.

- (8) **"Voluntary Custody"** means legal custody given to the Department, by written agreement, by a parent or legal guardian of a child.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 109.640, 418.312

Responsibility of Staff to Secure a Legal Consent

413-020-0120 Policy Whenever the legal consent of a parent or guardian is needed for a child in the care and custody of the Department, the service worker shall secure the consent of the person authorized to approve the proposed service or activity. Relevant information shall be provided the authorized person to assure the Department's authority to consent, the need for and advisability of the service or activity, and whenever feasible, the concurrence of parents and/or physical custodians.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 109.640, 418.312

Department Authority in Child Placement Agreements

413-020-0130

- (1) When a parent or guardian of a child authorizes a Child Placement Agreement with the Department, the parent(s) or guardian will remain guardian of the child and will retain legal authority, and are obligated to continue to exercise and perform all parental duties and legal responsibilities except those delegated to the Department by the signed CF 499 Child Placement Agreement.
- (2) When a child is in the voluntary custody of the Department, the Department or the physical custodian will exercise the authority of a legal custodian as assigned in the CF 1005 Voluntary Custody Agreement.
- (3) In the event the parent or legal guardian is unavailable or unwilling to fulfill the responsibilities of a guardian, the Department will petition the Juvenile Court and request authority to provide essential services to the child.

Note: Please refer to Child Placement Agreement/Voluntary Custody OAR 413-020-0000 through 413-020-0050 (CAF Policy I-B.1.3) for additional information regarding these two options for services.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 109.640, 418.312

Exercise and Delegation of Legal Authority

413-020-0140 Where the Department has legal custody of a child through a Voluntary Custody Agreement, a court order, or a Release and Surrender Agreement, the Department will exercise its authority through Department staff and through delegation to other persons as follows:

- (1) **Physical Custodian.** The Department delegates the following responsibilities to the physical custodian by this administrative rule. This delegation shall continue as long as

the child is in the legal custody of the Department and resides with the physical custodian. Any exception to this rule shall be given in writing to the child's custodian and a copy will be maintained in the child's case record with the Department. The department will delegate to the child's Physical Custodian its authority to consent to:

- (a) The child/youth's registration in public school; assisting them with selecting or changing class schedules; authorizing absence from school; participation in school and extracurricular activities; and enrollment in school meal and school insurance programs. Consent for traditional school testing as deemed necessary. School pictures, except those listed under 413-020-0130 (2) (c);
- (b) Routine medical care and dental care, including vaccinations and immunization; routine examinations and lab tests;
- (c) Short term inter-county travel;
- (d) Application for work permits or releases.

(2) Service Worker. The Service Worker may exercise the Department's consent authority to any action to which the physical custodian may consent. In addition, the child's Service Worker may exercise the Department's authority to give consent for the following:

- (a) Education records, -academic or school behavioral records; or any specialized school testing. The Department Service Worker may not assume the role or responsibilities of Educational Surrogate, per OAR 581-015-0099.
- (b) Psychiatric or psychological evaluation, or outpatient psychiatric or psychological treatment for the child; and
- (c) Photograph(s) taken for publicity purposes or media promotions that may draw attention to the individual.

(3) Service Delivery Area (SDA) Manager or Designee. The SDA Manager or Designee may exercise the Department's consent authority to any action to which the Physical Custodian or Services Worker may consent. In addition, the SDA Manager or Designee may exercise the Department's authority to consent to the following actions with respect to children serviced by the SDA:

- (a) Emergency medical care and/or surgery, to include anesthesia;
- (b) Major medical and surgical procedures that are not extraordinary or controversial, to include anesthesia;
- (c) Admission to a state training center for the retarded, or to any state hospital or a private hospital for purpose of psychiatric treatment;
- (d) Registration in special schools, including private or alternative schools;
- (e) Application for driver's training, permits and license;
- (f) Interstate travel and international travel;

- (g) Examination by law enforcement agency (e.g., polygraphs, interrogations without a warrant, etc.).
- (h) Use of firearms for purpose of recreational hunting, target practice, and/or Hunter Safety Course.
Statutory Authority: ORS 418.005
Stats. Implemented: ORS 109.640, 418.312

Exercise and Delegation of Legal “Guardian” Authority

413-020-0150 Where the Department has legal custody of a child through a court order in which the Department has specifically been given guardianship, or a Release and Surrender Agreement, the Department will exercise its authority through agency staff as follows;

- (1) **Service Delivery Area (SDA) Manager or Designee;** may exercise the Department’s authority to consent to the following actions with respect to children served by that SDA:
 - (a) Enlistment of a child in the Armed Forces or the Job Corps; and
 - (b) Marriage;
- (2) **Department Adoption Manager;** may exercise the Department’s authority to consent to the adoption of a child who is in the permanent custody of the agency. (ORS 109.316)
- (3) Department Assistant Director for Community Human Services (CHS) or Department Assistant Director for Children, Adults and Families (CAF) or the Department Director, or in their absence and in the event of an emergency the Deputy Assistant Director for CHS or CAF may consent to the following actions for a child;
 - (a) Termination of a pregnancy, except when a young woman 15 years of age or older exercises her statutory right to consent to her own termination of a pregnancy;
 - (b) Extraordinary or controversial medical or surgical procedures, such as: Do Not Resuscitate Order (DNR), organ transplants, kidney dialysis, open heart surgery, or any procedure involving substantial life threat;
 - (c) Any medical or surgical procedure to which a legal parent or guardian of the child or the child is opposed;
 - (d) Sterilization under ORS Chapter 436, but only when such procedure is necessary to protect the child's life.

(4) Department Director, Assistant Director for Children, Adults and Families (CAF), and Assistant Director for Community Human Services (CHS) may exercise the Department’s authority to consent to any action to which the Physical Custodian, Services Worker, Service Delivery Area (SDA Manager may consent.

Statutory Authority: ORS 418.005
Stats. Implemented: ORS 109.640, 418.312

Actions Not Authorized

413-020-0160

- (1) No Department employee will consent to educational planning which is defined as the responsibility of a surrogate parent. (OAR 581-015-0099).
- (2) No Department employee, or agent will exercise the Department's authority to give consent to the purchase of, or ownership of, a motor vehicle by a child in legal custody of the agency. This prohibition does not prevent a child in the legal custody of the agency from exercising the right to purchase or own a motor vehicle on his or her own account.
- (3) No Department employee shall co-sign or counter-sign any purchase contract for a child in the Department's custody.
- (4) No Department employee will accept responsibility or serve as conservator of a child's property or estate.
- (5) No Department employee, or agent shall consent to the sterilization of a child, except pursuant to ORS Chapter 436, and to save the child's life.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 109.640, 418.312

General Provisions

413-020-0170

- (1) The Department acknowledges the right of a minor 15 years of age or older to consent to hospital care, medical and surgical diagnosis or treatment without the consent of the parent or guardian. (ORS 109.640)
- (2) The Department acknowledges the right of a minor 14 years of age or older may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder or chemical dependency, excluding methadone maintenance, by a physician. (ORS 109.675)
- (3) Whenever Department staff exercise the agency's authority to authorize actions described as the responsibility of a legal guardian under these rules, Department staff shall:
 - (a) Consider the impact of the proposed action upon the welfare of the child, the child's family and the community prior to deciding whether to consent to or authorize the proposed action;
 - (b) Consult with the physical custodian of the child;
 - (c) When the child is not in the permanent custody of the Department, make reasonable efforts to consult the child's legal parent(s) or guardian(s) about the

action proposed and consider the parent(s) or guardian's preference concerning the action proposed prior to making a decision to consent to or authorize the proposed action unless there is cause to believe such consultation will be detrimental to the child;

- (d) Prepare a brief written record of the circumstances of the action consented to whenever the Department provides a written consent for actions defined as the responsibility of a guardian. The written record and a copy of any consent made in writing will be filed in the child's case record.

(4) In any case where Department staff consider it necessary or appropriate, they may notify the juvenile court, and/or seek the court's concurrence, prior to consenting to or authorizing any of the actions described in these rules with respect to children in the Department's custody.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 109.675

Contact(s):

- **Name:** CAF Reception; **Phone:** 503-945-5600

Policy History

- [01/02/96](#)