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| Policy Title: | Guardianship as a Permanency Plan – OAR | | |
| Policy Number: | I-E.3.6.1 413-070-0651 thru 0670 | | Effective Date: 6-28-11 |

Approved By: *on file*

Date Approved: 6-15-11

Policy

Forms, etc.

Definitions

References

Contact

History

Reference(s):

- Title IV-E and IV-B
- PL 105-89, The Adoption and Safe Families Act of 1997
- Fostering Connections to Success and Increasing Adoption Act of 2008 (122 Stat 3949-3981)
- SB 408 (1999 Legislative Session)
- ORS 109.119
- Child Welfare Policy I-B.2.3.3, Substitute Care Eligibility
- Child Welfare Policy I-E.3.1, Placement Matching
- Child Welfare Policy I-B.3.2.1, Substitute Care Placement Reviews
- Child Welfare Policy I-E.3.6, Legal Permanency, Concurrent Planning and Use of Permanency Committees
- Child Welfare Policy I-E.6.1, Title IV-E Foster Care, Adoption Assistance, and Guardianship Assistance Eligibility

Form(s) that apply:

None.

Rules:

413-070-0651

Purpose

The purpose of these rules (OAR 413-070-0651 to 413-070-0670) is to describe the responsibilities of the Department to determine the appropriate use of guardianship, as established by the court under ORS 419B, as a *permanency plan* for a *child* in the care or custody of the Department.

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

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

413-070-0655

Definitions

The following definitions apply to OAR 413-070-0651 to 413-070-0670:

- (1) "Child" means a person under 18 years of age.
- (2) "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.
- (3) "Department" means the Department of Human Services, Child Welfare.
- (4) "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.
- (5) "Guardian" means an individual who has been granted guardianship of a *child* through a judgment of the court.
- (6) "Guardianship assistance" means assistance provided by the Department to a *guardian* on behalf of an eligible *child* to offset the costs associated with meeting the ongoing needs of the *child*. Guardianship assistance may include payments, medical coverage, or reimbursement of nonrecurring expenses.
- (7) "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.
- (8) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.
- (9) "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*.
- (10) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the *child*. 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 legal responsibility for the *child* during the remaining years of dependency and be accessible and supportive to the *child* in adulthood.

- (11) "Potential guardian" means an individual who:
- (a) Has been approved by the Department or *participating tribe* to be a child's *guardian*; and
 - (b) Is in the process of legalizing the relationship to the *child* through a judgment of the court.
- (12) "Relative" means:
- (a) An individual with one of the following relationships to the *child* or *young adult* through the *parent* of the *child* or *young adult*:
 - (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) A *sibling*, also to include an individual with a *sibling* relationship to the *child* or *young adult* through a putative father.
 - (D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.
 - (E) A spouse of anyone listed in paragraphs (A) to (D) 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 *child* or *young adult* entering substitute care.
 - (F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.
 - (b) An individual with one of the following relationships to the *child* or *young adult*:
 - (A) 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.
 - (B) An individual defined as a relative of a refugee *child* or *young adult* under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.
 - (C) A stepparent described in OAR 413-100-0020(27)(c) or former stepparent if the *child* or *young adult* had a relationship with the former stepparent

prior to the *child* or *young adult* entering substitute care; a stepbrother; or a stepsister.

- (D) The 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 entering substitute care.
 - (E) The adoptive *parent* of a *sibling* of the *child* or *young adult*.
 - (F) The 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, 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 (D) of subsection (a) of this section.
- (d) An individual, although not related by blood, adoption, or marriage identified as:
- (A) A member of the family by the *child* or *young adult* or the family of the *child* or *young adult*; and
 - (B) An individual who had an emotionally significant relationship with the *child* or *young adult* or the family of the *child* or *young adult* prior to time the Department placed the *child* in substitute care.
- (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 child's adoptive or biological *parent* 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* and only when the requirements of all of the following subparagraphs are met:
 - (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 legal custody of the Department who has a *permanency plan* or *concurrent permanent plan* of guardianship;
 - (iii) The foster *parent* has cared for the *child* for at least the past 12 consecutive months; and

(iv) The Department has approved the foster *parent* for consideration as a *guardian*.

- (13) "Sibling" means one of two or more children or young adults related:
- (a) By blood or adoption through a common legal *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.
- (14) "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.
- (15) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-070-0660

Consideration of Guardianship as a Permanency Plan

- (1) The Department may consider guardianship as a *permanency plan* for a *child* in the care or legal custody of the Department based on the individual safety, permanency, and well-being needs of the *child*, when the Department has determined:
- (a) The *child* is unable to safely return to the home of a *parent*; and
 - (b) Adoption is not an appropriate plan based on the best interest of the *child*.
- (2) When considering guardianship as the *permanency plan*, the caseworker must:
- (a) Consult with the *child* 14 years of age or older;
 - (b) Seek input from the *child* as developmentally appropriate, regardless of the age of the *child*;
 - (c) Assess the parents' acceptance of guardianship as a *permanency plan*, their desire for continued contact with the *child*, and how this will impact the plan; and
 - (d) Document in the Department's information system how the requirements of subsections (a), (b), and (c) of this section were met.

413-070-0665

Consideration of a Substitute Caregiver as a Potential Guardian

- (1) Prior to considering a *substitute caregiver* as a *potential guardian*, the caseworker and the caseworker's supervisor must comply with the requirements of both of the following subsections:
 - (a) Review the Department's diligent efforts to identify, contact, and place a *child* with relatives and to place siblings together as required under Child Welfare Policy I-E.1.1, "Search for and Engagement of a Child's Relatives", OAR 413-070-0060 to 413-070-0087; and
 - (b) Confirm there are no current Department actions to --
 - (A) Identify a child's *relative* as defined in OAR 413-070-0655(12)(a)-(d);
 - (B) Assess an identified *relative* as defined in OAR 413-070-0655(12)(a)-(d) who has either expressed an interest in and needs to be or currently is being assessed as a permanency resource.
- (2) In order to be considered as a *potential guardian*, the *substitute caregiver* must --
 - (a) Have a current Certificate of approval from one of the following entities:
 - (A) The Department under Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396.
 - (B) Seniors and People with Disabilities Division, OAR 411-346-0100 to 411-346-0230, "Foster Homes for Children with Developmental Disabilities".
 - (C) A *foster care agency* under Child Welfare Policy II-C.1.2, "Licensing Foster Care Agencies", OAR 413-215-0301 to 413-215-0396.
 - (D) A *participating tribe* when the *potential guardian* is currently certified as a foster home by the *participating tribe* as meeting the tribe's certification and licensing standards.
 - (E) Another state when the *potential guardian* is currently certified or otherwise approved by the state in which the *potential guardian* resides and approved as a placement for the *child* under the Interstate Compact on Placement of Children (ICPC).
 - (b) Agree with the Department that the *child* and any *sibling* under consideration, and the *substitute caregiver* can maintain a stable relationship and function

effectively without Department supervision.

- (c) Have an updated home study describing how the substitute caregiver's skills and abilities meet the best interests and needs for safety and permanency for the *child* and any *sibling* under consideration.
 - (d) Have adequate means of financial support and connections to community resources.
 - (e) Have a strong commitment to caring permanently for the *child* and any *sibling* under consideration for whom the *substitute caregiver* has provided care.
- (3) The caseworker must complete all of the following requirements and present the results to a *permanency committee*, when scheduled:
- (a) Assess the ability of the *substitute caregiver* to provide safety, permanency, and well-being for the *child* and any *sibling* under consideration.
 - (b) Assess with the certifier of the *substitute caregiver* the extent to which the ongoing needs for safety, permanency, and well-being of the *child* and any *sibling* under consideration are being met pursuant to Child Welfare Policy I-E.3.1, "Placement Matching", OAR 413-070-0640.
 - (c) Assess the commitment of the *substitute caregiver* to raise the *child* and any *sibling* under consideration.
 - (d) Provide the *substitute caregiver* with information regarding the duties and responsibilities of a *guardian*.
 - (e) Agree that the *child*, any *sibling* under consideration, and the *substitute caregiver* can maintain a stable relationship and function effectively without Department supervision.
 - (f) Consult with the *substitute caregiver* regarding *guardianship assistance* under Child Welfare Policy I-E.3.6.2, "Guardianship Assistance", OAR 413-070-0900 to 413-070-0974.
 - (A) When *guardianship assistance* will be requested, inform the *substitute caregiver* of the eligibility, application, and ongoing requirements of *guardianship assistance* as described in Child Welfare Policy I-E.3.6.2, "Guardianship Assistance", OAR 413-070-0900 to 413-070-0974.
 - (B) When *guardianship assistance* will not be requested or may not be approved due to eligibility restrictions, ensure that the *substitute caregiver* has sufficient financial support and connections to community resources to meet the needs of the *child* and any *sibling* under consideration without this assistance.

413-070-0670

Approval and Implementation of a Guardianship Permanency Plan

- (1) When the Department is considering a change in a child's *permanency plan*, 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, and the child's caseworker schedules a *permanency committee*.
- (2) The *permanency committee* must review all of the information presented to the committee and make recommendations to the Child Welfare Program Manager or designee regarding:
 - (a) Whether guardianship is an appropriate *permanency plan* for the *child*; and
 - (b) Whether the *substitute caregiver* can meet the child's needs as described in subsection (3)(c) of this rule and should be considered as a *potential guardian*.
- (3) The Child Welfare Program Manager or designee must decide whether guardianship is the appropriate *permanency plan* for the *child* based upon:
 - (a) How a *permanency plan* of guardianship meets the child's needs, and the requirements of OAR 413-070-0660(1) and (2) and OAR 413-070-0665(2) and (3);
 - (b) Whether the Department has provided the *child* and the child's parents an opportunity to identify available permanency;
 - (c) Whether the *substitute caregiver* being considered as the *potential guardian* is able to meet the child's needs pursuant to Child Welfare Policy I-E.3.1, "Placement Matching", OAR 413-070-0640.
- (4) Following the Child Welfare Program Manager or designee decision to approve guardianship as a *permanency plan*, the caseworker must --
 - (a) Request a permanency hearing before the court within 30 days of the decision.
 - (b) Prior to the court hearing, provide the court with supporting written documentation regarding the Department's position that:
 - (A) Guardianship is in the child's best interest; and
 - (B) Neither placement with parents nor adoption is an appropriate plan.
- (5) At the court hearing, the caseworker must:
 - (a) Recommend that the court approve changing the child's *permanency plan* to

- guardianship;
- (b) Inform the court whether or not the *potential guardian* is applying for *guardianship assistance*; and
 - (c) When *guardianship assistance* is being requested, inform the court that after the Department has negotiated the amount or type of *guardianship assistance* with the *potential guardian*, a subsequent court hearing will be requested to allow the order of guardianship to be entered.

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

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Policy History

- [12/29/10 thru 06/27/11](#)