DHS Policy
Oregon Department of Human Services

Children, Adults and Families

Policy Title:	Guardianship Assistance – OAR				
Policy Number:	I-E.3.6.2 413-070-0900 thru 0975			Effective Date:	1/01/02

Approved By: *On file* Date Approved:

Prior Version

Reference(s):

- Public Law 103-432
- Child Welfare Policy I-E.5.5, Payment for Direct Client Legal Services
- Title IV-B
- Title IV-E
- Indian Child Welfare Act
- Child Welfare Policy I-E.2.1, Placement of Indian Children
- ORS 125.300 - 125.325

Form(s) that apply:

- CF 0970 “Comprehensive Assessment for Guardianship Assistance”
- CF 0971 “Guardianship Assistance Agreement
- CF 0972 “Guardianship Review Report”
- CF 0973 “Guardian Assistance Application, Title IV-E Guardian Assistance Determination
- CF 0974 “Guardian Assistance Application, Family Information”
- CF 0975 “Legal Duties of a Guardian Information”
- CF 0976 “Choices Chart”
- CF 0977 “Annual Guardian’s Court Report”
- CF 0982 “Subsidized Guardianship Application – Packet Checklist
- PAM 9702 “Subsidized Guardianship Brochure”
- “Procedures for Approval for Participation in the Guardianship Assistance Demonstration Project”

Rules:

413-070-0900
Purpose

(1) The State of Oregon, Department of Human Services (DHS) received federal approval in July, 1999 from the Department of Health and Human Services, Administration for Children and Families, to operate a three year Guardianship Assistance demonstration project pursuant to Section 1130 of the Social Security Act (the Act); Titles IV-E and IV-B of the Act; and Public Law 103-432. Tribal participation is described below in OAR 413-070-0917. Under the IV-E waiver demonstration project, relatives and foster parents, who are providing care for certain children meeting specific eligibility criteria and in the custody of DHS may have an opportunity to assume a complete parenting role by becoming the child's legal guardian. The Guardianship Assistance program, modeled after the Federal Adoption Assistance Program creates another permanency option for children. Many caretakers making a permanent commitment to children in their care will benefit from the financial and medical assistance offered under the demonstration project.

(2) The purpose of these rules is to set forth criteria used to determine subsidized guardianship as a permanency planning option for children in substitute care. Adoption is usually the preferred permanent plan when children cannot successfully be reunited with their parents, but this choice is not viable for all. DHS is expanding the choices for children and families to include the establishment of legal custody and guardianship for children for whom adoption does not best serve the permanency needs of the child.

Statutory Authority: ORS 418.005
Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

Definitions
413-070-0905

(1) **"Guardianship Agreement"** means a written agreement between DHS and the prospective guardians, signed prior to the establishment of guardianship, to provide guardianship assistance.

(2) **"Guardianship Assistance"** means financial and/or medical benefits to guardian families for costs associated with the needs of the child under their guardianship. Benefits may be in the form of cash and/or Medicaid coverage and/or nonrecurring legal costs in establishing the guardianship and/or Title XIX Personal Care payments.

(3) **"Qualified Vendor Attorneys"** are qualified attorneys, including Legal Aid Program attorneys who have signed a legal fees agreement with DHS to accept DHS's currently established standard payment, plus reimbursement of any personal costs incurred for court fees and the filing of mandatory court papers, or for obtaining birth certificates when establishing non-contested guardianships for children in DHS's care and custody, or to process adoptions.

(4) **"Waiver"** means the waiver of certain provisions and program regulations of Title IV-E of the Social Security Act for a demonstration project approved under specific terms and conditions by the U.S. Department of Health and Human Services, Administration for Children and Families.

(5) **"Legal Custody and Guardianship"** means that an adult, other than a legal parent of the child, has been made legally responsible for a minor child and the local department's commitment order has been rescinded.

Statutory Authority: ORS 418.005

Prior Version

Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

Values
413-070-0910

(1) The protection and safety of a child are always the first priorities. Services are child centered and family focused.

(2) DHS supports permanency for children and recognizes that sometimes neither family reunification nor termination of parental rights and adoption best serve the permanency needs of the child.

Statutory Authority: ORS 418.005
Statutes Implemented: **Title IV-E, Title IV-B, PL 103-432**

Eligibility
413-070-0915

(1) Under the Title IV-E Waiver federal terms and conditions and state legislative approval, DHS shall operate a three year guardianship demonstration project providing guardianship assistance to specific children only in selected counties. Children in foster care for whom DHS is making a IV-E foster care maintenance payment (including children in tribal custody) may participate in the project. Children for whom a Title XIX foster care payment is made from MHDDSD are ineligible to participate in the project.

(2) Under the Guardianship Assistance Waiver demonstration project, DHS will place a minimum of twenty children in guardianship each year. The children and their caretakers must meet the State established criteria to participate in the demonstration. DHS will comply with the general provisions over the full term of the Waiver demonstration project as stated in Oregon's approved amended Waiver demonstration project terms and conditions.

(3) There is no limit to the number of eligible children who may participate in the Guardianship Assistance Demonstration Project. However, the project is time-limited and federal funding is scheduled to end in June, 2002. Children found eligible for and receiving Guardianship Assistance prior to June, 2002 will continue to receive monthly general fund payments at the project's conclusion. Funding will continue until they reach age 18 or otherwise become ineligible as defined by policy. Continuous program funding from the State's general fund coffers for children enrolled in the project prior to June 2002 was sought and approved by the 1999 and 2001 Oregon legislative sessions.

(4) DHS will offer this new option only when other permanency goals, including return to the parent(s) or adoption are determined not to be in the child's best interest. DHS will represent the guardianship option to families as one which will normalize and stabilize family life, empower care givers in assuming the complete parenting role and minimize the level of state intrusion into their lives. For example, because the children will no longer be committed to the custody of DHS, the care givers will no longer be required to get permission from the DHS local office to take the child out-of-state for any reason, the placement will no longer be subject to Citizen Review Board substitute care reviews, and care givers will no longer be expected to participate in such reviews.

Statutory Authority: ORS 418.005

Prior Version

Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

Eligibility For Tribal Participation
413-070-0917

Prior Version

(1) All Title IV-E eligible children in the legal care and custody of a Tribe having a title IV-E agreement with DHS may be considered for participation in the Title IV-E Guardianship Assistance Demonstration Project. The following policy exceptions apply to Tribal children:

(a) Tribal children of any age and in the legal care and custody of the Tribe in a related or unrelated certified foster home may be considered for participation in the Guardianship Demonstration Project.

(b) Foster homes certified by the Tribe and meeting Tribal standards for foster home licensure are equivalent to licensing or approval by the State. A potential guardian family will have a strong commitment to the child, be a safe and suitable placement, and meet Tribal standards for ongoing care. The Tribe will make a separate visit to the home to conduct a specialized guardianship assessment of DHS's design, to document the appropriateness of the family to participate in the subsidized Guardianship Demonstration Project.

Policy
413-070-0920 DHS/Participating Tribe may support a legal guardianship provided the following assurances are met:

(1) The child has been in DHS/Participating Tribe's legal custody for more than twelve months. DHS may waive this requirement in certain situations, when a written justification referencing agency policy in determining permanent plans for children is prepared by the local DHS office/tribe and reviewed and approved by DHS local office/tribal committee and the DHS local office/tribal manager. Final approval to waive this and other requirements must be obtained from the Permanency and Adoption Manager or his/her designee.

(2) The child is in foster care and receiving a Title IV-E foster care payment.

(a) The child's eligibility for IV-E foster care maintenance payments will be reviewed and eligibility confirmed from the first of the month prior to the month in which the prospective guardians sign the application for guardianship assistance through the date the application was signed.

(b) Children temporarily ineligible for Title IV-E due to lump sum benefits are considered to be eligible for assisted guardianship once the lump sum is expended;

(c) Children for whom Title IV-E payments are being made with an SSI application pending may also be considered for assisted guardianship;

(d) Children eligible for Title IV-E foster care payments, but receiving SSI may also be considered for assisted guardianship when SSI is terminated.

(3) The child has a stable and positive relationship with a prospective guardian and has lived for at least six months in the home of the guardian. The DHS Committee may waive the six month placement requirement for sibling groups when at least one sibling meets all other subsidized guardianship criteria.

(4) The prospective guardian is an approved certified relative or non-relative provider.

(5) The prospective guardian is a non-relative and the child is at least 12 years old. The child may be a minor of any age if the prospective guardian is a relative. DHS will waive the age requirement for sibling groups placed with a non-relative when at least one sibling is at least 12 years of age and meets all other subsidized guardianship criteria.

(6) The child cannot return home. Reunification with his or her parent(s) is not possible.

(7) DHS has determined through steps outlined in DHS CAF Policy I-F.2, Determining the Appropriateness of Adoption as Permanency Plan, and DHS CAF Policy I-F.3.2.1, Termination of Parental Rights, that it is unwarranted to pursue adoption for reasons that may include, but are not limited to:

(a) Efforts to secure a voluntary relinquishment of parental rights have been unsuccessful, and termination of parental rights, as confirmed by legal counsel, is not a viable option;

(b) SOSCF has determined that adoption is not an appropriate plan for the child for reasons that may include, but are not limited to:

(A) A child aged 12 years or over, or a child less than 12 years of age who is capable of making this decision, will not consent to be adopted and another permanency plan has been identified; or

(B) The parent and child have a significant bond, but the parent is unable to care for the child, and another permanent plan has been identified. (DHS will discuss the proposed plan with the parent(s) and seek their written consent to the guardianship plan, if possible.)

(8) SOSCF and the prospective guardian agree that the child and the prospective guardian can maintain a stable relationship and function effectively without SOSCF supervision.

(a) SOSCF has formally assessed the placement with a finding that continuation of the placement is in the child's best interests in that the placement supports the safety, permanency and well-being of the child;

(b) The child has no ongoing care or financial needs beyond basic maintenance and does not require the services of a case manager; or

(A) The child has needs, but they do not require continued agency funding (e.g. therapy is paid through insurance); or

(B) The child has needs which can be met through the guardian's utilization of community resources and the guardian has agreed to access or continue

Prior Version

to maintain those services.

(9) The court agrees to termination of the order for DHS's/tribal care, custody and supervision when ordering guardianship.

(10) The juvenile court agrees to set aside or modify an order of permanent commitment to DHS thereby relieving DHS of their responsibility for the child so that guardianship may be granted to another individual.

(11) The child has legal resident status, or is an immigrant or citizen of the US, under the care of a relative caretaker who is residing in this county legally.

Statutory Authority: ORS 418.005
Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

Prior Version

Guardian Family Requirements
413-070-0925 In order for DHS to approve a potential guardian family for Guardianship Assistance, the family must meet the following requirements:

(1) Be a certified foster home care giver, providing care to children being considered for participation in the demonstration project. The family will have a strong commitment to the child, be a safe and suitable placement, and meet agency standards for ongoing care of the child as determined by family study or specialized guardianship assessment.

(2) Be a foster parent or relative care giver who has demonstrated a commitment and ability to provide a safe, permanent home for the child for at least the past six months as verified through a guardianship assessment.

(3) Require no significant ongoing case work services at the time of the establishment of guardianship and demonstrate an ability to safeguard the welfare of the child, including protection from all persons and situations which brought the child into care.

(4) Have a means of financial support and connections to community resources.

(5) Agree to cooperate with the Division of Child Support and DHS Child, Family and Adult Services (CAFS) program and policy in performing tasks deemed necessary for support enforcement services including:

(a) Agreeing to submit an application for child support services, as defined in OAR 413-070-0905(6), in connection with each of the child's parents;

(b) Upon acquiring any right(s) to receive child support, agreeing to assign to CAFS the right(s) to receive:

(A) current support payments;

(B) any support payments that may have accrued before or after the child was placed with the guardian; and

(C) any support payments that may be imposed in a future order.

(c) Agreeing to cooperate with the DCS and CAFS and perform tasks that CAFS

deems necessary for any support enforcement services or proceeding(s) as defined in OAR 413-070-0905(6)(a)-(e).

(d) Understanding that the timing of support proceedings with respect of the child's mother and father may be different and agree to cooperate with both.

(e) Agreeing that the basic Guardianship Assistance monthly payment shall be contingent upon such cooperation.

Statutory Authority: ORS 418.005
Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

Guardianship Assistance Payments And Medical Coverage
413-070-0930

(1) The Guardianship Assistance rate shall be no more than the child's most recent monthly basic foster care rate and Title XIX personal care rate minus any regular monthly benefit other than child support payments made on behalf of the child. (A special rate payment shall not be included in the Guardianship Assistance rate.) Children residing outside the State of Oregon shall receive a payment based on the out-of-state basic foster care rate.

(a) DHS shall consider all other sources of income other than child support payments available to the child when determining the monthly assistance rate;

(b) The guardian shall become payee for, as necessary, any benefits other than child support payments for the child such as social security benefits;

(c) DHS shall pay the difference between any benefit other than child support payments that the child receives and the most recent foster care and personal care payment. For example, if the child receives Social Security benefits, the amount of the benefit shall be transferred to the guardian and the monthly income from these resources deducted from the total standard basic rate and personal care rate when determining the amount of assistance;

(d) The Guardianship Assistance monthly payment shall be contingent upon the guardian's performance fo the duty, to cooperate with DCS and CAFS in doing what DCS and CAFS deems necessary with respect to child support enforcement services defined in OAR 413-070-925 (5).

(2) The child's eligibility for Title XIX personal care payments and services may continue so long as the child resides in the State of Oregon. However, the amount of the personal care rate may be reduced if DHS determines through an analysis of the child's needs that the personal care service hours previously required have decreased.

(3) DHS shall authorize no monthly special care rate, other than the Personal Care payment, or any special one-time payment from either State general fund or Federal sources.

(4) Children participating in this Waiver demonstration, to the extent they are otherwise eligible, shall be provided a full range of services under the Medicaid program which includes health care services and mental health care services. Children moving out-of-

Prior Version

state are entitled to continue to receive Medicaid services from the State of Oregon.

(5) CAFS Guardianship Assistance payments to legal guardians, who were agency certified foster parents for the child(ren) prior to becoming court designated guardians, shall be inalienable by any assignment or transfer and exempt from execution, levy, attachment, garnishment and other legal process under the laws of this state.

Statutory Authority: ORS 418.005
Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

Prior Version

The Agreement
413-070-0935

(1) In order for Guardianship Assistance to take place, there must be a written Guardianship Assistance Agreement between DHS and the guardian for the financial support of the child in question. The agreement shall, in part:

(a) Include the consent of the guardian;

(b) List the monthly benefit DHS is offering;

(c) Include the guardian's consent to and acceptance of the monthly cash benefit DHS is offering;

(d) Include the guardian's understanding that the benefit may not be greater than the basic foster care rate and personal care payment paid were the child is in foster care;

(e) Include the guardian's understanding that the benefit may be adjusted on an annual basis upon mutual agreement between the agency and the guardian.

(f) Include the guardian's understanding that the guardian shall submit an application for child support enforcement services, as defined in OAR 413-070-0905(6), from each of the child's parents.

(g) Include the guardian's understanding that the guardian upon acquiring the right to receive child support, shall assign to CAFS the right to receive.

(A) current support payments;

(B) any support payments that may have accrued before or after the child was placed with the guardian; and

(C) any support payments that may be imposed in a future order.

(h) Include the guardian's understanding that the guardian shall cooperate with DCS and CAFS by performing tasks that CAFS or DCS deems necessary to the support enforcement services described above in OAR 413-070-0905(6).

(i) Include the guardian's understanding that the basic Guardianship Assistance monthly payment shall be contingent upon the cooperation described in subsection (1)(g).

(2) The agreement shall also provide that children for whom DHS is making a financial or benefit type of payment shall remain eligible for medical assistance under Title XIX of the Act.

(3) DHS shall maintain the written agreement between the DHS and the guardian according to DHS's criteria in place at the time of the court's establishment of guardianship.

(4) DHS shall review each guardianship agreement annually.

Statutory Authority: ORS 418.005
Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

Prior Version

Court Orders
413-070-0937

(1) At the Guardianship Hearing the Worker Will Request the court order guardianship. The caretaker is ineligible for foster care payments once guardianship is effective and DHS care and custody terminated.

(2) Guardianship Assistance May Be Approved Regardless of Whether the Order of guardianship is permanent or temporary or ordered by the juvenile court or probate court.

(3) Guardianship Assistance will not be approved if the court establishes guardianship and orders DHS's continued supervision of the child and/or guardians.

Title Iv-e Guardianship Assistance Eligibility
413-070-0940

(1) DHS administers the Guardianship Assistance program in order to provide continued financial support for selected children placed with financially needy appointed guardians.

(2) The guardianship appointment, monthly subsidy, and services shall continue without court involvement unless the child meets one of the following conditions. DHS shall cease or suspend, as appropriate, Guardianship Assistance when:

(a) The child reaches age 18 or emancipation, whichever comes first;

(b) Child custody or guardianship is awarded to another individual;

(c) The child is incarcerated for more than three months;

(d) The child is out of the home for an extended period with no plans to return to the home or is no longer living in the home;

(e) The child dies;

(f) A minor child marries;

(g) The guardian dies or terminates guardianship;

(h) It is demonstrated that the guardians are no longer legally responsible for the financial support of the child or the child is no longer receiving financial support from the guardian;

(i) The child is adopted;

(j) The child is placed in substitute care; or

(k) The annual report is not filed with DHS within 30 days of the anniversary date of the court's appointment of the guardian(s).

Statutory Authority: ORS 418.005
Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

Prior Version

Annual Reviews
413-070-0945

(1) Eligibility reviews for Guardianship Assistance shall be conducted on an annual basis.

(a) The guardian shall file a written report annually. The guardian shall file the report with the court within 30 days after each anniversary of the court appointment of guardianship;

(b) Guardians shall annually submit to DHS Central Office Adoption Unit a copy of the guardianship report required by the court within 30 days after each anniversary date of the court's appointment of the guardian(s);

(c) DHS shall hold the Guardianship Assistance check if the guardian does not submit to DHS the court report within 30 days after each anniversary date of the court's appointment of the guardian(s).

(2) The DHS local office Personal Care Registered Nurse shall assess Children receiving Personal Care Services Guardianship Assistance Payments annually. Personal Care assessments shall not be conducted on more than an annual basis except under extreme circumstances. Upon receiving a request from the Central Office Adoption Assistance Unit, the RN providing local Personal Care Services shall complete and submit an assessment of the child's current personal care needs to the Central Office Adoption Unit.

(3) The basic Guardianship Assistance rate shall not automatically increase. Guardians may request an increase in the child's subsidy up to the current rate of pay for the child's age, or up to the current rate of pay given cost of living increases or other legislatively approved increases for the basic foster care rate.

(4) The Guardianship Assistance basic rate may increase when the guardian payee does not receive the child benefits in the amount calculated and deducted as an offset to the basic Guardianship Assistance monthly payment.

(5) A review of the child's continuing Title IV-E eligibility status is not required after the guardianship assistance application is signed, and it is not necessary to confirm ongoing parental deprivation in the home from which the child was removed as long as the child remains otherwise eligible to receive Guardianship Assistance. Ideally, the

assistance application should be signed no earlier than 60 days prior to the anticipated hearing date on which the court will order guardianship.

Statutory Authority: ORS 418.005
Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

Prior Version

Eligibility Retention
413-070-0950

(1) DHS must review continued eligibility for Title IV-E foster care based on parental deprivation and the child's financial circumstances when children return to substitute care from a disrupted guardianship placement. The guardian's income is not considering during this review, nor is the guardian obligated to pay child support upon the child's return to substitute care.

(2) Children returning to Guardianship Assistance from foster care shall resume their original Title IV-E eligibility for Guardianship Assistance without regard to parental deprivation at the time of child's return to the guardian's care or the child's eligibility status while in foster care.

(3) Children moving from Guardianship Assistance to adoption shall remain eligible for Title IV-E adoption assistance.

(4) DHS shall not re-establish dependency on any child placed into guardianship under this demonstration project unless DHS determines there is cause for removal from the guardian's home due to abuse or neglect or unless DHS would otherwise re-establish dependency for reasons unrelated to the expiration of the Waiver or the termination of this demonstration, such as a change in the care giver's circumstances which leaves the care giver unable to care for the child(ren).

Statutory Authority: ORS 418.005
Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

Guardian Responsibilities for Agency Notification

413-070-0955 The guardian shall notify the local office of DHS when:

(1) A change in circumstances indicates that there is no longer a need for Guardianship Assistance.

(2) The guardian has a change of address; or

(3) The guardian is planning to move out-of-state.

Statutory Authority: ORS 418.005
Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

Vendor Attorney And Legal Payments
413-070-0960

(1) To legally establish guardianship, DHS shall provide payment to the vendor attorney or reimbursement of the prospective guardian's personal attorney costs according to the requirements of OAR 413-090-0500 through 413-090-0550, Payments for Providing Direct Client Legal Services (DHS CAF Policy I-E.5.5). Payments for providing direct

client legal services per these administrative rules, shall be made from the local foster care prevention budget and may include:

(a) Payments for attorney services at DHS's currently established payment rate;

(b) Payment or reimbursement for mandatory filing and other various court fees incurred in filing papers to pursue the court case.

(2) The local DHS office may authorize payment, for reimbursement of or payment for the cost of newspaper publications notices of the agency's intent to establish guardianship for absent parents.

(3) The local DHS office shall not authorize payment for contested case legal services.

Statutory Authority: ORS 418.005
Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

Prior Version

Selection Criteria
413-070-0965

(1) DHS shall impose no means test with respect to prospective guardians for the selection of children to be approved for Guardianship Assistance nor for the selection of families.

(2) In no case shall participation in the demonstration be mandatory for families.

(3) Members of sibling groups shall be placed together unless there is an explicit local DHS office decision made that it is not in the best interest of the child or children involved to be placed together when establishing placements under the demonstration.

Statutory Authority: ORS 418.005
Stats Implemented: Title IV-E, Title IV-B, PL 103-432

Guardianship Social Services and Supports
413-070-0970

(1) DHS shall provide caretakers a range of services prior to the establishment of the guardianship. DHS shall provide an orientation to the family to assure that all family members understand the benefits and responsibilities of all participants in the guardianship demonstration project. The discussion shall also include biological and/or legal parents when possible, and particularly when the intra- and inter-familial tensions between the birth parent and care givers affect the child's and family's well-being.

(2) Guardians shall have the same access to local DHS services after the guardianship has been established as do adoptive parents, including access to Oregon Post Adoption Resources and crisis intervention services.

(3) Upon establishment of guardianship, the caseworker shall have an exit conference with the guardian family and the child and ensure the guardian family has phone numbers to call for services, if needed. The caseworker shall advise the guardian family to call Intake Screening to request services in the county in which they reside. The case worker will clarify that requesting services does not place guardianship in jeopardy. In the closing casework narrative, the caseworker shall document that s/he has informed the family of their rights and responsibilities and access to post-guardianship services.

Statutory Authority: ORS 418.005
Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

Fair Hearings
413-070-0975 All guardians and applicants for Guardianship Assistance are entitled to fair hearings concerning disputes that may arise in the administration of the subsidized guardianship program as identified in OAR 413-130-0120 and DHS Contested Case Hearings Policy I-A.5.2.
Statutory Authority: ORS 418.005
Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

Prior Version

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