



**STATE OFFICE for SERVICES
to CHILDREN and FAMILIES
CLIENT SERVICES MANUAL I**

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SECTION: E. Substitute Care
3. Placement Expectations

SUBSECTION: 6. Achieving
Permanency

SUBJECT: 2. Guardianship Assistance - Oregon Administrative Rules

Responsible Manager: Manager,
Permanency and Adoptions

Approval: Joni Peterson
Deputy Administrator,
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Interpretation: Title IV-E Waiver Manager and
Guardianship Assistance Coordinators

- REFERENCES:** Public Law 103-432
OAR 413-090-0540
Title IV-B
Title IV-E
Indian Child Welfare Act
SOSCF Policy I-E.2.1, Placement of Indian Children
ORS 125.300 - 125.325
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"
PAM 9702 "Subsidized Guardianship Brochure"
"Procedures for Approval for Participation in the Guardianship
Assistance Demonstration Project"

PURPOSE

413-070-0900 (1) The State of Oregon, Office for Services to Children and Families, (SOSCF) 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 SOSCF, 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. SOSCF 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 SOSCF 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 SOSCF to accept SOSCF'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 SOSCF'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

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) SOSCF 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, SOSCF shall operate a three year guardianship demonstration project providing guardianship assistance to specific children only in selected counties. Children in foster care for whom SOSCF is making a IV-E foster care maintenance payment (including children in tribal custody) may participate in the project with the exception of children on case loads in the Marion SOSCF Branch Office. Marion Branch Office was selected as the "comparison" branch for evaluation purposes for the demonstration project; it was deemed to be the most representative branch of the State as a whole. 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, SOSCF 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. SOSCF 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 Oregon legislature.

(4) SOSCF 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. SOSCF 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 SOSCF, the care givers will no longer be required to get permission from the local branch 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

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

ELIGIBILITY FOR TRIBAL PARTICIPATION:

413-070-0917 All Title IV-E eligible children in the legal care and custody of a Tribe having a title IV-E agreement with SOSCF 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 SOSCF's design, to document the appropriateness of the family to participate in the subsidized Guardianship Demonstration Project.

POLICY

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

(1) The child has been in SOSCF/Participating Tribe's legal custody for more than twelve months. SOSCF may waive this requirement in certain situations, when a written justification referencing agency policy in determining permanent plans for children is prepared by the branch/tribe and reviewed and approved by branch/tribal committee and the branch/tribal manager. Final approval to waive this requirement 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 SOSCF 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. SOSCF 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) SOSCF has determined through steps outlined in SOSCF Policy I-F.2,

Determining the Appropriateness of Adoption as Permanency Plan, and SOSCF 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. (SOSCF 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 to maintain those services.

(9) The court agrees to termination of the order for SOSCF'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 SOSCF thereby relieving SOSCF 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

GUARDIAN FAMILY REQUIREMENTS

413-070-0925 In order for SOSCF 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 complete the Division of Child Support's application for child support services to enforce and/or modify an existing order of parental support or to establish a new order for support from the parent(s).

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 or 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) SOSCF shall consider all other sources of income available to the child when determining the monthly assistance rate;

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

(c) SOSCF shall pay the difference between any other benefit 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) Irregular or intermittent child support payments may be averaged over a twelve month period and the average deducted from the monthly subsidy.

(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 SOSCF determines through an analysis of the child's needs that the personal care service hours previously required have decreased.

(3) SOSCF shall authorize no monthly special care rate, other than the Personal Care 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-state are entitled to continue to receive Medicaid services from the State of Oregon.

Statutory Authority: ORS 418.005

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

THE AGREEMENT

413-070-0935 (1) In order for Guardianship Assistance to take place, there must be a written Guardianship Assistance Agreement between SOSCF 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 SOSCF is offering;
- (c) Include the guardian's consent to and acceptance of the monthly cash benefit SOSCF 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.
- (2) The agreement shall also provide that children for whom SOSCF is making a financial or benefit type of payment shall remain eligible for medical assistance under Title XIX of the Act.
- (3) SOSCF shall maintain the written agreement between the SOSCF and the guardian according to SOSCF's criteria in place at the time of the court's establishment of guardianship.
- (4) SOSCF shall review each guardianship agreement annually.
- Statutory Authority: ORS 418.005**
Statutes Implemented: Title IV-E, Title IV-B, PL 103-432

COURT ORDERS

413-070-0937 (1) At the guardianship hearing the worker will request the court order guardianship to become effective 60 days from the date of the hearing. A future effective date for guardianship allows foster care payments to continue while Central Office, Permanency and Adoptions Unit processes the guardianship application, closes the branch foster care payment, opens the guardianship assistance case and initiates the payment. The caretaker is ineligible for foster care payments once guardianship is effective and SOSCF 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 SOSCF's continued supervision of the child and/or guardians.

TITLE IV-E GUARDIANSHIP ASSISTANCE ELIGIBILITY

413-070-0940 (1) SOSCF 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. SOSCF 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 annual report is not filed with SOSCF 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

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

(2) The SOSCF branch 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 branch 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 or child support payments in the amount calculated and deducted as an offset to the basic Guardianship Assistance monthly payment. A reduction in the ongoing basic Guardianship Assistance monthly payment may result if it is determined that the support payments received by the guardian were greater than calculated and deducted during the previous twelve months and the increased payments are expected to continue.

(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.

Statutory Authority: ORS 418.005

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

ELIGIBILITY RETENTION

413-070-0950 (1) SOSCF 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.

(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) SOSCF shall not re-establish dependency on any child placed into guardianship under this demonstration project unless SOSCF determines there is cause for removal from the guardian's home due to abuse or neglect or unless SOSCF 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 branch of SOSCF 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, SOSCF shall provide to the vendor attorney or the prospective guardian's personal attorney payment according to the requirements of OAR 413-090-0500 through 413-090-0550, Payments for Providing Direct Client Legal Services (SOSCF Policy I-E.5.5). Payments for providing direct client legal services per these administrative rules, shall be made from the branch foster care prevention budget and may include:

(a) Payments for attorney services at SOSCF'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 branch 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 branch 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

SELECTION CRITERIA

413-070-0965 (1) SOSCF 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 branch 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) SOSCF shall provide caretakers a range of services prior to the establishment of the guardianship. SOSCF 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 branch 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 SOSCF Contested Case Hearings Policy I-A.5.2.

Statutory Authority: ORS 418.005

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