

<b>Policy Title:</b>	Guardianship Assistance - OAR		
<b>Policy Number:</b>	I-E.3.6.2 413-070-0900 thru 0979		<b>Effective Date:</b> 6/15/10

Approved By: *On file*

Date Approved: 6/15/10

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### Reference(s):

- Title IV-E Waiver Terms and Conditions
- Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law (P.L.) 110-351)
- ACYF-CB-PI-08-05
- ACYF-CB-PI-08-007 Program Instruction for P.L. 110-351
- I-A. 5.1 Contested Case Hearings

### Form(s) that apply:

- CF 0966 - Consent of Parent to Guardianship
- CF 0967a - Letter to Relative Regarding Use of Vendor Attorney
- CF 0967B - Guardianship Assistance Legal Fee Agreement
- CF 0967C Attorney Agreement to Accept DHS Rate of Reimbursement
- CF 0970 - Assessment for Guardianship Assistance
- CF 0971 - Guardianship Assistance Agreement
- CF 0972 - Guardianship Review Report
- CF 0973 – Title IV-E Guardianship Assistance Program (GAP) Determination and Title XIX Determination
- CF 0973D – Notice of DENIAL of Title IV-E Guardianship Assistance Payments
- CF 0974 - Guardianship Assistance Application - Family Information
- CF 0975 - Duties of a Guardian
- CF 0977 - Annual Guardian's Court Report
- CF 0976 - Choices Chart
- DHS 9601 – Child and Adolescent Needs and Strengths (CANS) Ages birth through five
- DHS 9602 – Child and Adolescent Needs and Strengths (CANS) Ages 6 through 20

### Rules:

**413-070-0900**

## Purpose

The purpose of these rules, OAR 413-070-0900 to 413-070-0979, is to describe Department criteria for program eligibility and receipt of *guardianship assistance* for Title IV-E eligible children in Oregon. *Guardianship assistance* for a *child* from another state placed with a guardian in Oregon is the responsibility of the sending state.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

## 413-070-0905

### Definitions

The following definitions apply to OAR 413-070-0900 to 413-070-0979:

- (1) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of integrating information on a *child* or young adult's needs and strengths for the purposes of case planning, service planning, and determining the supervision needs of the *child* or young adult. The Department uses two versions of the CANS Comprehensive Screening Tool, one version for an individual birth through five years old and another version for an individual six through twenty years old.
- (2) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which he or she resides, to a *child* or young adult in the care or custody of the Department.
- (3) "Child" means a person less than 18 years of age.
- (4) "Enhanced supervision" means the additional support, direction, observation, regulation, and guidance provided by a *certified family* to a *child* or young adult to promote and ensure the safety and well-being of the *child* or young adult, beyond the level of supervision that typically is required for a *child* or young adult of the same age.
- (5) "Guardianship assistance" means financial assistance or medical benefits to a child's guardian on behalf of an eligible *child* under guardianship. *Guardianship assistance* may be in the form of a monthly *guardianship assistance payment*, Medicaid coverage, and nonrecurring legal costs incurred in establishing the guardianship.
- (6) "Guardianship assistance agreement" means a written agreement between the Department and the guardian of an eligible *child* setting forth the assistance the Department is to provide the *child*, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.
- (7) "Guardianship assistance payment" means a monthly cash payment made by the Department to the guardian on behalf of the eligible *child*.
- (8) "Guardianship Assistance Review Committee" means a committee composed of local and central office staff who have expertise in the area of guardianship.

- (9) "Indian child's tribe" means the Indian tribe of which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, *Indian child's tribe* means the Indian tribe with which the child has the most significant contacts.
- (10) "Nonrecurring expenses" means a one-time payment of up to \$2,000, which the Department will make to a guardian with a *guardianship assistance agreement* to assist with the expenses associated with obtaining legal guardianship of the child. *Nonrecurring expenses* are the reasonable and necessary fees and may include the cost of a home study, court costs, attorney fees, physical and psychological examinations, and other expenses related directly to the legal guardianship of the child.
- (11) "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.
- (12) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.
- (13) "Permanency Committee" means a group of three individuals, responsible for making a recommendation regarding a child's permanency plan when the *child* likely is not returning to his or her *parent*.
- (a) The committee must:
- (A) Include two Department staff and may include a community partner, all of whom are approved by the District Manager or designee; and
  - (B) When the *child* is an ICWA *child*, and a *Permanency Committee* is appropriate, identify an individual from a federally recognized *tribe* as one of the three individuals on the committee; and
  - (C) Have an identified chairperson approved by the District Manager or designee.
- (b) The *Permanency Committee* members must:
- (A) Be knowledgeable of permanency issues;
  - (B) Be knowledgeable of the importance of cultural connections;
  - (C) Have no personal or professional relationship to the *child* or prospective placement resource; and
  - (D) Represent multiple child welfare offices.

- (14) "Qualified alien" means an alien described in 8 USC 1641(b) or (c), and as described in OAR 413-130-0045.
- (15) "Registered Domestic Partner" means an individual joined in a domestic partnership that is registered with a county clerk in accordance with ORS 106.300 to 106.340.
- (16) "Relative" means:
- (a) An individual with one of the following relationships to the *child* or young adult through the child or young adult's *parent*:
    - (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* 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 death or divorce. 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 customs of the *child* or young adult's tribe 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 OAR 413-070-0380).
    - (C) A stepparent described in OAR 413-100-0020(27)(c) or a 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 *child* or young adult's *parent* or former registered domestic partner of the *child* or young adult's *parent* if the *child* or young adult had a relationship with the former domestic partner prior to the *child* or young adult entering *substitute care*.

- (E) The adoptive *parent* of a *child* or young adult's *sibling*.
  - (F) The unrelated legal or biological father or mother of a child's half-*sibling* when the child's half-*sibling* is living with the unrelated legal or biological father or mother.
- (c) An individual identified by the *child* or young adult or the *child* or young adult's family, or an individual who self-identifies, related to the *child* or young adult through the *child* or young adult's *parent* by blood, adoption, or marriage to a degree other than an individual specified as a *child* or young adult's *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 *child* or young adult's family; and
  - (B) Who had an emotionally significant relationship with the *child* or young adult or the *child* or young adult's family prior to the time the Department placed the *child* in *substitute care*.
- (e) For the purposes of these rules, OAR 413-070-0900 to 413-070-0979:
- (A) A stepparent is considered a *parent* and is not a *relative* under these rules 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 be considered a relative under these rules when:
    - (i) There is a compelling reason why adoption is not an achievable permanency plan;
    - (ii) The foster parent is currently caring a for a *child* in the legal custody of the Department who has a permanency plan or concurrent permanency plan of guardianship;
    - (iii) The foster parent has cared for the *child* for at least the past 12 consecutive months; and
    - (iv) A Permanency Committee has recommended the foster parent for consideration as a guardian.
- (17) "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 children or young adults' legal or biological parents; or

(c) Through a legal or biological *parent* who is the *registered domestic partner* of the children or young adults' legal or biological *parent*.

(18) "Substitute care" means the out-of-home placement of a *child* or young adult who is in the legal or physical custody and care of the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

#### **413-070-0909**

##### **Funding of Guardianship Assistance**

- (1) Non-relative *guardianship assistance* established under the Title IV-E Waiver Project is funded by Title IV-E waiver funds until the waiver expires or is terminated. At that time the Oregon general fund provides monies for any current and new non-relative *guardianship assistance* for Title IV-E eligible children.
- (2) Effective January 1, 2009, newly established *relative caretaker guardianship assistance* for Title IV-E children is funded with Guardianship Assistance program funds as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

#### **413-070-0917**

##### **Eligibility: Child**

- (1) To be eligible for *guardianship assistance* a *child* must:
- (a) Be a United States citizen or *qualified alien*.
  - (b) Have been removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the *child*.
  - (c) Have been eligible for Title IV-E foster care maintenance payments during a six consecutive month period during which the *child* resided in the home of the prospective guardian who was licensed, certified, or approved as meeting the licensure or certification requirements of a foster family home in the state where the home is located or a participating tribe. The Department determines a child's eligibility for a Title IV-E maintenance payment under Child Welfare Policy I-E.6.1, "Title IV-E Foster Care and General Assistance" OAR 413-100-0000 to 413-100-0345.
  - (d) Have been in the Department's or participating tribe's legal custody for a minimum of --
    - (A) Six months, if the prospective guardian is the child's *relative*; or

- (B) Twelve months, if the prospective guardian is not the child's relative or is a foster parent who meets the definition of a *relative* under OAR 413-070-0905(16)(e)(B).
- (e) Be ---
  - (A) 10 years of age or older if the prospective guardian is not a *relative* or is a foster parent who meets the definition of a *relative* under OAR 413-070-0905(16)(e)(B).
  - (B) Any age if the prospective guardian is a *relative* as defined under OAR 413-070-0905(16)(a) to (d).
  - (C) The Department waives the age requirement when the *child* is:
    - (i) A member of a *sibling* group placed together for guardianship with a non-relative or a foster parent who meets the definition of a *relative* under OAR 413-070-0905(16)(e)(B) if at least one member of the group is 10 years of age or older and meets all other *guardianship assistance* eligibility criteria under this rule; or
    - (ii) An Indian Child Welfare Act (ICWA) identified *child* in the care and custody of the Department if the *Indian child's tribe* supports the plan of guardianship with the current caretaker.
  - (f) Have a stable positive relationship with the prospective guardian.
  - (g) Demonstrate a strong attachment to the prospective guardian.
  - (h) The Department or participating tribe determines return to a *parent* or adoption are not in the child's best interest.
  - (i) If the *child* is a Title IV-E eligible Indian *child* as defined by the ICWA and in the care and custody of the Department, have a permanency plan for guardianship approved by the child's *tribe*.
- (2) The *child* and any non-Title IV-E eligible *sibling* may be placed in the same guardianship if the Department or participating tribe and the prospective guardian agree on the appropriateness of the arrangement for the siblings. *Guardianship assistance* may be provided for the non-Title IV-E eligible *sibling* if the Title IV-E *child* meets all *guardianship assistance* eligibility criteria under this rule.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

#### **413-070-0919**

#### **Eligibility: Child in the Custody and Care of a Participating Tribe**

In addition to the other Guardianship Assistance program criteria under these rules, OAR 413-070-0900 to 413-070-0979, the following requirements apply to a *child* in the care and custody of a *participating tribe*:

- (1) The *participating tribe* must have a Title IV-E agreement with the Department allowing the tribe to participate in the Guardianship Assistance program.
- (2) The *participating tribe* must:
  - (a) Conduct and prepare a written home study of the guardian;
  - (b) Document how continued placement with the prospective guardian is in the best interests of the *child* and meets the child's needs for safety and permanency.
  - (c) Notify the Department's Adoption and Guardianship Program within 30 days if the *tribe* reestablishes custody of a *child* in a guardianship placement established under these rules, OAR 413-070-0900 to 413-070-0979; and
  - (d) When applicable, provide the Department's Adoption and Guardianship Program with a copy of the court order terminating the guardianship within 30 days of the termination.
- (3) The *child* must be placed in a tribal foster home meeting the participating tribe's certification and licensing standards.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

#### **413-070-0925**

##### **Eligibility: Prospective Guardian**

- (1) The Department may approve a prospective guardian for *guardianship assistance* when the prospective guardian meets the requirements of all of the following subsections:
  - (a) Meets one of the following requirements:
    - (A) Has a current Certificate of Approval from 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) Currently is certified as a foster home by the *participating tribe* as meeting the tribe's certification and licensing standards; or
    - (C) Currently is certified or otherwise approved by the state in which the prospective guardian resides and approved as a placement for the *child* under the Interstate Compact on Placement of Children (ICPC).
  - (b) Agrees with the Department or tribe, and the Department or tribe documents in the child's case record, that the *child* and the prospective guardian can maintain a stable relationship and function effectively without Department supervision.

- (c) Has an updated home study documenting how the prospective guardian's skills and abilities meet the child's best interests and needs for safety and permanency.
  - (d) Has adequate means of financial support and connections to community resources.
  - (e) Has a strong commitment to caring permanently for the *child* for whom the prospective guardian has cared as a foster parent.
- (2) The Department may consider a non-related individual as a potential guardian for the *child* when the individual has an emotionally significant relationship with the *child* and the requirements of one of the following subsections are met:
- (a) In making the determination to consider the non-related individual as a potential guardian for the *child*, the Department considered and determined that the unique current and life-long needs of the *child* will best be met by guardianship with the individual who has an emotionally significant relationship with the *child*.
  - (b) When the individual being considered is the current foster parent of the *child*, the time caring for the *child* and the subsequent relationship that develops is not sufficient in making the determination under subsection (a) of this section. The Department must consider and document the reasons described in subsection (a) of this section when determining if the foster parent will be considered as a potential guardian for the *child*.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

#### **413-070-0929**

##### **Determination of Permanency Plan: Guardianship**

- (1) The Department or a *participating tribe* may consider guardianship as the permanency plan for a *child* when all of the following conditions are met:
- (a) The Department determines that adoption is not an appropriate permanency plan under Child Welfare Policies I-F.2, "Determining the Appropriateness of Adoption as a Permanency Plan for a Child" OAR 413-110-0300 to 413-110-0360 and I-F.3.2.1, "Termination of Parental Rights" OAR 413-110-0200 to 413-110-0252;
  - (b) The eligibility requirements in OAR 413-070-0915, 413-070-0917, 413-070-0919, and 413-070-0925 have been met for the purpose of *guardianship assistance*.
  - (c) The Department or *participating tribe* has consulted with the *child*, if 14 years of age or older, regarding guardianship as the permanency plan.
  - (d) The Department and the prospective guardian agree, and the Department documents in the child's case record, that the *child* and the prospective guardian can maintain a stable relationship and function effectively without Department supervision.

- (e) A Permanency Committee has recommended:
  - (A) Guardianship as an appropriate permanency plan for the *child*; and
  - (B) Guardianship is in the child's best interests because the prospective guardian meets the safety, permanency, and well-being needs of the *child*.
- (f) The court approves a guardianship permanency plan for the child under Child Welfare Policy I-E.3.6, "Achieving Permanency" OAR 413-070-0500 to 413-070-0517.
- (2) Each *parent* with legal rights or standing consents to the permanency plan of guardianship or has been given adequate notice of the permanency plan under state or tribal law when the Department or *participating tribe* requests a court order establishing guardianship.
- (3) When guardianship has been approved as a child's permanency plan, and *guardianship assistance* is being considered, the child's case plan must include:
  - (a) How the *child* meets the eligibility requirements described in OAR 413-070-0917.
  - (b) The steps taken by the Department or *participating tribe* to determine that it is not appropriate for the *child* to return home or be adopted.
  - (c) The efforts made by the Department or *participating tribe* to discuss with the substitute caregiver adoption rather than guardianship as the preferred permanency plan and why adoption was not chosen.
  - (d) The efforts made by the Department or *participating tribe* to discuss the guardianship plan with each parent of the *child* or the reasons why efforts were not made.
  - (e) The reasons why permanent placement with a fit and willing guardian through a *guardianship assistance* arrangement is in the child's best interests.
  - (f) The efforts made by the Department or *participating tribe* to discuss with each parent of the *child* the *guardianship assistance* arrangement or the reasons why no such efforts were made.
  - (g) The reasons, if any, that siblings were separated during placement.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

#### **413-070-0934**

##### **Application Requirements**

- (1) A prospective guardian is not required to apply for *guardianship assistance*. An applicant may withdraw an application for *guardianship assistance* at any time before the court establishes the guardianship.

- (2) When all applicable program eligibility criteria have been met, a prospective guardian may apply for *guardianship assistance* by completing and signing a *guardianship assistance* application and returning it to the local Department child welfare office or *participating tribe* office providing case management for review and eligibility determination.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

#### **413-070-0939**

#### **Determination of Guardianship Assistance Payments and Medical Benefits**

- (1) The *guardianship assistance* benefits are negotiated when the Department's Adoption and Guardianship program approves a *guardianship assistance* application. The total amount of the *guardianship assistance payment* may not exceed the amount of the base foster care rate the *child* is eligible to receive while in foster care and, when applicable, the current level of care payment for enhanced supervision as determined by a *CANS screening* under Child Welfare Policies I-B.1.6, "Enhanced Supervision" OAR 413-020-0200 to 413-020-0255 and I-E.5.1 "Payment for Foster Care Base Rate, Level of Care, Chafee Housing, and Independent Living Housing Subsidy" OAR 413-090-0000 to 413-090-0050.
- (2) The base *guardianship assistance payment* for a *child* residing outside of the State of Oregon may not exceed the base foster care rate determined by Child Welfare Policy I-E.5.1, "Payment for Foster Care Base Rate, Level of Care, Chafee Housing, and Independent Living Housing Subsidy" OAR 413-090-0000 to 413-090-0050.
- (3) The base *guardianship assistance payment* is determined through negotiation between the Adoption and Guardianship program and the prospective guardian prior to the completion of the *Guardianship Assistance Agreement*. The *guardianship assistance payment* is established and paid as follows:
- (a) The monthly *guardianship assistance payment* negotiation takes into consideration relevant factors which include, but are not limited to:
- (A) The needs of the *child*;
  - (B) The services required to meet the needs of the *child*;
  - (C) The cost of the services required to meet the needs of the *child*;
  - (D) The guardian's ability to provide the services required to meet the needs of the *child*; and
  - (E) The community resources available to the *child* and guardian.
- (b) Medicaid coverage, private insurance, public education, and all community resources must be considered as resources for the *child* and the guardian when determining the amount of the *guardianship assistance payment*.

- (c) The Department considers all sources of income, except tribal dividend payments, available to the *child* when negotiating the monthly *guardianship assistance payment*. A child's income from sources such as Social Security and Veterans benefits are considered in determining the *guardianship assistance payment*, but are not deducted necessarily dollar-for-dollar from the amount of the *guardianship assistance payment*.
- (4) When the *child* is receiving a level of care payment, as indicated by a Child and Adolescent Needs and Strengths (CANS) screening under Child Welfare Policy I-E.5.1, "Payment for Foster Care Base Rate, Level of Care, Chafee Housing, and Independent Living Housing Subsidy" OAR 413-090-0000 to 413-090-0050, at the time of negotiation, the full amount of the level of care payment is provided as part of the *guardianship assistance payment*.
- (5) Except for tribal dividend payments, the guardian must be the designated payee for any benefit the *child* receives, such as Social Security benefits.
- (6) The *guardianship assistance payment* begins when:
  - (a) All parties have signed the *guardianship assistance agreement*; and
  - (b) The court has issued an order of guardianship.
- (7) A *guardianship assistance payment* to a guardian who was a Department certified foster parent for the *child* prior to becoming a court designated guardian is inalienable, not assignable or transferable, and exempt from execution, levy, attachment, garnishment, and other legal process under the laws of Oregon, as long as the payment can be identified as a Guardianship Assistance program payment and is kept separate from other money in the guardian's possession.
- (8) A *child* eligible for and receiving *guardianship assistance* with a relative caretaker is eligible for medical benefits in the child's state of residence. If a *child* is eligible for *guardianship assistance*, resides in a state other than Oregon with a non-relative guardian, and is not able to obtain medical benefits in his or her state of residence the Department provides medical benefits under Child Welfare Policy I-E.6.2, "Title XIX and General Assistance Medical Eligibility" OAR 413-100-0400 to 413-100-0610.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

#### **413-070-0944**

#### **Special Payments: Legal Expenses**

- (1) To the extent the total cost of such expenses does not exceed \$2,000, the Department will pay for *nonrecurring expenses* incurred by the guardian in the establishment of an assisted guardianship of a *child*.
- (2) The Department may not authorize payment for legal services provided --
  - (a) For the prospective guardian or guardian in connection with a contested case hearing; or

- (b) To defend or retain a guardianship upon challenge by another party once a guardianship is established.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

#### **413-070-0949**

#### **Guardianship Assistance Agreement Requirements**

- (1) Before a guardian may receive *guardianship assistance*, there must be a negotiated written *guardianship assistance agreement* between the Department and the guardian signed by all parties prior to the court order establishing the legal guardianship.
- (2) The *guardianship assistance agreement* must include the following:
  - (a) A statement indicating that a *guardianship assistance payment* remains in effect without regard to the state of residency of the guardian.
  - (b) The amount of the *guardianship assistance* and the manner in which it is to be provided.
  - (c) The basis and requirements for periodic changes in the *guardianship assistance payment*, in consultation with the guardian, based on the circumstances of the guardian and the needs of the *child*.
  - (d) The additional services and assistance for which the *child* and guardian are eligible under the agreement and the procedure by which the guardian may apply for such services.
  - (e) A statement that the Department will pay the *nonrecurring expenses* associated with obtaining legal guardianship of the *child*, to the extent the *nonrecurring expenses* do not exceed \$2,000.
  - (f) A statement indicating the effective date of the *guardianship assistance agreement* is the date of the court order of guardianship.
  - (g) A statement that no retroactive *guardianship assistance payment* may be authorized except as provided under OAR 413-070-0969.
  - (h) A statement indicating that the guardian understands that a *guardianship assistance payment* may be terminated or suspended under OAR 413-070-0974.
  - (i) A statement indicating that the *child* for whom the Department is providing the *guardianship assistance payment* remains eligible for medical assistance once the guardianship is established.

- (j) A statement indicating that the guardian understands that the provisions of ORS 192.520 allow the Department of Human Services' Oregon Health Plan (OHP) and the OHP managed care plans to exchange the following protected health information without the guardian's authorization for the purpose of treatment activities related to the behavioral or physical health of the *child* when the *child* is the recipient of OHP services:
- (A) The child's name and Medicaid recipient number;
  - (B) The name of the child's hospital or medical provider;
  - (C) The hospital or medical provider's Medicaid number;
  - (D) Each diagnosis for the *child*;
  - (E) Each treatment activity's date of service;
  - (F) Each treatment activity's procedure or revenue code;
  - (G) The quantity of units or services provided; and
  - (H) Information about medication prescription and monitoring.
- (k) A statement indicating that the guardian agrees to comply with the Guardianship Assistance program reporting requirements under OAR 413-070-0964 and 413-070-0969(5).
- (3) The Department must provide the guardian with a copy of the *guardianship assistance agreement*.
- (4) The Department may review any *guardianship assistance agreement* at any time.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

#### **413-070-0959**

##### **Court Order of Guardianship**

- (1) The Department or *participating tribe* may not pursue a court order establishing an assisted guardianship until both of the following requirements are met:
- (a) The Department's Adoption and Guardianship Program Office approves a *guardian assistance* application for the *child*; and
  - (b) A signed *guardianship assistance agreement* between the Department and the prospective guardian has been completed.
- (2) *Guardianship assistance* may be provided for legal guardianships 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*.

- (3) The Department or *participating tribe* must request a court order establishing the guardianship and directing one of the following:
  - (a) Termination of Department or tribal care, custody, and supervision of the *child*; or
  - (b) If the *child* has been committed permanently to the Department, set aside or modify the order of permanent commitment, relieving the Department of responsibility for the *child*.
- (4) The guardian is not eligible for foster care payments provided under Child Welfare Policies I-E.5.1, "Payment for Foster Care Base Rate, Level of Care, Chafee Housing, and Independent Living Housing Subsidy" OAR 413-090-0000 to 413-090-0050 and I-E.5.1.2, "Personal Care Services" 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 terminated by court order.
- (5) The Department may not provide *guardianship assistance* if the court establishes guardianship and orders the Department or *participating tribe* to continue supervision of the *child* or guardian.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

#### **413-070-0964**

#### **Changes That Must be Reported and Annual Report**

- (1) A guardian receiving a *guardianship assistance payment* must report immediately, orally or in writing, to the Department's Adoption and Guardianship Program any of the following:
  - (a) Any change described in OAR 413-070-0974;
  - (b) A change of address; or
  - (c) When the guardian is planning to move from his or her state of residency.
- (2) The guardian, within 30 days after each annual anniversary of the court appointment of guardianship, must file a written report with the court and submit a copy of the report to the Department's Adoption and Guardianship Program. The report must contain assurances that each school-aged *child* receiving a *guardianship assistance payment* is a full-time elementary or secondary school student or is incapable of attending school due to a documented medical condition.
- (3) When the court does not require an annual report as part of the appointment of guardianship, the Department requires the guardian to submit an annual report to the Adoption and Guardianship Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

**413-070-0969**

**Renegotiation of a Guardianship Assistance Agreement**

- (1) A guardian may request that the Department consider renegotiation of the *guardianship assistance agreement*. The request for renegotiation must:
  - (a) Be in writing;
  - (b) Document the change in the circumstances of the guardian;
  - (c) Document the needs of the *child*; and
  - (d) Provide information about the financial expenses of the *child*.
- (2) The Department may complete a *CANS screening* when requested by a guardian as part of the renegotiation when the Department determines that the *child* is eligible for the screening under the following criteria:
  - (a) The *child* must reside within the United States.
  - (b) If the *child* previously has never had a *CANS screening*, the guardian may request an initial assessment at any time.
  - (c) If the *child* previously had a *CANS screening* while in foster care and that assessment resulted in a level of care payment being included in the *guardianship assistance payment* or a subsequent *CANS screening* after establishment of the legal guardianship, the guardian may request a re-screening if there have been changes in the child's behavior or functioning as described in OAR 413-020-0230(2)(a).
  - (d) Each *CANS screening* is conducted as described in OAR 413-020-0230(3) to (6) as if the *child* still was in *substitute care*.
  - (e) A contested case hearing request is addressed under OAR 413-010-0500(2) as if the *child* still was in *substitute care*.
- (3) A new *guardianship assistance agreement* must be signed by all parties prior to a change in benefits each time a child's *guardianship assistance* is renegotiated.
- (4) The Department may authorize a renegotiated *guardianship assistance payment* increase for the period commencing the first day of the month in which the Department receives the written request.
- (5) The Department may adjust the *guardianship assistance* benefits if a child's income changes. The guardian is responsible for notifying the Department of any change in the child's income within 30 days of the effective date of any such change. A new *guardianship assistance agreement* must be signed by all parties prior to a change in benefits being made.
- (6) If a *child* receiving *guardianship assistance* benefits is placed in *substitute care* and the plan is for the child to return to the guardian's home, the Department may adjust, continue, or suspend the *guardianship assistance* benefits to reflect the guardian's

continued expenses on behalf of the child. If the *child* returns to the care of the guardian, the Department reviews the *guardianship assistance* benefits, adjusts the benefits as appropriate, and provides a new *guardianship assistance agreement* for the guardian to sign.

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

#### **413-070-0970** **Guardianship Social Support Services**

- (1) The guardian or *child* in an assisted guardianship may request family support services as described in Child Welfare Policy I-B.2.3.1, "Family Support Services" OAR 413-030-0000 to 413-030-0030 from the Department.
- (2) A guardian receiving *guardianship assistance* on behalf of a *child* has access to the consultation, training, and library services of the Oregon Post Adoption Resource Center.

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

#### **413-070-0974** **Suspension or Termination of Guardianship Assistance Benefits**

- (1) The Department must terminate or suspend *guardianship assistance* benefits on the day when any of the following occurs:
  - (a) The *child* reaches 18 years of age or is emancipated, whichever comes first.
  - (b) Child custody or guardianship is awarded to another individual.
  - (c) The *child* dies.
  - (d) The *child* marries.
  - (e) The *child* is adopted.
  - (f) The *child* is placed in *substitute care* with no plan for the *child* to return to the care of the guardian.
  - (g) The guardian dies or terminates the guardianship.
- (2) The Department may terminate or suspend a *guardianship assistance payment* when any of the following occurs:
  - (a) The *child* is incarcerated for more than three consecutive months.
  - (b) The *child* is out of the guardian's home for more than a 30-day period or is no longer living in the home.

- (c) The guardian is no longer legally responsible for the financial support of the *child* or the *child* is no longer receiving financial support from the guardian.
- (3) The Department may terminate a *guardianship assistance agreement* upon 30 days written notice to the guardian when the guardian is no longer responsible for the *child* or is no longer providing support to the *child*, or in the event of legal or legislative action requiring discontinuance of *guardianship assistance*.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

#### **413-070-0979**

#### **Guardianship Assistance Review Committee and Appeals Procedure**

- (1) The *Guardianship Assistance Review Committee* serves as a consultation and review body for the Guardianship Assistance program.
  - (a) Guardianship Assistance program staff may refer unusual or exceptionally costly benefit requests to the *Guardianship Assistance Review Committee* for consultation; or
  - (b) If, during negotiations of *guardianship assistance* benefits, Guardianship Assistance program staff and the guardian family or prospective guardian family is unable to reach agreement, the matter may be referred to the *Guardianship Assistance Review Committee* for review at the request of Guardianship Assistance program staff or the guardian family or prospective guardian family.
- (2) The guardian family or prospective guardian family and the family's assigned caseworker must provide written documentation for the Committee's consideration.
- (3) The caseworker for the prospective guardian family may participate in a *Guardianship Assistance Review Committee* meeting by telephone.
- (4) The *Guardianship Assistance Review Committee* reviews relevant materials and provides a recommendation regarding the level of benefits to the Department's *guardianship assistance* coordinator. The *Guardianship Assistance Review Committee* must consider the special needs of the *child* and the financial circumstances of the guardian family or prospective guardian family.
- (5) If the guardian family or prospective guardian family is unsatisfied with the *guardianship assistance* offer made by the *Guardianship Assistance Review Committee*, the family may request further review by the Department's Adoption and Guardianship Program Manager.
- (6) A request for further review must be made in writing and received by the Department's Adoption and Guardianship Program Manager within 14 days from the date the *Guardianship Assistance Review Committee* recommendation is provided to the guardian family or prospective guardian family.

- (7) The Adoption and Guardianship Program Manager reviews the material and makes a decision within 60 days from the date of the *Guardianship Assistance Review Committee* recommendation.
- (8) After receipt of the Adoption and Guardianship Program Manager's decision, the guardian family or prospective guardian family may request a contested case hearing as provided in Child Welfare Policy I-A.5.2, "Contested Case Hearings" OAR 413-010-0500 to 413-010-0535.

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

### **Contact(s):**

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### **Policy History:**

- [09/14/99 thru 03/12/00](#)
- [03/10/00](#)
- [01/01/02](#)
- [01/09/03](#)
- [01/23/03 thru 06/20/03](#)
- [07/31/03](#)
- [01/01/04 thru 04/28/04](#)
- [04/01/04 thru 04/28/04](#)
- [3/31/09 thru 6/30/09](#)
- [7/1/09 thru 9/27/09](#)
- [9/28/09](#)
- [12/16/09 thru 6/14/10](#)
- [2/1/10 thru 6/14/10](#)
- [6/30/11 thru 9/30/11](#)
- [10/01/11 thru 12/27/11](#)
- [12/28/11](#)
- [5/22/12](#)