DHS Policy
Oregon Department of Human Services

Office of Child Welfare Programs

Prior Version

Policy Title:	Guardianship Assistance – Temporary OAR				
Policy Number:	I-E.3.6.2 413-070-0900 thru 0974			Effective Date:	1/21/15 thru 1/31/15

Approved By: *On file* Date Approved:

Policy | Forms, etc. | Definitions | References | Contact | History

Reference(s):

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

Form(s) that apply:

- CF 0311g – Guardianship – Case Plan Addendum
- CF 0958 - Guardianship Assistance EARLY REVIEW Checklist
- CF 0971 - Guardianship Assistance Agreement
- 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 0975 - Duties of a Guardian
- CF 0982 - Guardianship Assistance Application Requirements
- CF 0969b – Guardianship Assistance Application
- 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

(1) The purpose of these rules, OAR 413-070-0900 to 413-070-0974, is to describe Department criteria for eligibility and receipt of *guardianship assistance* for:

(a) A *child* in the care or custody of the Department or a *participating tribe*;

(b) A *young adult* on whose behalf an initial *guardianship assistance agreement* was entered into when the *young adult* was a *child* of age 16 or 17; or

(c) A *young adult* who qualifies for disability services and on whose behalf an initial *guardianship assistance agreement* was entered into when the *young adult* was a *child*.

(2) The State of Oregon is not responsible for *guardianship assistance* for a *child* or *young adult* placed for guardianship in Oregon by a public child welfare agency other than the Department.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

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413-070-0905
Definitions

The following definitions apply to OAR 413-070-0900 to 413-070-0974:

(1) "Base rate payment" means a payment to the foster parent or relative caregiver for the costs of providing the *child* or *young adult* with the following:

(a) Food -- including the cost to cover a *child* or young adult's special or unique nutritional needs;

(b) Clothing -- including purchase and replacement;

(c) Housing -- including maintenance of household utilities, furnishings, and equipment;

(d) Daily supervision -- including teaching and directing to ensure safety and well-being at a level which is appropriate based on the *child* or young adult's chronological age;

(e) Personal incidentals -- including personal care items, entertainment, reading materials, and miscellaneous items; and

(f) The cost of providing transportation -- including local travel associated with expenditure for gas and oil, and vehicle maintenance and repair associated with transportation to and from extracurricular, child care, recreational, and cultural activities.

(2) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on a *child* or young adult's needs and strengths used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the *child* or *young adult* in *substitute care* with a certified family;

(b) Determining the *level of care payment* while in *substitute care* with a certified family; and

(c) Determining the *level of care payment* included in an adoption assistance agreement or *guardianship assistance agreement*.

(3) "Child" means a person under 18 years of age.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of the *child* or *young adult* when the *child* or *young adult* qualifies for a *level of care payment*.

(6) "Guardian" means an individual who has been granted guardianship of a *child* through a judgment of the court.

(7) "Guardianship assistance" means assistance on behalf of an eligible *child* or *young adult* to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the *child* or *young adult*. "Guardianship assistance" may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.

(8) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the *potential guardian* or *guardian* setting forth the assistance the Department is to provide on behalf of the *child* or *young adult*, the responsibilities of the *guardian* and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(9) "Guardianship assistance agreement only" means a written agreement, binding on the parties to the agreement, between the Department and the *potential guardian* or *guardian* of an eligible *child* or *young adult*, when the *potential guardian* or *guardian* is not receiving a *guardianship assistance payment* or medical coverage at the time of the agreement but may request it at a later date.

(10) "Guardianship assistance base rate" means the portion of the *guardianship assistance payment* that is negotiated with the *potential guardian* or *guardian* and cannot exceed the amount of the Oregon foster care *base rate payment* for the *child* or young adult's age.

(11) "Guardianship assistance payment" means a monthly payment made by the Department to the *guardian* on behalf of the eligible *child* or *young adult*.

(12) "Guardianship Assistance Review Committee" means a committee composed of local and central office Department staff that have expertise in the area of guardianship.

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(13) "Incapacity" means a physical or mental defect, illness, or impairment that reduces substantially or eliminates the individual's ability to support or care for the *child* and is expected to be permanent.

(14) "Level of care payment" means the payment provided to an approved or certified family, a *guardian*, a pre-adoptive family, or an adoptive family based on the *child* or young adult's need for *enhanced supervision* as determined by applying the CANS algorithm to the results of the *CANS screening*.

(15) "Nonrecurring guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the *potential guardian* of an eligible *child* for a one-time payment to reimburse the *guardian* for the reasonable and necessary expenses incurred in legally finalizing the guardianship.

(16) "Nonrecurring guardianship expenses" means a one-time payment of up to $2,000 per *child* that the Department will make to a *guardian* to assist with the reasonable and necessary expenses associated with obtaining legal guardianship of an eligible *child*.

(17) "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.

(18) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.

(19) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or potential permanency resource when the *child* or *young adult* likely is not returning to his or her *parent*.

(20) "Potential guardian" means an individual who:

(a) Has been approved by the Department or *participating tribe* to be a child's *guardian*; and

(b) Is in the process of legalizing the relationship to the *child* through the judgment of the court.

(21) "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.

(22) "Relative" means (each of the following individuals is a "relative"):

(a) An individual with one of the following relationships to the *child* or *young adult* through the *parent* of the *child* or *young adult* unless the relationship has been dissolved by adoption of the *child*, *young adult*, or *parent*:

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(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A *sibling*, also to include an individual with a sibling relationship to the *child* or *young adult* through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the *child* or *young adult* must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the *child* or *young adult*:

(A) An individual defined as a relative by the law or custom of the tribe of the *child* or *young adult* if the *child* or *young adult* is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent or former stepparent if the *child* or *young adult* had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(D) The *registered domestic partner* of the *parent* of the *child* or *young adult* or a former *registered domestic partner* of the *parent* of the *child* or *young adult* if the *child* or *young adult* had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(E) The adoptive parent of a *sibling* of the *child* or *young adult*.

(F) The unrelated legal or biological father or mother of a half-sibling of the *child* or *young adult* when the half-sibling of the *child* or *young adult* is living with the unrelated legal or biological father or mother.

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(c) An individual identified by the *child* or *young adult* or the family of the *child* or *young adult*, or an individual who self-identifies, as being related to the *child* or *young adult* through the *parent* of the *child* or *young adult* by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (D) of subsection (a) of this section unless the relationship has been dissolved by adoption of the *child*, *young adult*, or *parent*.

(d) An individual meeting the requirements of at least one of the following paragraphs:

(A) An individual not related to the *child*, *young adult*, or *parent* by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the *child* or *young adult* or by the family of the *child* or *young adult*; and

(ii) Who had an emotionally significant relationship with the *child* or *young adult* or the family of the *child* or *young adult* prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the *child* or *young adult* as described in paragraphs (a)(A) to (D) of this section through the birth parent of the *child* or *young adult*, but the prior legal relationship has been dissolved by adoption of the *child*, *young adult*, or birth parent, and who is identified as a member of the family by the *child* or *young adult* or who self-identifies as a member of the family.

(e) For eligibility for the *guardianship assistance* program under these rules, OAR 413-070-0900 to 413-070-0974:

(A) A stepparent is considered a *parent* and is not a "relative" for the purpose of eligibility for *guardianship assistance* unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the *child* has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for *guardianship assistance* when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a *child*, in the care or custody of the Department or a *participating tribe*, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the *child* for at least 12 of the past 24 months; and

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

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(23) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

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

(24) "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.

(25) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a *child* or *young adult* in the legal or physical custody of the Department.

(26) "Successor legal guardian" means an individual who has been named in the *guardianship assistance agreement*, including any amendments to the agreement, as a replacement legal *guardian* in the event of the guardian's death or *incapacitation*.

(27) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

413-070-0909
Funding of Guardianship Assistance

(1) When grandparents or other approved relatives make a permanent commitment to and assume legal guardianship of a *child* for whom they have cared as a *substitute caregiver*, the Department provides *guardianship assistance* as described in these rules (OAR 413-070-0900 to 413-070-0974).

(2) *Guardianship assistance* for Title IV-E children or young adults is funded in part with Title IV-E funds as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351).

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

413-070-0917
Eligibility and Extension of Guardianship Assistance

(1) <u>Eligibility: Child</u>

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(a) *Guardianship assistance* will not be established for a *child* placed outside of the United States or a territory or possession thereof.

(b) A *guardianship assistance agreement* must be signed by the *potential guardian* and a Department representative before guardianship has been legally established by a state or participating tribal court.

(c) To be eligible for *guardianship assistance*, a *child* must meet all of the following:

(A) Be a United States citizen or qualified alien as described in Child Welfare Policy I-E.6.1, "Title IV-E Foster Care, Adoption Assistance, and Guardianship Assistance Eligibility", OAR 413-100-0210(2), and in 8 USC 1641(b) or (c).

(B) Be removed from his or her home pursuant to a voluntary placement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the *child*.

(C) The Department or *participating tribe* has determined that neither return home nor adoption is an appropriate permanency option for the *child*.

(D) Be 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 *potential guardian* who was fully licensed, certified, or approved by the state or a *participating tribe* as meeting the licensure or certification requirements for a foster family home in the state where the home is located. 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, Adoption Assistance and Guardianship Assistance Eligibility", OAR 413-100-0000 to 413-100-0345.

(E) Be in the Department's or participating tribe's care or custody for a minimum of --

(i) Six months, if the *potential guardian* is the child's *relative* as defined by OAR 413-070-0905(21)(a) through (d); or

(ii) Twelve months, if the *potential guardian* is a *substitute caregiver* who meets the definition of a *relative* under OAR 413-070-0905(21)(e)(B).

(F) Demonstrate a strong attachment to the *potential guardian*.

(G) Be consulted regarding the guardianship arrangement when the *child* has attained 14 years of age.

(2) In order for a child to be determined eligible for *guardianship assistance*, the following must be documented in the child's case plan:

(a) How the *child* meets the eligibility requirements;

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(b) The steps the Department or *participating tribe* has taken to determine that return to the home or adoption is not appropriate;

(c) The efforts the Department or *participating tribe* has made to discuss adoption with the child's *relative* caregiver and the reasons why adoption is not an option;

(d) The efforts the Department or *participating tribe* has made to discuss kinship guardianship with the child's *parent* or parents or the reasons why efforts were not made;

(e) The reason why a permanent placement with a potential *relative guardian* and receipt of a kinship *guardian assistance payment* is in the child's best interests; and

(f) The reasons for any separation of siblings during placement. If the child's placement with the potential *relative guardian* does not include siblings, the case plan must also include a description of the reasons why the *child* is separated from siblings during placement.

(3) Siblings. Each *sibling* of a *child* or *young adult* eligible for *guardianship assistance* is also eligible for *guardianship assistance* without meeting the eligibility requirements set forth in paragraphs (1)(c)(B) to (F) of this rule when:

(a) The *sibling* is placed in a guardianship with the same *potential guardian* or *guardian*, whether the siblings are placed at the same time or not; and

(b) The *potential guardian* or *guardian* and the Department or *participating tribe* agree that both of the following are appropriate:

(A) Placing the child's *sibling* in the home of the *potential guardian* or *guardian*; and

(B) Guardianship as a permanency plan for the *sibling*.

(4) Extension of Guardianship Assistance for a Young Adult

(a) The Department may approve an extension of a *guardianship assistance agreement* for an individual under the age of 21 when the individual meets paragraph (A) or (B) of this subsection.

(A) An initial *guardianship assistance agreement* was entered into on behalf of the *child* and at the time of the child's 18th birthday, the *child*:

(i) Qualifies as an individual with a developmental disability as determined by the Oregon Department of Human Services, Developmental Disabilities Services;

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(ii) Qualifies as an individual with a developmental disability as determined by the equivalent developmental disability program if living in a state other than Oregon; or

(iii) Qualifies for Supplemental Security Income (SSI) as determined by the Social Security Administration.

(B) An initial *guardianship assistance agreement* was entered into on behalf of the *child* who is age 16 or 17, and upon reaching the age of 18, the *child* is:

(i) Completing secondary school (or equivalent);

(ii) Enrolled in post-secondary or vocational school;

(iii) Participating in a program or activity that promotes or removes barriers to employment;

(iv) Employed for at least 80 hours a month; or

(v) Determined incapable of any of the above due to a documented medical condition, physical disability, or mental disability.

(b) In order for the extension of *guardianship assistance* under paragraph (a)(A) of this section to be approved on behalf of a *young adult*, the *guardian* must submit to the Department documentation from the agency making the determination described in subparagraphs (a)(A)(i) to (iii) of this section.

(c) In order for the extension of *guardianship assistance* under paragraph (a)(B) of this section to be approved on behalf of a *young adult*, the *guardian* must submit to the Department documentation verifying the circumstances described in subparagraphs (a)(B)(i) through (v) of this section. Documentation of circumstances described in subparagraph (a)(B)(v) of this section must be from a medical or mental health professional.

(d) The Department must receive the request for extension of the *guardianship assistance agreement* and the documentation described in subsections (b) and (c) of this section:

(A) At least 30 calendar days before the individual's 18th birthday; or

(B) Before a date determined by the Department when the Department approves a request from the *guardian* to submit the documentation after the individual's 18th birthday. The Department must receive the request before the individual's 18th birthday.

(e) If the Department does not receive the documentation as required by subsections (b) through (d) of this section, the Department may not approve an extension of a *guardianship assistance agreement*.

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(f) When an extension of *guardianship assistance* has been approved under paragraph (a)(A) of this section, *guardianship assistance* will continue until the *young adult* turns 21 years old.

(g) When an extension of *guardianship assistance* has been approved under paragraph (a)(B) of this section, the Department will review the eligibility of the *young adult* for continued *guardianship assistance*:

(A) At least annually; or

(B) When information is received that indicates the *young adult* may no longer be eligible for *guardianship assistance* or may be eligible for *guardianship assistance* in a different amount.

(h) The *guardian* must notify the Department, orally or in writing, of any changes in circumstances that may make the *young adult*:

(A) Ineligible for *guardianship assistance*; or

(B) Eligible for *guardianship assistance* in a different amount.

(5) Successor Legal Guardian.

(a) In the event of the death or incapacity of the relative *guardian*, a *child* eligible for Title IV-E guardianship assistance remains eligible so long as a "successor legal guardian" is named in the *guardianship assistance agreement* prior to the guardian's death or *incapacitation*.

(b) A "successor legal guardian" may be added, removed, or replaced by amending the *guardianship assistance agreement* at any time prior to the guardian's death or *incapacitation*.

(c) A "successor legal guardian" must be granted guardianship of the *child* through a judgment of the court.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

413-070-0919
Eligibility and Requirements for a Child or Young Adult in the Care or Custody of a Participating Tribe

(1) In addition to *guardianship assistance* program criteria under these rules, OAR 413-070-0900 to 413-070-0974, the following requirements apply to a *child* in the care or custody of a *participating tribe*:

(a) The *child* must be placed in a foster home approved by the *participating tribe* that meets the certification and licensing standards of the *participating tribe*; and

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(b) The *participating tribe* must document how continued placement with the *potential guardian* is in the best interests of the *child* and meets the child's needs for safety and permanency.

(2) The *participating tribe* must:

(a) Conduct and prepare a written home study of the *guardian*;

(b) Have a current Title IV-E agreement with the Department which includes participation in the *guardianship assistance* program;

(c) Notify the Adoption Assistance and Guardianship Assistance Unit within 30 calendar days after reestablishing custody of a *child* or *young adult* in a guardianship placement established under these rules, OAR 413-070-0900 to 413-070-0974; and

(d) Provide the Adoption Assistance and Guardianship Assistance Unit with a copy of the court order terminating the guardianship within 30 calendar days of the termination, when applicable.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

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413-070-0925
Eligibility: Potential Guardian

The Department may approve a *potential guardian* for *guardianship assistance* when the *potential guardian* --

(1) Meets the requirements of Child Welfare Policy I-E.3.6.1, "Guardianship as a Permanency Plan", OAR 413-070-0665(2); and

(2) Agrees to ensure that, if the *child* has attained the minimum age for compulsory attendance under the law of the state of residence but has not completed secondary school, the *child* is:

(a) Enrolled in an elementary or secondary school as determined by the law of the state of residence;

(b) Home schooled in accordance with the law of the state of residence;

(c) Enrolled in an independent study program in accordance with the law of the state of residence; or

(d) Incapable of attending school due to a documented medical condition.

Stat. Auth.: ORS 411.141, 418.005
Stats. Implemented: ORS 411.141, 418.005

413-070-0934
Application Requirements

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(1) Except as described in subsections (a) and (b) of this section, the Adoption Assistance and Guardianship Assistance Unit must begin negotiation of the *guardianship assistance agreement* no later than 60 calendar days after receipt of the completed *guardianship assistance* application.

(a) The Adoption Assistance and Guardianship Assistance Unit may delay negotiation of the *guardianship assistance base rate* when the *child* is due for an updated *CANS screening*, a new *CANS screening* is warranted, or a *CANS screening* is in process or completed but a decision is pending regarding the *level of care payment* under Child Welfare Policy I-B.1.6, "CANS Screening and Enhanced Supervision", OAR 413-020-0230. The unit must begin negotiation no later than 30 calendar days from receipt of the final decision regarding the level of care payment.

(b) The Adoption Assistance and Guardianship Assistance Unit may delay negotiation following a request by the caseworker, *guardian*, or *potential guardian* when there are extenuating circumstances regarding the *child* or family. The unit must begin negotiation no later than 30 calendar days from notification that the extenuating circumstance causing the delay has been resolved.

(2) A *guardianship assistance* application is considered complete when the Adoption Assistance and Guardianship Assistance Unit has received a signed application and all supporting documentation.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

413-070-0939
Guardianship Assistance Payments, Medical Assistance, and Nonrecurring Guardianship Expenses

(1) When a *guardianship assistance payment* or medical assistance is not being provided, a *potential guardian* or *guardian* may enter into a *guardianship assistance agreement only*.

(2) The monthly *guardianship assistance payment* may not exceed the total of:

(a) The *guardianship assistance base rate*; and

(b) When applicable, the *level of care payment* determined by the *CANS screening* conducted under Child Welfare Policy I-B.1.6, "CANS Screening and Enhanced Supervision", OAR 413-020-0230.

(3) The monthly *guardianship assistance base rate*:

(a) Is determined through discussion and negotiation between the Department and the *potential guardian* or *guardian*.

(b) May not exceed the current foster care *base rate payment* the *child* or *young adult* would be eligible to receive in foster care as determined under Child Welfare Policy I-E.5.1, "Foster Care Payments for a Child or Young Adult Living With a Certified Family or Living Independently", OAR 413-090-0010(1)(b).

(c) Is negotiated between the *potential guardian* of a *child* or *guardian* of a *child* or *young adult* and the Department, taking into consideration relevant factors which include, but are not limited to:

(A) The ordinary and special needs of the *child* or *young adult*.

(B) The services and goods required to meet the needs of the *child* or *young adult*.

(C) The cost of the services and goods required to meet the needs of the *child* or *young adult*.

(D) The circumstances of the *potential guardian* or *guardian* and their ability to provide the required services and goods for the *child* or *young adult*.

(E) The resources available to the *potential guardian* or *guardian* such as medical coverage, private health insurance, public education, other income sources, and community resources.

(F) A *guardianship assistance payment* may be reduced when other sources of income are received by the *potential guardian* or *guardian* or the *child* or *young adult*.

(d) Is intended to combine with the resources of the *potential guardian* or *guardian* to provide for the needs of the *child* or *young adult*.

(4) When, during negotiation of the *guardianship assistance base rate* payment, the Adoption Assistance and Guardianship Assistance Coordinator and the *potential guardian* or the *guardian* are unable to reach agreement, the Adoption Assistance and Guardianship Assistance Coordinator, the *potential guardian*, or the *guardian* may request a review by the *Guardianship Assistance Review Committee*. When a review is requested:

(a) An Adoption Assistance and Guardianship Assistance Coordinator must:

(A) Prepare documentation for the scheduled *Guardianship Assistance Review Committee*;

(B) Notify the *potential guardian* or *guardian* and the assigned caseworkers of the date of the committee; and

(C) Attend and participate in the *Guardianship Assistance Review Committee*.

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(b) The *potential guardian* or *guardian* may provide written documentation to the Adoption Assistance and Guardianship Assistance Coordinator for review and consideration by the *Guardianship Assistance Review Committee*.

(c) The certification worker for the *potential guardian* and the caseworker for the *child* may participate in a *Guardianship Assistance Review Committee* meeting and may present information and respond to questions. The workers may not participate in the deliberations of the *Guardianship Assistance Review Committee*.

(d) The *Guardianship Assistance Review Committee* members must:

(A) Consider written documentation provided by the *potential guardian* or *guardian*, caseworkers, and the Adoption Assistance and Guardianship Assistance Coordinator.

(B) Review materials submitted to the *Guardianship Assistance Review Committee*, deliberate, and make one or more recommendations regarding the *guardianship assistance base rate*.

(e) At the conclusion of the *Guardianship Assistance Review Committee*, the Adoption Assistance and Guardianship Assistance Coordinator must:

(A) Document the recommendations of the *Guardianship Assistance Review Committee*; and

(B) Submit the documentation to the Post Adoption Services Program Manager or designee within one business day of the *Guardianship Assistance Review Committee* meeting.

(f) The Post Adoption Services Program Manager or designee must complete each of the following actions:

(A) Attend the *Guardianship Assistance Review Committee* and ask any clarifying questions, but not participate in the deliberation or recommendation of the *Guardianship Assistance Review Committee*;

(B) Review and consider:

(i) The materials submitted to the *Guardianship Assistance Review Committee*;

(ii) The recommendations of the committee; and

(iii) The information presented by the *potential guardian* or *guardian* under subsection (4)(b) of this rule.

(C) Make a decision within 30 calendar days of the date of the request for review; and

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(D) Provide written notification to the *potential guardian* or *guardian* and the Adoption Assistance and Guardianship Assistance Coordinator within ten business days of the decision.

(5) The monthly *level of care payment*:

(a) Is determined based on the results of a *CANS screening* conducted under Child Welfare Policy I-B.1.6, "CANS Screening and Enhanced Supervision", OAR 413-020-0230.

(b) Cannot exceed the amount of the *level of care payment* set forth in Child Welfare Policy I-E.5.1, "Foster Care Payments for a Child or Young Adult Living with a Certified Family or Living Independently", OAR 413-090-0010(2)(g).

(c) Is included in the *guardianship assistance payment* when the *child* or *young adult* qualifies for a *level of care payment* and when requested by the *potential guardian* or *guardian*.

(6) When a *potential guardian* or *guardian* is not satisfied with the final *guardianship assistance* offer from the Department, consisting of the *guardianship assistance base rate* and, when applicable, a *level of care payment*, the *potential guardian* or *guardian* has the right to a contested case hearing under Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(7) An initial *guardianship assistance payment* begins on the date the state or tribal court legally establishes the guardianship provided there is a written *guardianship assistance agreement* signed by all parties.

(8) A *guardianship assistance payment* to a *guardian* for the *child* or *young adult* 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 payment* and is kept separate from other money in the guardian's possession.

(9) The *guardian* may apply to be the designated payee for any benefit the *child* or *young adult* receives if the benefit program allows such application.

(10) <u>Medical assistance and social services</u>.

(a) A *child* or *young adult* who is the subject of a *guardianship assistance agreement* funded by Title IV-E funds as authorized by the Fostering Connection to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) is categorically eligible for medical assistance through Title XIX and social services under Title XX when --

(A) The guardianship is in effect; and

(B) A *guardianship assistance payment* is being made to the *guardian*.

Prior Version

(b) A *child* or *young adult* who is not eligible for Title XIX medical assistance is eligible for medical assistance under Child Welfare Policy I-E.6.2, "Title XIX and General Assistance Medical Eligibility", OAR 413-100-0400 to 413-100-0610, when:

(A) The *child* or *young adult* resides in Oregon; or

(B) The *child* or *young adult* resides outside of Oregon but in the United States or a territory or possession thereof and is not able to obtain medical assistance in his or her place of residence.

(c) Medical assistance is not provided for a *child* or *young adult* who resides outside of the United States or a territory or possession thereof.

(11) Nonrecurring guardianship expenses.

(a) The Department will reimburse a *guardian* up to $2,000 per eligible *child* for approved *nonrecurring guardianship expenses*, including but not limited to:

(A) The cost of a home study;

(B) Court costs;

(C) Attorney fees;

(D) Physical and psychological examinations required for the guardianship; and

(E) Travel to visit with the *child* prior to placement.

(b) Payment for *nonrecurring guardianship expenses* may not duplicate expenses covered by the Interstate Compact on Placement of Children (ORS 417.200-417.260) or another resource available to the *potential guardian*.

(c) Documentation of *nonrecurring guardianship expenses* is required and must be submitted prior to execution of the *nonrecurring guardianship assistance agreement*. The *nonrecurring guardianship assistance agreement*, indicating the nature and amount of the *nonrecurring guardianship expenses*, must be signed by the *potential guardian* and a Department representative prior to the establishment of the guardianship.

(d) Payment for *nonrecurring guardianship expenses* is made when the Department receives the court order establishing the guardianship.

(12) Overpayment.

(a) If the Department issues a *guardianship assistance payment* on behalf of a *child* or *young adult* after the date the *guardianship assistance agreement* automatically expires, the Department may seek reimbursement of the overpayment and the *guardian* must repay the Department.

Prior Version

(b) If the *guardian* fails to comply with any provisions of the *guardianship assistance agreement*, including failing to notify the Department of any of the events or circumstances described in OAR 413-070-0964 and 413-070-0974(6) and (8), the Department may collect any *guardianship assistance payment* or medical assistance which the Department would not have provided had the *guardian* complied with the provisions of the *guardianship assistance agreement*.

Prior Version

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

413-070-0944
Legal Expenses of a Guardian

The Department may not authorize payment for legal services provided:

(1) For the *potential guardian* or *guardian* in connection with a contested case hearing; or

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

Stat. Auth.: ORS 411.141, 418.005
Stats. Implemented: ORS 411.141, 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 *potential guardian* or *guardian* signed by all parties prior to the court order establishing the legal guardianship.

(2) The *guardianship assistance agreement* must include each of the following:

(a) A statement indicating that a *guardianship assistance agreement* remains in effect without regard to the state of residency of the *guardian*.

(b) The effective date of the initial *guardianship assistance agreement* is the date of the court order of guardianship.

(c) That the Department will pay the *nonrecurring guardianship expenses* associated with obtaining legal guardianship of the *child*, to the extent the *nonrecurring guardianship expenses* do not exceed $2,000 per *child*.

(d) That the *child* or *young adult* for whom the Department is providing a *guardianship assistance payment* remains eligible for medical assistance provided:

(A) The guardianship remains in effect;

(B) A payment is being made; and

(C) The *child* or *young adult* is placed in the United States, a territory or possession thereof.

(e) Information regarding garnishment of *guardianship assistance* payments as set forth in OAR 413-070-0939(8).

(f) That the *guardian* agrees to comply with the reporting requirements under OAR 413-070-0964.

(g) That the *guardian* understands that a *guardianship assistance agreement* may be reviewed and the *guardianship assistance* may be adjusted, suspended, or terminated under OAR 413-070-0974.

(h) A statement indicating that the *guardian* understands that the provisions of ORS 192.558 allow the Oregon Health Plan (OHP) and the OHP managed care plans without the authorization of the *guardian*, *child*, or *young adult* to exchange the following protected health information for the purpose of treatment activities related to the behavioral or physical health of the *child* or *young adult* when the *child* or *young adult* is the recipient of OHP services:

(A) The name and Medicaid recipient number of the *child* or *young adult*;

(B) The name of the hospital or medical provider of the *child* or *young adult*;

(C) The Medicaid number of the hospital or medical provider;

(D) Each diagnosis for the *child* or *young adult*;

(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.

(i) The amount of the *guardianship assistance* and the manner in which it is to be provided.

(j) 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* or *young adult*.

(k) The additional services and assistance for which the *child* or *young adult* and *guardian* are eligible under the agreement and the procedure by which the *guardian* may apply for such services.

Prior Version

(l) When the Department has agreed to include such language, that the Department may continue to provide *guardianship assistance* for a *child* or *young adult* when *child* or *young adult* moves out of the home of the *guardian* to attend college or live independently.

(3) In the event of a guardian's death or *incapacitation* and if a *successor legal guardian* is named in the *guardianship assistance agreement* as outlined in 413-070-0917(5), before the *successor legal guardian* may receive *guardianship assistance*, the Department and the *successor legal guardian* must negotiate and enter into a written *guardianship assistance agreement* as described in section (2) of this rule signed by all parties.

(4) The Department must provide the *guardian* with a copy of the *guardianship assistance agreement*.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

413-070-0959
Court Order of Guardianship

(1) *Guardianship assistance* may only be provided for a legal guardianship 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*.

(2) The Department or *participating tribe* may not pursue a court order establishing an assisted guardianship until a *guardianship assistance agreement* between the Department and the *potential guardian* has been signed by all parties.

(3) The Department or *participating tribe*, through counsel if the *child* is in the care or custody of the Department, must move the court for an order establishing the guardianship and, when the *child* is in the care or custody of the Department or *participating tribe*, directing one of the following:

(a) Termination of Department or participating tribe's care or custody and dismissal of the Department or *participating tribe* as a party to the case; or

(b) If the *child* has been committed permanently to the Department, an order setting aside the order of permanent commitment and relieving the Department of responsibility for the care, placement, and supervision of the *child*.

(4) The Department may not provide *guardianship assistance* if the court establishes guardianship but orders the Department or *participating tribe* to continue supervision of the *child* or *guardian*.

(5) The *guardian* is not eligible for payments provided under Child Welfare Policies I-E.5.1, "Foster Care Payments for a Child or Young Adult Living with a Certified Family or Living Independently", OAR 413-090-0000 to 413-090-0050 and I-E.5.1.2, "Personal

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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 dismissed by court order.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

Prior Version

413-070-0964
Required Reports and Communication

(1) A *guardian* receiving *guardianship assistance* must immediately report, orally or in writing, to the Adoption Assistance and Guardianship Assistance Unit any changes in circumstances of the *child*, *young adult*, or *guardian* that makes the *child* or *young adult* ineligible for *guardianship assistance* including when:

(a) The *child* or *young adult*:

(A) Is emancipated;

(B) Dies;

(C) Marries; or

(D) Is adopted.

(b) The court:

(A) Vacates the guardianship; or

(B) Terminates wardship over the *child* or *young adult*, unless the guardianship is a tribal court guardianship and the guardianship remains in effect under tribal law.

(2) A *guardian* receiving *guardianship assistance* must immediately report, orally or in writing, to the Department's Adoption Assistance and Guardianship Assistance Unit any changes in circumstances of the *child*, *young adult*, or *guardian* that may make the *child* or *young adult* ineligible for *guardianship assistance* including when --

(a) The *child* or *young adult*:

(A) Is out of the home of a *guardian* for more than a thirty-day period or, if more than one *guardian*, is out of the home of both guardians for more than a thirty-day period;

(B) Has a change in needs including but not limited to eligibility for a change in the *level of care payment* based on a new *CANS screening*;

(C) Is placed in *substitute care*;

(D) Is no longer receiving financial support from a *guardian* or, if there is more than one *guardian*, both guardians;

(E) Is incarcerated for more than three consecutive months; or

(F) Has a change in any benefit received other than tribal dividend payments.

(b) A *guardian* is, or if more than one *guardian*, both guardians are:

(A) No longer legally responsible for the financial support of the *child* or *young adult*;

(B) No longer responsible for the *child* or *young adult*; or

(C) No longer providing support to the *child* or *young adult*.

(c) A *guardian* seeks to terminate or modify the guardianship.

(d) The court:

(A) Modifies the guardianship, or

(B) Awards *child* custody or guardianship to another individual.

(3) A *guardian* receiving a *guardianship assistance payment* must immediately report, orally or in writing, to the Adoption Assistance and Guardianship Assistance Unit the following:

(a) When there are two guardians and one *guardian* dies, the surviving *guardian* must notify the Department.

(b) When there is a change in address.

(c) When a *guardian*, *child*, or *young adult* is planning to move from his or her state of residency.

(4) Guardians appointed under ORS 419B.367 are required to file an annual report with the court within 30 calendar days after each annual anniversary of the court appointment of guardianship. Guardianships established under a Tribal Court may also have a requirement to send written reports to the court.

(5) The Department may:

(a) Send notification to a guardian of any court reports required under section (4) of this rule;

(b) Request a guardian to submit a copy of the court report to the Department;

(c) Notify the court or *participating tribe* of circumstances that may affect a child's eligibility for *guardianship assistance*; and

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(d) Send inquiries to a guardian to ensure the child continues to be eligible for *guardianship assistance*.

(6) Guardians must respond to inquiries from the Adoption Assistance and Guardianship Assistance Unit within 30 calendar days or as required by the unit.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

Prior Version

413-070-0969
Renegotiation of a Guardianship Assistance Agreement

(1) A *potential guardian* or *guardian* may request that the Department consider renegotiation of the *guardianship assistance agreement*. The request for renegotiation must:

(a) Be in writing in a format provided by the Department to the *potential guardian* or *guardian*;

(b) Document changes in the circumstances of the *potential guardian* or *guardian*, when applicable;

(c) Document the needs of the *child* or *young adult*;

(d) Provide information about the financial expenses of the *potential guardian* or *guardian* in meeting the needs of the *child* or *young adult*;

(e) Provide information about the expenses required to meet the needs of the *child* or *young adult*; and

(f) Provide additional documentation of the *child* or young adult's current behaviors when the *child* or *young adult* meets the eligibility requirements for consideration of a *level of care payment* under Child Welfare Policy I-B.1.6, "CANS Screening and Enhanced Supervision", OAR 413-020-0230, and the *potential guardian* or *guardian* is requesting a *level of care payment*.

(2) Renegotiation of the *guardianship assistance base rate* will be conducted as described in OAR 413-070-0939.

(3) Referrals for CANS screenings are described in Child Welfare Policy I-B.1.6, "CANS Screening and Enhanced Supervision", OAR 413-020-0230.

(4) The Department may require a renegotiation of the *guardianship assistance agreement* when the Department determines that the *child* or *young adult* is eligible for *guardianship assistance* in a different amount, as described in OAR 413-070-0974.

(5) A new *guardianship assistance agreement* must be signed by all parties each time a new *guardianship assistance payment* is agreed upon by the *potential guardian* or *guardian* and the Department.

(6) Unless section (7) of this rule applies, the Department may authorize a renegotiated *guardianship assistance payment* increase or decrease beginning on a date no earlier than the first day of the month in which the Department receives the written request for renegotiation.

(7) The Department may approve up to twelve months of retroactive payments unless a contested case hearing was requested and a subsequent decision necessitates a payment of more than twelve months. The decision includes any decision by the Department including:

(a) A final order;

(b) A stipulated final order;

(c) A settlement agreement; or

(d) Any other agreement resulting in withdrawal of the contested case.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

413-070-0970
Guardianship Social Support Services

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.

Stat. Auth.: ORS 411.141, 418.005
Stats. Implemented: ORS 411.141, 418.005

413-070-0974
Review, Adjustment, Suspension, Expiration, and Termination of Guardianship Assistance

(1) The Department may review a *guardianship assistance agreement* when the Department:

(a) Receives information indicating that the *child* or *young adult* may no longer be eligible for *guardianship assistance* or may be eligible for *guardianship assistance* in a different amount, including when the Department receives information regarding any of the circumstances described in OAR 413-070-0964;

(b) Determines, when the *child* or *young adult* is not residing in the home of the *guardian*, that a periodic review of the *guardianship assistance agreement* is required;

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(c) Receives information that indicates a review is necessary based on a change in the needs of the *child* or *young adult* or circumstances of the family;

(d) Receives information that the *young adult* no longer meets the requirements for continued assistance, if the Department has agreed to extend *guardianship assistance* under OAR 413-070-0917(4); or

(e) Determines that the *guardian* has not complied with the requirements of the *guardianship assistance agreement*.

(2) Department review of a *guardianship assistance agreement* may result in a renegotiation, suspension, adjustment, or termination of the *guardianship assistance agreement* or *guardianship assistance* payments.

(3) *Guardianship assistance* may be adjusted at any time by mutual agreement between the *guardian* and the Department.

(4) When there is an across-the-board reduction or increase in the *base rate payment* or *level of care payment* that the *child* or *young adult* would be eligible to receive if the *child* or *young adult* were in foster care, the Department may, after a case-by-case review and without concurrence of the *guardian*, adjust the monthly *guardianship assistance payment* to an amount that does not exceed the new foster care payment the *child* or *young adult* would be eligible to receive if currently in foster care, as follows:

(a) In the case of a reduction, only those payments that exceed the amount the *child* or *young adult* would be eligible for if currently in foster care would be reduced, and the reduction would only be to the amount that the *child* or *young adult* would be eligible to receive if currently in foster care.

(b) In the case of an increase, the Department, considering the needs of the *child* or *young adult* and the circumstances of the *guardian*, may increase the *guardianship assistance payment* to an amount that does not exceed the new foster care payment the *child* or *young adult* would receive if currently in foster care.

(5) If, upon review under section (1) of this rule or an adjustment under section (4) of this rule, the Department intends to adjust *guardianship assistance* without the concurrence of the *guardian*, the Department will provide the *guardian* and the *child* or *young adult* with written notice as described in Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(6) Unless terminated under sections (7) or (8) of this rule, the *guardianship assistance agreement* and the Department's obligation to provide *guardianship assistance* expires automatically on the date any of the following events occur:

(a) When the *child*:

(A) Reaches the age of 18 or, when an extension has been granted under OAR 413-070-0917(4), no later than the date identified in the *guardianship assistance agreement*;

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(B) Is emancipated;

(C) Dies;

(D) Marries;

(E) Is adopted; or

(F) No longer meets the requirements for continued *guardianship assistance* if the Department has agreed to continue *guardianship assistance* under OAR 413-070-0917(4).

(b) A *guardian* dies, or if more than one *guardian*, both die.

(c) The court:

(A) Vacates the guardianship order or otherwise terminates the guardianship;

(B) Terminates wardship over the *child* or *young adult*, unless the guardianship is a tribal court guardianship and the guardianship remains in effect under tribal law; or

(C) Appoints another individual as *guardian* of the *child* or *young adult*.

(7) *Guardianship assistance* may be suspended at any time by mutual agreement between the Department and the *guardian*.

(8) After a review and on a case-by-case basis, the Department may terminate a *guardianship assistance agreement* upon ten calendar days written notice to the *potential guardian* or *guardian* when the Department determines that --

(a) The *potential guardian* or *guardian* is no longer responsible for the *child* or *young adult*;

(b) The *potential guardian* or *guardian* is no longer providing support to the *child* or *young adult*; or

(c) The *child* or *young adult* is no longer eligible for *guardianship assistance* or is eligible for *guardianship assistance* in a different amount.

(9) If a child receiving *guardianship assistance* is subsequently adopted by the *guardian*, the child may be eligible for adoption assistance under Child Welfare Policy I-G.3.1, "Adoption Assistance", OAR 413-130-0000 to 413-010-0130.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 411.141, 418.005

Prior Version

Contact(s):

- **Name:**, Lorri Harris; **Phone:** 503-945-5998

Prior Version

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
- 6/15/10
- 6/30/11 thru 9/30/11
- 10/01/11 thru 12/27/11
- 12/28/11
- 5/22/12
- 02/01/14
- 06/03/14
- 08/04/14 thru 1/20/15