

Policy Title:	Guardianship Assistance – Temporary OAR		
Policy Number:	I-E.3.6.2 413-070-0900 thru 0982	Effective Date:	3/31/09 thru 6/30/09

Approved By: *On file*

Date Approved: 5-22-12

Policy

Forms, etc.

Definitions

References

Contact

History

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

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 - Guardianship Assistance Application - Title IV-E Determination
- CF 0974 - Guardianship Assistance Application - Family Information
- CF 0975 - Duties of a Guardian
- CF 0977 - Annual Guardian's Court Report
- CF 0976 - Choices Chart
- PAM 9702 - pamphlet on Subsidized Guardianship

Rules:

413-070-0900

Purpose

The purpose of these rules (OAR 413-070-0900 to 413-070-0982) is to set forth criteria used to determine eligibility for a subsidized guardianship as a permanency planning option for a child in substitute care.

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

413-070-0905 **Definitions**

As used in these rules (OAR 413-070-0900 to 413-070-0982), "guardianship assistance" means financial or medical benefits to a guardian for costs associated with the needs of the child under guardianship. Benefits may be in the form of cash, Medicaid coverage, nonrecurring legal costs incurred in establishing the guardianship, or Title XIX Personal Care payments.

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

413-070-0915 **Eligibility; Child**

In the Guardianship Assistance Program:

- (1) A child is eligible to participate if --
 - (a) The Department determines other permanency options, including return to a parent or adoption, are not in the child's best interest; and
 - (b) A county mental health or developmental disability system does not provide the child's substitute care or Title XIX maintenance payment.
- (2) A child eligible for the Guardianship Assistance Program remains eligible for the program when removed from the guardianship, if the child meets one of the following:
 - (a) The child is removed from the guardianship placement and placed in foster care. The Department reviews continued eligibility for Title IV-E foster care based on the child's deprivation of parental support and the child's financial circumstances. The guardian's income is not considered during this review, nor is the guardian obligated to pay child support upon the child's return to substitute care. Eligibility for Title IV-E benefits may be reestablished based on the child's original removal from the parental or relative home if the child continues to be deprived of parental support; the child meets personal financial eligibility criteria; and all court-related findings related to an initial removal are met.
 - (b) The child previously was determined eligible for the Guardianship Assistance Program and subsequently placed in foster care, but then is removed from foster care and returns to the guardian. The child remains eligible for the Guardianship Assistance Program without regard to whether or not the child is deprived of parental support at the time of the child's return to the guardian's care and without regard to the child's eligibility status while in foster care.

- (c) A child moving from guardianship assistance to adoption remains eligible for Title IV-E adoption assistance.
- (3) The Department does not reestablish the dependency of a child placed into guardianship unless the Department determines there is cause for removal from the guardian's home due to abuse or neglect or would otherwise reestablish dependency for reasons such as a change in the guardian's circumstances making the guardian unable to care for the child or the death of the guardian.

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

413-070-0917 **Eligibility; Participation by a Tribe**

In addition to the other Guardianship Assistance Program criteria under these rules (OAR 413-070-0900 to 413-070-0982), the following requirements apply to a child in the care and custody of a tribe:

- (1) A child eligible for benefits under Title IV-E in the legal care and custody of a tribe having a Title IV-E agreement with the Department may participate in the Guardianship Assistance Program.
- (2) A child of any age in the legal care and custody of a tribe and in a related certified foster home may participate in the Guardianship Assistance Program.
- (3) A foster home certified by a tribe and meeting the standards of the tribe for a licensed foster home meets the Department's foster home licensing requirements.
- (4) For a guardianship authorized by a tribe for child in the tribe's care and custody, a participating tribe agrees that the tribe must make a separate visit to the home to conduct a specialized guardianship study of the Department's design and document how continued placement with the current caregiver in a guardianship is in the best interests of the child and meets the child's needs for safety and permanency.
- (5) A participating tribe agrees that if the tribe reestablishes custody of a child formerly in a guardianship placement established under these rules, the tribe must notify within 30 days and provide a copy of the court order terminating the guardianship to the Department's Central Office Adoption Services Unit.

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

413-070-0920 **Guardianship Placement**

The Department or a participating tribe may consider a legal guardianship as a permanent plan for a child under all of the following conditions:

- (1) The child has been in the Department's or the participating tribe's legal custody for a minimum of --
 - (a) Six months, if the prospective guardian is a relative; or
 - (b) Twelve months, if the prospective guardian is not a relative.
- (2) The child is in foster care and eligible for a Title IV-E foster care payment, however receipt of the payment is not required.
- (3) The child has a stable and positive relationship with a prospective guardian and has lived for the past six contiguous months in the home of the prospective guardian.
- (4) Each sibling in the same sibling group placement is eligible, providing at least one sibling meets all eligibility criteria under this rule, regardless of the timing of each individual placement.
- (5) The prospective guardian of the child is a relative or, if the prospective guardian is not a relative, the child is 12 years of age or older. The Department waives the age requirement for the members of a sibling group placed with a non-relative prospective guardian if at least one sibling is 12 years of age or older and meets all other subsidized guardianship criteria under this rule.
- (6) The child cannot safely return home. This requirement is met when --
 - (a) Reunification with a parent of the child is not possible within a reasonable timeframe; and
 - (b) The Department determines through a Branch Permanency/Adoption Council Committee review that adoption is not an appropriate plan for that child (see Child Welfare Policy I-F.2, "Determining the Appropriateness of Adoption as a Permanency Plan for a Child (OAR 413-110-0300 to 413-110-0360) and Child Welfare Policy I-F.3.2.1, "Termination of Parental Rights" (OAR 413-110-0200 to 413-110-0252)).
- (7) 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.
- (8) A Department or participating Tribe's Permanency/Adoption Council Committee formally assesses the placement and finds that continuation of the placement is in the child's best interests because the placement supports the safety, permanency, and well-being of the child.
- (9) The child does not require the ongoing services of a Department case manager because --
 - (a) The child has no ongoing need requiring Department services or funding (such as a need covered by insurance);

- (b) The child has a need, but it does not require continued Department services or funding; or
 - (c) The child has a need that can be met through a community or other resource and the guardian agrees to access or continue to use that resource.
- (10) Each legal parent consents to the guardianship placement or has been given adequate notice under the law.
 - (11) The Department consult with the child, if 14 years of age or older, regarding the guardianship placement.
 - (12) A court guardianship order terminates the order for Department or tribal care, custody, and supervision; or, if a child has been committed permanently to the Department, the court guardianship order sets aside or modifies the order of permanent commitment, relieving the Department of responsibility for the child.
 - (13) The child is a legal resident of, an immigrant to, or citizen of the United States, and is under the care of a caregiver residing in this country legally.
 - (14) If the child is a Title IV-E eligible Indian child, as defined by the Indian Child Welfare Act (ICWA), and in the care and custody of the Department, the plan for guardianship placement with the current caregiver is approved by the participating tribe.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-070-0925

Eligibility; Guardian

The Department may approve a guardian for Guardianship Assistance Program benefits when the guardian meets all of the following requirements:

- (1) Be a certified foster parent 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, currently providing care to a child being considered for guardianship.
The foster parent must:
 - (a) Have a strong commitment to the child;
 - (b) Provide a safe and suitable placement for the child; and
 - (c) Meet Department standards for ongoing care of the child as determined by a family study or specialized guardianship assessment.
- (2) Be a caregiver who demonstrates the commitment and ability necessary to provide a safe, permanent home for the child for at least the past six contiguous months as verified through a guardianship assessment.

- (3) Require no significant ongoing casework services at the time the guardianship is established and demonstrate an ability to safeguard the welfare of the child, including protection from any individual or situation that brought the child into the care and custody of the Department.
- (4) Have a means of financial support and connections to community resources.
- (5) Agree to comply with all of the following requirements of the Department of Justice, Division of Child Support (DCS):
 - (a) Submitting an application for child support services in connection with each of the child's parents.
 - (b) Assigning to the Department, upon obtaining the right to receive child support, the right to receive --
 - (A) All current support payments; and
 - (B) Any support payment accruing before the child is placed with the guardian.
 - (c) Cooperating with DCS and the Department as required by the rules of the Child Support Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-070-0930

Income and Payment Standards and Medical Benefits; Guardianship Assistance Program

In the Guardianship Assistance Program:

- (1) When guardianship assistance is authorized, the guardianship assistance payment amount may be no greater than the foster care maintenance rate under Child Welfare Policy I-E.5.1 "Maintenance and Treatment Payments", OAR 413-090-0000 to 413-090-0500 based on the age of the child.
- (2) The guardianship assistance payment is established and paid as follows:
 - (a) The Department considers all sources of income, except child support and tribal dividend payments, available to the child when determining the monthly assistance rate.
 - (b) The guardian must be the designated payee for any benefits the child receives other than child support and tribal dividend payments, except that the guardian must assign to the Department benefits received irregularly by the guardian to avoid adjustments in the Guardianship Assistance Program benefits.

- (c) The guardianship assistance payment is calculated by taking the difference between the child's benefit income, which does not include child support and tribal dividend payments, and the most recent payment for foster care maintenance. For example, if the child receives Social Security benefits, that income is deducted from the foster care maintenance rate when determining the amount of the guardianship assistance payment.
 - (d) The guardianship assistance monthly benefit is contingent upon the guardian's continued compliance with the requirements of the Division of Child Support (see OAR 413-070-0925). The Department may terminate or suspend guardianship assistance benefits effective the date the Department determines the guardian has failed to comply with this subsection.
- (3) A child residing outside the state of Oregon may receive guardianship assistance benefits based on the basic foster care maintenance rate in the child's state of residence.
 - (4) The effective date of guardianship assistance services is the later of the date all parties have signed the guardianship assistance agreement (see OAR 413-070-0935) or the date of the court order of guardianship.
 - (5) When a child receiving guardianship assistance benefits is placed in substitute care, the Department evaluates the change in circumstances and adjusts the guardianship assistance benefits as appropriate. If the guardian is involved in the child's treatment, and the plan is for the child to return to the guardian's home, the guardian may ask to have the guardianship assistance benefits suspended, continued, or adjusted to reflect current expenses. If the child returns to the care of the guardian, the Department reviews the guardianship assistance benefits and adjusts the benefits as appropriate.
 - (6) A guardianship assistance payment to a legal 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 program payment and is kept separate from other money in the guardian's possession.
 - (7) The guardianship assistance benefit payment does not automatically increase. A guardian may request an increase in the child's payment up to the current foster care maintenance rate based on the age of the child, cost of living increases, or other legislatively approved increases to the basic foster care maintenance payment. A retroactive guardianship assistance benefit payment increase may only be authorized for the period commencing the first day of the month in which the increase request is made.
 - (8) The Department may adjust the guardianship assistance benefits when the child's income used to calculate the basic guardianship assistance monthly benefit payment changes.
 - (9) A child eligible for Guardianship Assistance Program benefits is eligible for 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

413-070-0935
Guardianship Agreement

In the Guardianship Assistance Program:

- (1) Before a guardian may receive guardianship assistance benefits, there must be a written guardianship assistance agreement between the Department and the guardian for the financial support of the child in question. The agreement must state all of the following:
 - (a) The amount of the guardianship assistance subsidy and manner in which the benefits will be provided.
 - (b) The manner in which the benefits may be adjusted periodically in consultation with the guardian, based on the changed circumstances of the guardian or needs of the child.
 - (c) 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 additional services.
 - (d) The Department pays for nonrecurring expenses associated with obtaining legal guardianship of the child to the extent the total of these expenses does not exceed \$1,500.
 - (e) The agreement remains in effect without regard to the state of residency of the guardian.
 - (f) That the guardian understands --
 - (A) No retroactive foster care maintenance payment increase may be authorized;
 - (B) An increase in the foster care maintenance payment due to the child's change in age is effective the first day of the month in which the request for increased benefits is made; and
 - (C) The Department may review and adjust accordingly a child's personal care needs at the Department's discretion.
 - (g) That in the event a legislative or executive branch action affecting the Department's budgeting or spending authority makes it necessary for the Department to implement budget reductions to the Guardianship Assistance Program these reductions may result in reduced guardianship assistance benefits.

- (h) The guardian must submit an application for child support enforcement services for each of the child's parents.
 - (i) The guardian agrees to cooperate with child enforcement services under OAR 413-070-0925(5).
 - (j) The guardian understands guardianship assistance monthly benefits are contingent upon the guardian's cooperation with the requirements under OAR 413-070-0925(5).
 - (k) The guardian understands that Guardianship Assistance Program benefits may be terminated or suspended under OAR 413-070-0930 for failure to comply with OAR 413-070-0925(5), or under OAR 413-070-0940.
 - (l) That each child for whom the Department is providing guardianship assistance benefits remains eligible for medical assistance once the guardianship is established.
 - (m) The guardian agrees to comply with the Guardianship Assistance Program reporting requirements under OAR 413-070-0955.
- (2) The Department must provide the guardian with a copy of the guardianship agreement.
 - (3) The Department may review each guardianship agreement at the Department's discretion.

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

413-070-0937

Court Order of Guardianship

When the Department determines that guardianship is the appropriate placement for a child, the Department establishes a guardianship under ORS 419B.365 or ORS 419B.366 and as provided under ORS 419B.367 to 419B.369.

- (1) The Department will not pursue a court order establishing a guardianship until an application is approved by the Department's Central Office Adoption Services Unit.
- (2) The caregiver is ineligible for foster care maintenance payments once the guardianship is effective and the Department's custody of the child is terminated by court order.
- (3) The Department will not approve guardianship assistance if the court establishes guardianship and orders the Department to continue supervision of the child or guardian.

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

413-070-0940

Suspension or Termination of Guardianship Assistance Benefits

In the Guardianship Assistance Program:

- (1) The guardianship appointment and guardianship assistance monthly benefits and services continue without court involvement. The Department terminates or suspends guardianship assistance benefits on the day when any one of the following occurs:
 - (a) The child reaches age 18 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; or
 - (g) The guardian dies or terminates the guardianship.
- (2) The Department may terminate or suspend guardianship assistance payment when any one of the following occurs:
 - (a) The child is incarcerated for more than three months;
 - (b) The child is out of the home for more than a 30-day period or is no longer living in the home; or
 - (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.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-070-0945

Annual Reviews of Eligibility and Reports to the Court

In the Guardianship Assistance Program:

- (1) The Department may review eligibility for guardianship assistance on at least an annual basis.
- (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 Central Office Adoption Services Unit.

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

413-070-0955
Changes That Must be Reported

A guardian receiving Guardianship Assistance Program benefits must report any of the following changes to the Department's Central Office Adoption Services Unit within ten days of occurrence. The report may be made orally or in writing:

- (1) A change in circumstances indicates that there is no longer a need for guardianship assistance, including but not limited to:
 - (a) The child's --
 - (A) Absence for longer than 30 days from or the child is not currently living in the guardian's home;
 - (B) Adoption;
 - (C) Death;
 - (D) Emancipation;
 - (E) Incarceration for more than three consecutive months;
 - (F) Marriage; or
 - (G) Placement in substitute care with no plan for the child to return to the care of the guardian.
 - (b) Custody or guardianship of the child is granted to another individual.
- (2) The guardian --
 - (a) Has a change of address;
 - (b) Is no longer legally responsible for the financial support of the child or the child is no longer receiving financial support from the guardian; or
 - (c) Is planning to move out of the state of Oregon.

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

413-070-0960
Special Payments; Vendor Attorney and Legal Expenses

In the Guardianship Assistance Program:

- (1) The Department may pay for some costs incurred by the guardian in the establishment of a guardianship of a child under Child Welfare Policy I-E.5.5 "Payments for Providing Direct Client Legal Services", OAR 413-090-0500 to 413-090-0550.
- (2) The Department may authorize payment for reimbursement of or payment for the cost to publish notice to absent parents of the Department's intent to establish guardianship of a child.
- (3) The Department may not authorize payment for legal services provided --
 - (a) In connection with a contested case; or
 - (b) To defend or retain guardianship upon challenge by another party once a guardianship is established.

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

413-070-0965 Application Requirements

In the Guardianship Assistance Program:

- (1) A guardianship assistance applicant must complete and sign an application, and return the application to the Department branch office providing case management for review and eligibility determination.
- (2) A guardian is not required to apply for the Guardianship Assistance Program and applying is voluntary.
- (3) An applicant may withdraw an application at any time.

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

413-070-0970 Guardianship; Social and Support Services

- (1) The Department provides a range of services to a caregiver before a guardianship is established. The Department provides an orientation to the prospective guardian and prospective guardian's family to assure that each family member understands the benefits and responsibilities of each individual in the guardianship. The orientation includes biological and legal parents when possible, particularly when intra- and inter-familial tensions between a birth parent and a prospective guardian affect the well-being of the child, prospective guardian, or prospective guardian's family.
- (2) A guardian and the child in the guardianship have access to local Department services after establishment of the guardianship as do adoptive parents, including access to the

Oregon Post Adoption Resource Center or other contracted resource center, and crisis intervention services

- (3) Upon the establishment of a guardianship, the caseworker must conduct an exit conference with the guardian, guardian's family, and the child and ensure the guardian and guardian's family have contact information for social and support services. The caseworker must advise the guardian family to call Intake Screening to request services in the county in which the family resides. The caseworker must explain that requesting services does not place the guardianship in jeopardy.

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

413-070-0980 Budgetary Reductions of Guardianship Assistance

- (1) If a legislative or executive branch action makes it necessary for the Department to reduce Guardianship Assistance Program benefits, the Department sends notification to each recipient of Guardianship Assistance Program benefits ten days before the effective date of any reduction about the following:
 - (a) The amount or percentage of the guardianship assistance benefit reduction;
 - (b) The effective date of the reduced guardianship assistance benefit amount; and
 - (c) The reason for the reduction.
- (2) Any reduction to Guardianship Assistance Program benefits --
 - (a) Applies uniformly to every recipient of Guardianship Assistance Program benefits.
 - (b) Does not constitute a change in circumstances warranting a review of the recipient's Guardianship Assistance Program benefits under OAR 413-070-0930.

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

413-070-0982 Fair Hearings

Guardians, recipients of guardianship assistance, and applicants for guardianship assistance are entitled to the opportunity for hearing as provided in ORS 183.310 to 183.550 concerning disputes that arise in the administration of the subsidized guardianship program.

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

Contact(s):

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