

Policy Title:	Guardianship Assistance – Temporary OAR		
Policy Number:	I-E.3.6.2 413-070-0900 thru 0982		Effective Date: 7/01/09 thru 9/27/09

Approved By: *On file*

Date Approved:

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
- ACYF-CB-PI-08-007 Program Instruction for P.L. 110-351
- I-A. 5.1 Contested Case Hearings

Form(s) that apply:

- CF 803 – CANS Results (Ages 0 to 5)
- CF 804 – CANS Results (Ages 6 to 20)
- 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 describe the Department responsibility to determine eligibility for guardianship assistance for a child in Oregon. Guardianship assistance for a child placed into Oregon from another state 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 413-070-0982:

- (1) "Another Planned Permanent Living Arrangement (APPLA)" means a permanency plan for a stable, secure living arrangement for a child, and includes building relationships with significant people in the child's life that will continue after substitute care.
 - (a) "Planned" means the arrangement is intended, designed, considered, premeditated, or deliberate.
 - (b) "Permanent" means enduring, lasting, or stable.
 - (c) APPLA is the least preferred permanency plan of the four permanency plan options for a child.
- (2) "Child" means a person under 18 years of age.
- (3) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department 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.
- (4) "Court" means a Circuit Court for the State of Oregon with jurisdiction to order and monitor a legal guardianship of a child.
- (5) "Enhanced supervision" means the additional support, direction, regulation, and guidance provided to a child or young adult.
- (6) "Guardianship assistance" means financial assistance or medical benefits to a child's guardian on behalf of an eligible child under guardianship. Benefits may be in the form of a monthly guardianship assistance payment, Medicaid coverage, and nonrecurring legal costs incurred in establishing the guardianship.
- (7) "Guardianship assistance payment" means a payment paid monthly by the Department to the guardian on behalf of the eligible child.
- (8) "Permanency Committee" means a group of three persons, who are responsible for making a decision regarding a child's permanency plan when a child likely cannot or will not return 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;
- (B) Have an identified chairperson approved by the District Manager or designee.
- (b) The members must:
 - (A) Be knowledgeable of permanency issues;
 - (B) Have no personal or professional relationship to the child or prospective placement resource; and
 - (C) Represent multiple child welfare offices.
- (9) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.
- (10) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody of the Department.
- (11) "Tribe" means a federally-recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-070-0915

Child Eligibility for Guardianship Assistance

- (1) A child is eligible for guardianship assistance if --
 - (a) The Department determines other permanency options, return to a parent or adoption, are not in the child's best interest or an existing APPLA plan is determined to no longer be in the child's best interest; and
 - (b) But for receipt of SSI, the child would be Title IV-E eligible.
- (2) A child eligible for guardianship assistance remains eligible when the child is placed in substitute care, but returns to the guardian. The child remains eligible for guardianship assistance without regard to whether 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 substitute care.
- (3) The Department does not reestablish the dependency of a child placed into guardianship unless the Department:
 - (a) Determines there is cause for removal from the guardian's home due to abuse or neglect; or

- (b) 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

Child Eligibility When in the Care and Custody of 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 is eligible for guardianship assistance.
- (2) A child in the legal care and custody of a tribe and placed with a certified family is eligible for guardianship assistance.
- (3) A child living in a foster home certified by a tribe and meeting the standards of the tribe for a licensed foster home is eligible for guardianship assistance.
- (4) When a child is in the legal care and custody of a tribe and in a guardianship authorized by the tribe, there must be tribal agreement to:
 - (a) Conduct and prepare a written home study of the guardian, of the Department's design; and
 - (b) Document how continued placement 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 the Department's Adoption Program within 30 days and provide a copy of the court order terminating the guardianship.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-070-0920

Determination of Guardianship As the Most Appropriate Permanency Plan for a Child

The Department or a participating tribe may consider 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 the child's relative caregiver; or
 - (b) Twelve months, if the prospective guardian is not the child's relative caregiver.
- (2) The child is in substitute care and determined eligible for Title IV-E.
 - (3) The child has a stable and positive relationship with a prospective guardian and has lived for the past six consecutive months in the home of the prospective guardian.
 - (4) The child is a sibling of another child living with the same prospective guardian.
 - (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 Permanency Committee review that adoption is not an appropriate plan for the child.
 - (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 Committee formally assesses the prospective guardian and finds that guardianship is in the child's best interests because the prospective guardian meets the safety, permanency, and well-being needs of the child.
 - (9) Each legal parent consents to the permanency plan of guardianship or has been given adequate notice under the law.
 - (10) The Department consults with the child, if 14 years of age or older, regarding guardianship as a permanency plan.
 - (11) A court order approves guardianship and terminates 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.
 - (12) The child is a legal resident of, an immigrant to, or citizen of the United States, and is under the care of a prospective guardian residing in this country legally.
 - (13) 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 permanency plan for guardianship also is approved by the participating tribe.

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

413-070-0925 **Approval of Guardianship Assistance**

The Department may approve guardianship assistance on behalf of an eligible child when the prospective guardian:

- (1) Is certified 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.
- (2) Has an updated home study documenting how the prospective guardian meets the child's best interests and needs for safety and permanency.
- (3) Has adequate means of financial support and connections to community resources.
- (4) Agrees 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 **Requirements for Income and Payment Standards and Medical Benefits**

- (1) When guardianship assistance is authorized, the guardianship assistance payment may be no greater than the current foster care base rate and any enhanced supervision payment the child receives as a result of the most recent CANS screening completed while the child was still in foster care under Child Welfare Policy I-E.5.1 "Maintenance and Treatment Payments", OAR 413-090-0000 to 413-090-0050 minus the child's benefit income, which does not include child support and tribal dividend payments.
- (2) The guardianship assistance payment is established through the following considerations:

- (a) The Department considers all sources of income, except child support and tribal dividend payments, available to the child when determining the monthly guardianship assistance payment.
 - (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 benefits.
- (3) The guardianship assistance payment 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 section of this rule.
- (4) A child residing outside the state of Oregon may receive a guardianship assistance payment based on the foster care rate effective for the child's state of residence.
- (5) The effective date of guardianship assistance 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.
- (6) If a child receiving guardianship assistance benefits is placed in substitute care, guardianship assistance may be adjusted, continued, or suspended. 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.
- (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 program payment and is kept separate from other money in the guardian's possession.
- (8) The Department unilaterally may amend, suspend, or terminate the guardianship agreement with notice to the guardian of the intended action when an action by a state or federal court or a law adopted through a state or federal legislative or executive branch action necessitates a suspension, termination, or change in guardianship assistance.
- (9) The guardianship assistance payment does not automatically increase. A guardian may submit a written request for an increase in the child's guardianship assistance no greater than the Department approved rate based on the child's current age plus the initial amount of enhanced supervision when the child continues as a resident of Oregon. A retroactive guardianship assistance payment increase only may be authorized for the period commencing the first day of the month in which the written

request is received by the Department. For a guardianship assistance payment made to a child residing in another state, the guardian may submit a written request for an increase in the child's guardianship assistance payment no greater than the foster care base rate the child would receive if the child was in foster care in that state.

- (10) The Department may adjust the guardianship assistance benefits when the child's income used to calculate the basic guardianship assistance monthly benefit payment 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.
- (11) A child eligible for guardianship assistance 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

Determination of the Guardianship Assistance Agreement

- (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 and applying is voluntary.
- (3) An applicant may withdraw an application at any time.
- (4) Before a guardian may receive guardianship assistance, there must be a written guardianship assistance agreement between the Department and the guardian which must include:
 - (a) The amount of the guardianship assistance payment.
 - (b) The basis and requirements for periodic changes in the guardianship assistance payment.
 - (c) The additional services and assistance for which the child and guardian are eligible under the agreement.
 - (d) The limitation on Department payments for nonrecurring expenses associated with obtaining legal guardianship of the child.
 - (e) The effective date of the agreement.
 - (f) Mutual understanding that no retroactive guardianship assistance payment will be authorized except as provided under OAR 413-070-0930(9).
 - (g) 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 guardianship assistance, payments on behalf of the child cannot be reduced without the agreement of the guardian. However, budget reductions may result in reduced guardianship assistance payments under any new agreement.

- (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 payments are contingent upon the guardian's cooperation with the requirements under OAR 413-070-0925(5).
 - (k) The guardian understands that guardianship assistance payment 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) The extent to which each child for whom the Department is providing a guardianship assistance payment 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.
 - (n) The guardianship assistance payment remains in effect without regard to the state of residency of the guardian.
- (5) The Department must provide the guardian with a copy of the guardianship assistance agreement.
- (6) The Department may review any guardianship agreement at any time.

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 permanency plan 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 Adoption Program.
- (2) The guardian is ineligible for family foster care base rate and enhanced supervision 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

- (1) The guardianship assistance payments continue without court involvement. The Department must terminate or suspend guardianship assistance payment 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 on the day 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 Required Reporting

- (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 Adoption Program.
- (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 Program. The Adoption Program must notify the guardian that the guardianship assistance may be terminated in the event the guardian fails to submit the required report.
- (4) A guardian receiving guardianship assistance payments must report immediately, orally or in writing, to the Department's Adoption Program a change of address or that the guardian is planning to move out of the state of Oregon.

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

413-070-0955

Changes That Must be Reported

A guardian receiving guardianship assistance payments must report immediately, orally or in writing, to the Department's Adoption Program: any of the changes described in OAR 413-070-0940, a change of address, or if the guardian 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

- (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 hearing; 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

413-070-0982

Contested Case Hearings

Guardians, recipients of guardianship assistance, and applicants for guardianship assistance are entitled to the opportunity for a contested case hearing as provided in ORS 183.411 to 183.685 concerning disputes about a guardianship assistance payment. (See 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

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Policy History:

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- [01/01/02](#)
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- [01/01/04 thru 04/28/04](#)
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