

	Department of Human Services CHILDREN, ADULTS & FAMILIES	NUMBER: I-G.3.1 OAR: 413-130-0000 thru 0130
	CLIENT SERVICES INDEX	SECTION: G. Adoption
	ISSUED BY: Office of Safety and Permanency for Children FINAL: 10-01-08	SUBSECTION: 3. Post Adoption Services
SUBJECT: 1. Adoption Assistance – OAR		

REFERENCES

Child Welfare Policy I-A.5.2, Contested Case Hearings
Public Law 96-272
Public Law 99-514
Federal PIQs (Policy Interpretation Questions)
ORS 418.330-418.340
Child Welfare Policy I-E.6.1, Title IV-E and General Assistance

FORMS

DE 1005, "Facilitation of Communication Form"
CF969A, Adoption Assistance Application, Child's Application
CF969B, Adoption Assistance Application, Family Information
CF969C, Adoption Assistance Application, Title IV-E Adoption Assistance
Determination
CF969D, Adoption Assistance Application, Title IV-E Determination

413-130-0000

Purpose

The purpose of these rules (OAR 413-130-0000 to 413-130-0130) is to set forth criteria used to determine eligibility for the Adoption Assistance program. The Department's Adoption Assistance program is for eligible Oregon children. Establishment of adoption assistance for children placed into Oregon from another state is the responsibility of the sending state.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0010

Definitions

The following definitions apply to OAR 413-130-0000 to 413-130-0130:

- (1) "Adoption assistance" means financial and medical assistance to adoptive families to assist them with the costs associated with their adoptive child's needs. Financial benefits are funded by the Department's adoption assistance budget. Assistance may be in the form of cash, medical coverage, an agreement only, or special payments.
- (2) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child. The adoption assistance agreement must:
 - (a) Specify the nature and amount of any payments, services and assistance to be provided under such agreement;
 - (b) Stipulate that the agreement must remain in effect regardless of the state in which the prospective adoptive parents reside; and
 - (c) Contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the prospective adoptive parents and the child move to another state while the agreement is effective.
- (3) "Adoption assistance benefits" mean all or any portion of the adoption assistance package of benefits which include monthly payments, nonrecurring payment, special payments, and medical assistance.
- (4) "Adoption assistance payments" mean adoption assistance payments paid monthly by the Department to the family on behalf of the child which are determined by negotiation between the adoptive family and the Department, considering relevant factors which include but are not limited to the needs of the child, the services required to meet those needs, cost of such services, the family's ability to pay for the services, and the community resources available.
- (5) "Adoption Assistance Review Committee" is a committee composed of field and central office staff who have expertise in the area of adoption. It meets monthly, or as necessary.
- (6) "Agreement only" is an agreement between the Department and the family signed prior to the finalization of the adoption, to provide adoption assistance if a need for payment or medical coverage arises prior to the child's 18th birthday.
- (7) "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 they reside, to a child or young adult in the care or custody of the Department.
- (8) "Department" means the Department of Human Services, Child Welfare.

- (9) "Foster care" is 24 hour substitute care for children placed away from their parents or guardians and for whom the Department has placement and care responsibility. This includes but is not limited to placements in foster homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the Department or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of the adoption, or whether there is Federal matching of any payments that are made.
- (10) "Legally free" means that, with respect to a child, the legal rights of all parents with legal standing have been judicially terminated, voluntarily relinquished, or otherwise dispensed with so that the child may be adopted.
- (11) "Licensed adoption agency" means an agency currently licensed in Oregon under the provisions of ORS 418.225 to 418.325 to provide adoption services.
- (12) "Medical assistance" means payment for medical services in accordance with the Department's administrative rules.
- (13) "Nonrecurring expenses" mean a one-time payment up to \$1,500, which the Department may pay to an adoptive family to assist with the expenses incurred in legally finalizing the adoption of a special needs child. Nonrecurring expenses may include the reasonable and necessary adoption fees, court costs, attorney fees, mediation costs, and other expenses which are directly related to the legal adoption of a special needs child.
- (14) "Payment" means cash assistance to adoptive families to meet the child's needs.
- (15) "Private child caring agency" means any private organization providing day treatment, adoption placement, residential care, foster care or other similar services for children, but does not include foster homes certified by the Department and homes established and maintained by fraternal organizations for the exclusive use of membership.
- (16) "Qualified vendor attorney" is an attorney who has a price agreement with the Department to process the adoption of a child who is eligible for adoption assistance for the currently established vendor fee plus costs for filing and birth certificates.
- (17) "Special payments" mean payment for unanticipated, short-term costs which are directly related to the child's special needs or are essential to the welfare of the child, and are not covered by the adoptive family's insurance or by Medicaid as negotiated between the Department and the family.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

**413-130-0020
Eligibility Criteria for Children**

A child who is in the custody of the Department, a Tribe with a Title IV-E Agreement, or a licensed adoption agency in Oregon may be eligible for adoption assistance, including monthly assistance payments, medical coverage, an agreement only, and special payments. In order to be eligible, the child must meet the requirements of all three of the following sections which establish special needs status:

- (1) The state has determined that the child cannot or should not be returned to the home of his or her parents. This decision is based on one of the following:
 - (a) An order from a court of competent jurisdiction terminating parental rights;
 - (b) The existence of a petition for termination of parental rights;
 - (c) For children under the jurisdiction of the court, a signed relinquishment;
 - (d) For children not under the jurisdiction of the court, a signed relinquishment and a subsequent court finding signed within six months of the date the child was last living with the parent that it would be contrary to the welfare of the child to return home at that time; or
 - (e) In the case of an orphan, verification of the death of the parent or parents.
- (2) The child has at least one of the following factors or conditions which make adoptive placement difficult to achieve:
 - (a) A documented medical, physical, mental, emotional condition or other clinically diagnosed disability, or a documented history of abuse or neglect or other identified predisposing factor that places the child at risk for future problems that need treatment.
 - (b) Is a member of a sibling group which will be placed together and is difficult to place because there are three or more children, or if in a sibling group of two, at least one of the children is six years of age or older.
 - (c) Is a member of an ethnic, racial, or cultural minority (such as African American, Hispanic, Asian, Indian, or Pacific Islander).
 - (d) Is eight years of age or older.
- (3) A reasonable but unsuccessful effort to place the child with appropriate adoptive parents for adoption without assistance has been made. The exception to this requirement is where it would not be in the best interests of the child.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.330 - 418.340

413-130-0030

Eligibility for Nonrecurring Expenses Reimbursement

Any child who meets the criteria in OAR 413-130-0020 will also be eligible for reimbursement of the nonrecurring expenses. In addition, a child being adopted by an Oregon resident who is not the responsibility of the Department or an Oregon licensed adoption agency is also eligible for reimbursement of nonrecurring expenses if all other eligibility requirements are met (see OAR 413-130-0020). If the child is eligible for adoption assistance through a state other than Oregon, the other state is responsible for any nonrecurring expenses.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.330 - 418.340

413-130-0040

Adoption Assistance Eligibility

- (1) The Department will make efforts to establish Title IV-E eligibility for any child who meets the special needs criteria (OAR 413-130-0020). Licensed adoption agencies must make all requested efforts to assist the Department in establishing Title IV-E eligibility.
- (2) In addition to the special needs criteria, a child must meet the requirements of one of the following subsections to be eligible for adoption assistance:
 - (a) The child's eligibility for Title IV-E foster care was established at the time of removal.
 - (b) The child meets all eligibility requirements for Supplemental Security Income (SSI) benefits.
 - (c) The child's payments in a certified family home or private child caring agency are covered by the foster care maintenance payment being made for his or her minor parent.
 - (d) The child was determined eligible for adoption assistance payments with respect to a prior adoption and is now available for adoption because of the following:
 - (A) The prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated or relinquished; or

- (B) The child's adoptive parents have died.
- (3) In addition to the special needs criteria (OAR 413-130-0020) and the requirements of section (2) of this rule, a child must meet the following requirements, as applicable:
- (a) For a private agency adoption, the child must have been voluntarily placed with the private agency in out-of-home care and Title IV-E eligible in the month the voluntary agreement was signed.
 - (b) Judicial Determination Criteria. A "contrary to the welfare" or "best interest" ruling is not required for children receiving SSI, or for children whose eligibility is based on their minor parents' receipt of foster care payment while placed with their minor parents in foster care. For all other children, a judicial determination that it is "contrary to the welfare of the child to remain in the home" or is in the "best interest of the child to be removed from the home" must be contained in one of the following:
 - (A) The first court order of removal for a child removed by court order.
 - (B) A court order signed within six months of the month the child last lived with a specified relative if the child's removal was via parental relinquishment only. Documentation of the date of the signing of the court order is necessary.
 - (C) A court order with a finding made within 180 days of the date that the child voluntarily entered care, and signed within six months of the date the child was last living with the parent.
 - (c) The child must be a United States citizen or a "qualified alien" as described at OAR 413-100-0210(2).

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0050

Availability of New Assistance and Rate Adjustments

The availability of state funds governs the rate of payments which may be obligated. If all of the adoption assistance funds are obligated, the Department continues to accept and process applications and requests for increases in assistance and establishes a waiting list. Assistance agreements will be granted in the order of the date of approval as funds become available.

- (1) Foster care payments end when adoption assistance payments begin. Medical coverage continues until the adoption assistance payment is negotiated, agreements are signed, and adoption assistance benefits begin.
- (2) When a child is legally free for adoption, the Department field staff completes the adoption assistance agreement with the family and submits it to the Adoption Assistance program no later than 60 days from the date the family is selected. Within 60 days of the receipt of the completed adoption assistance agreement, adoption assistance program staff completes the processing of the application. The adoption assistance application may be initiated earlier if the adoptive family has been selected and the child is not yet legally free.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0060

Agreement Only

- (1) An agreement only is entered into between the Department and the adoptive parent or parents when there is no current need for adoption assistance, the parent or parents request such agreement, and the child meets adoption assistance special needs criteria.
- (2) The agreement only becomes effective on the date the completed adoption assistance agreement is approved and signed by the Department, and automatically terminates upon the child's 18th birthday.
- (3) The adoptive parent or parents must make a written request to the Department to negotiate an agreement only prior to initiation of adoption assistance benefits. The parent or parents must provide documentation to establish the child's need for service and costs of service at the time assistance is requested.
- (4) If a family determines that they do not want an agreement only, the family must notify the Department in writing of their decision not to accept an agreement only.
- (5) Agreement only adoption assistance agreements are governed by policy for adoption assistance payment and medical assistance agreements, payments, and procedures except as noted in these rules (OAR 413-130-0000 to 413-130-0130).

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0070

Adoption Assistance Payments

- (1) The rate of adoption assistance payments is determined by negotiation between the adoptive family and the Department. If necessary, the adoption assistance coordinator conducts the final negotiation and any future renegotiation. Consultation from the adoption assistance coordinator is available during the negotiation.
- (2) To establish the amount of an adoption assistance payment, the Department considers relevant factors which include but are not limited to, the needs of the child, the services required to meet those needs, cost of such services, the family's ability to provide these services, and the community resources available.
- (3) If a child under the age of eight years meets the eligibility criteria for special needs status (OAR 413-130-0020) and has no documented medical, physical, mental, or emotional condition, or other clinically diagnosed disability, he or she will receive an adoption assistance payment that is less than the regular foster care payment rate, or an "Agreement only."
- (4) The amount of adoption assistance payment will be negotiated prior to the completion of the adoption assistance agreement. Adoptive parents may request adjustment of the adoption assistance payment amount at any time, to reflect the child's current needs and family circumstances. The adoption assistance benefits will take effect upon completion of the adoption assistance agreement for a child who is legally free for adoption and in a home that the Department or the private agency has designated as the adoptive placement.
- (5) Medicaid, private insurance, public education, and all community resources must be considered as resources for the child and the family when negotiating the amount of adoption assistance. Income to the child from sources such as Social Security and Veterans benefits are considered in negotiating the adoption assistance payment, but will not necessarily be deducted dollar for dollar from the amount of adoption assistance payment.
- (6) The rate of the adoption assistance payment may not exceed what the child would currently require if placed in a certified family home. When a child's needs exceed the regular foster care rate (determined by the age of the child), verification of the need for a higher foster care rate must be shown by completed Personal Care Services Foster Care Authorization (CF 0172A) and Special Rate Foster Care Authorization (CF 0172A (NPC)). When the child is not currently in foster care or there are no recently completed Special Rate Foster Care Authorization forms available, other appropriate documentation may be accepted, for example: a detailed letter from the parent describing the child's needs with supporting documentation such as CDRC reports, therapist assessment, school report, or psychological evaluation.
- (7) When adoptive parents divorce, the Department may request updated information, including financial, to reflect the change in family circumstances. Upon receiving a request from an adoptive parent for change of payee due to divorce, the Department

will notify the other parent of the request. If the change of payee is challenged, a legal document describing custody is required.

- (8) Adoptive parents who move out-of-state continue to be eligible for adoption assistance benefits. Medical coverage for the child may change (see OAR 413-130-0100).
- (9) Adoption assistance payments may begin when all of the following criteria are met:
 - (a) The child is legally free for adoption;
 - (b) An adoption assistance agreement has been signed by the adoptive parent or parents and by the Department representative;
 - (c) The Department or a private agency has designated this family as the adoption placement.
- (10) Adoption assistance payments may be retroactive to the date of the signed adoption assistance application if the child was legally free for adoption and in the designated placement on this date, and no foster care payment was made for the same period.
- (11) Adoption assistance payments will be made at the end of each month of eligibility.
- (12) Adoption assistance benefits paid to adoptive parents by the Department are inalienable by any assignment or transfer and exempt from execution, levy, attachment, garnishment, and other legal process under the laws of this state.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0075

Renegotiation of Amount of Adoption Assistance Payment

- (1) An adoptive parent may make a request to the adoption assistance coordinator for an increase in the agreed-upon amount of adoption assistance benefits based upon the following:
 - (a) Changes in the child's needs.
 - (b) Changes in the family's circumstances.
- (2) Renegotiation of the adoption assistance payment amount will be based on consideration of relevant factors which include but are not limited to the current needs of the child, the services required to meet those needs, cost of such services, the family's ability to pay these services, and the community resources available.

- (3) The renegotiated adoption assistance monthly payment amount may in no case be retroactive more than 24 months.
- (4) When a change in monthly payment is negotiated, a new agreement stating the adjusted amount must be signed by the parents and the adoption assistance coordinator prior to instituting the new payment rate.
- (5) If, after negotiation, the adoptive parent does not agree with the revised amount, the parent may appeal this decision as provided in OAR 413-130-0120.

Stat. Auth.: ORS 418.005, 418.340

Stats Implemented: ORS 418.330 - 418.340

413-130-0080

Payment for Nonrecurring Expenses

- (1) The Department may make a one-time payment of up to \$1,500 to an adoptive family for nonrecurring expenses to assist with the costs incurred in legally finalizing the adoption of a special needs child, such as adoption fees, court costs, attorney fees, mediation costs, and other expenses which are directly related to the legal adoption of a special needs child. Other expenses are defined as the costs of adoption incurred by, or on behalf of, the parents and for which the parents carry the burden of payment, such as the adoption study, health and psychological examinations, supervision of the placement prior to adoption, transportation, and the reasonable costs of lodging and food for the child or the adoptive parents during travel when necessary to complete the adoption process. This payment may not duplicate expenses covered by Interstate Compact for Placement of Children, expenses covered by a Department contract with a private agency, or expenses already covered by some other resource available to the adoptive family.
- (2) Documentation of the nonrecurring expenses will be required and must be submitted prior to execution of the adoption assistance agreement. The agreement, indicating the nature and amount of the nonrecurring expenses, must be signed prior to the final decree of adoption.
- (3) The legal fees, when reimbursement is requested, are included in the nonrecurring expenses. It is the responsibility of the adoptive family to choose a privately retained attorney or enter into a legal fees agreement with a "qualified vendor attorney". The Department will make payment directly to the qualified vendor attorney after the adoption is legalized. For other attorneys, the adoptive family is responsible for payment, and the Department will reimburse the family for reasonable charges. Reasonable charges are the current vendor rate, and only in extraordinary circumstances may a higher amount be considered.

- (4) Nonrecurring payments will be made when the Department receives the final general judgement of adoption.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0090 Special Payments

Special Payment for unanticipated, short-term costs which are directly related to the child's special needs or are essential to the welfare of the child, and are not covered by the adoptive family's insurance or by Medicaid may be approved in exceptional cases as negotiated between the Department and the family. The Department may authorize Special Payments for a limited duration, subject to Department's discretion and availability of resources. The family must make documentation available to the Department when requested. Special Payment will be made to the adoptive family who will then be responsible to reimburse the provider for services.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0100 Medical Assistance

- (1) Children will be eligible for Medicaid coverage if one of the following subsections is met:
- (a) The child was receiving Title IV-E foster care payments, Temporary Assistance to Needy Families (TANF), or SSI benefits at the time the adoptive placement was approved.
 - (b) The child and adoptive parents meet the income and resource standards of the TANF program administered by the Office of Self Sufficiency Programs.
 - (c) Prior to the execution of the adoption assistance agreement, the child was not Title IV-E eligible, but was receiving or was eligible to receive Medicaid under the Oregon Health Plan, and the child has a documented special need for medical or rehabilitative services, or services that preclude adoption without receipt of Medicaid benefits.
 - (d) Prior to the execution of the adoption assistance agreement, the child was not eligible for Medicaid coverage because the child had income available above Department standards for Medicaid. However, the child had a condition which

required a special foster care rate plus the standard foster care rate which was greater than the amount of the child's income.

- (2) Oregon families for whom eligibility for medical assistance has been established are issued medical identification for the child through the Division of Medical Assistance Programs. Payment for medical services will be in accordance with Department administrative rules.
- (3) Medical coverage for Title IV-E eligible children is provided by the medical assistance program in the state where the child resides:
 - (a) If the child is placed outside the adoptive home and is eligible for federal funding through Title IV-E or SSI, the state in which the child resides will provide medical coverage in accordance with the rules of that state even if the adoptive family resides in a separate state.
 - (b) If the adoptive family moves to another state or the child is placed for adoption in a state other than Oregon, the Department will provide the documentation necessary to assist the adoptive family to obtain Medicaid coverage.
 - (c) The Department will provide written verification of the child's Title IV-E eligibility to the appropriate coordinator of the adoption assistance program in the state where the adoptive family is residing in order to facilitate Medicaid medical coverage.
- (4) Medical coverage for children who are not eligible for Title IV-E will be provided by the Division of Medical Assistance Programs under the rules of the Oregon Health Plan. If the child is placed in another state, or the adoptive family moves from Oregon to another state, the child may continue to receive medical coverage from Oregon, except in those cases where the other state will provide the Medicaid coverage (see section (3) of this rule).
- (5) An adoption assistance agreement shall be signed by the adoptive parents and the Department which documents that the child is eligible for adoption assistance, and that medical coverage has been requested.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0110

Administration of Approved Adoption Assistance

- (1) It is the responsibility of Department staff and licensed private agency staff to notify or advise prospective adoptive parents of the availability of adoption assistance for

children with special needs, provide adoptive parents with a copy of the adoption assistance policy, and assist the family in making application, if appropriate.

- (2) Prospective adoptive parents must submit a written application for adoption assistance to the central office Permanency and Adoptions Unit through their respective Department branch office worker or private adoption agency worker.
- (3) Prospective adoptive parents who apply for adoption assistance must be approved by their respective adoption agency as being suitable adoptive parents who meet all state standards including certification standards.
 - (a) Licensed adoption agencies recommending adoption assistance for prospective adoptive parents are responsible to verify and document on the adoption assistance application that efforts were made to place the child without adoption assistance.
 - (b) The Department branch offices submitting applications must assure that the adoptive placement status has been approved by the central office Adoption Unit.
- (4) Prior to the finalization of adoptions and issuance of any benefits, written adoption assistance agreements must be completed that meet all of the following requirements. The agreement must ---
 - (a) Be signed by each adoptive parent and the adoption assistance coordinator. The adoption assistance agreements establish the child's monthly eligibility for benefits as well as nonrecurring expenses.
 - (b) State the duration of the agreement.
 - (c) State the amount of assistance benefits (if any), and specify:
 - (A) The amount of the adoption assistance monthly payment (if any); and
 - (B) The nature and amount of any other payments, services, and assistance to be provided, including nonrecurring adoption expenses.
 - (d) State that the agreement remains in effect regardless of the state of residence of the adoptive parents and the child.
 - (e) State whether the child will receive medical benefits, and specify the child's eligibility for Title XIX and Title XX.
 - (f) State that the adoptive parents have the right to a fair hearing.

- (5) The initial effective date of adoption assistance shall be determined by the central office Adoption Unit, taking into consideration the request of the adoptive family and the recommendations of the adoption agency or Department branch. The effective date may not be prior to the completion of a signed assistance agreement, and must be effective no later than the date the adoption is finalized.
- (6) Annually the DHS adoption assistance program sends a letter to adoptive families, except those with an agreement only, inquiring whether there has been a change in circumstances or need for benefits.
- (7) No assistance may be provided to parents if the parents are no longer legally and financially responsible for the support of the child, or the child is no longer receiving care and support from the adoptive parents. A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military.
- (8) In the case of an adopted child who becomes legally free for adoption due to the adoptive parent or parents' relinquishment of the child, the termination of the adoptive parent or parents' parental rights to the child, or the death of the adoptive parent or parents, the determination of eligibility of the adopted child for adoption assistance remains based on the eligibility of the child as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance benefits. The child must also meet special needs criteria at the time the child again becomes available for adoption. (This rule is intended to meet the requirements of Sec. 473 (a)(2)(C) of the Social Security Act, 42 USC 673.)
- (9) If a child receiving adoption assistance benefits is placed in foster care or residential care, adoption assistance benefits may be adjusted, continued, or suspended. If the family is involved in the child's treatment, and the plan is for the child to return home, the family may ask to have the adoption assistance benefits suspended, continued, or adjusted to reflect current expenses. When the child returns to the care of the parents, adoption assistance benefits may be reviewed upon request by the parent.
- (10) Adoptive parents must immediately inform the agency when a change in circumstances indicates that there is no longer a need for adoption assistance benefits.
- (11) The Department may terminate the agreement upon 30 days written notice to adoptive parents when the child is no longer in the home, and the adoptive parents are no longer providing any support for the child.
- (12) An adoption assistance agreement automatically terminates, as required by Oregon law, when the child is 18 years old.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0115

Adoption Assistance Review Committee

- (1) The Adoption Assistance Review Committee will serve as a consultation and review body for the adoption assistance program, for example:
 - (a) The adoption assistance program staff may, at their discretion, refer unusual or exceptionally costly benefit requests to the adoption assistance review committee for consultation; or
 - (b) If, during negotiations of adoption assistance benefits, the adoption assistance staff and the prospective adoptive parents are unable to reach agreement, the matter may be referred to the committee for review at the request of either the adoption assistance staff or the adoptive parents.
- (2) The prospective adoptive parents and the caseworker must provide written documentation for the committee's consideration.
- (3) The caseworker for the prospective adoptive parents may participate in the committee by phone.
- (4) The committee reviews relevant materials and provides a recommendation regarding level of benefits to the adoption assistance coordinator. The adoption assistance review committee takes into consideration the special needs of the child and the financial circumstances of the prospective adoptive parents.
- (5) If the family requests further review of the adoption assistance benefits package offered to the family by the adoption assistance coordinator, subsequent to the recommendation of the Adoption Assistance Review Committee, the permanency and adoptions manager reviews the materials and makes a decision. If the family remains unsatisfied, they may request a contested case hearing to appeal the level of benefits as described in OAR 413-130-0120.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0120

Appeal Procedures of Adoption Assistance

- (1) Except as provided in OAR 413-130-0125, at any time the Department takes action to deny the application, or reduce or terminate adoption assistance payments, recipients of adoption assistance benefits must be notified of their right to a contested case

hearing, except for terminations required by law, termination on the child's 18th birthday, or terminations required by legislative action.

- (2) If agreement cannot be reached between the Department and the adoptive parents on the amount or type of benefits, the adoptive parents have the right to request a review or a contested case hearing within 30 days of receipt of notification of this right. Excluded from the right of appeal are Special Payments described in OAR 413-130-0090.
- (3) Requests for a contested case hearing must be addressed in writing to the manager of the Department's adoptions program.
- (4) The adoption manager or designee must ---
 - (a) Assure that the individual who requests the hearing receives a written statement that sets out the facts and the particular sections of the statutes and rules on which the Department based its initial decision; and
 - (b) Forward the contested case hearing request to the Office of Administrative Hearings (OAH).
- (5) Hearings will be conducted by OAH. (See OAR 413-010-0500 and Child Welfare Policies I-A.5.2 and I-A.5.2.1)
- (6) The Administrative Law Judge will prepare and distribute a proposed order in compliance with OAR 413-010-0500, Child Welfare Policies I-A.5.2 and I-A.5.2.1, and according to any interagency agreement between the Department and OAH.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0125

Budgetary Reductions of Adoption Assistance

- (1) Once a child is adopted and determined to be eligible for Title IV-E adoption assistance, the adoption assistance payments may not be automatically adjusted without the agreement of the adoptive parents for any reason other than an across-the-board reduction in foster care maintenance rates. In the event that legislative or executive branch actions impacting the Department's budget or expenditure authority makes it necessary for the Department to implement budget reductions to the adoption assistance program, the Department notifies all recipients of adoption assistance of the following:
 - (a) The reason for the reduction;

- (b) The percentage or amount that adoption assistance will be reduced; and
 - (c) The effective date of the reduced adoption assistance payment.
- (2) Reductions to adoption assistance payments pursuant to this rule will be applied uniformly to all recipients of adoption assistance.
 - (3) Reductions to adoption assistance payments pursuant to this rule are not subject to negotiation between the Department and the adoptive family.
 - (4) Reductions to adoption assistance payments pursuant to this rule are not subject to a contested case hearing.
 - (5) Reductions to adoption assistance pursuant to this rule do not constitute a change in circumstances warranting a change in the recipient's adoption assistance benefits.
 - (6) It is the intent of the Department to restore as much as possible any adoption assistance which has been reduced by operation of this rule. If additional funding becomes available to the Department to restore, in whole or in part, the reductions to adoption assistance payments required by this rule, the Department will notify all recipients. If legislative or executive branch actions impacting the Department's budget or expenditure authority give the Department the ability and authority to restore, in whole or in part, adoption assistance that has been reduced by operation of this rule, the Department will notify all recipients who were affected by the corresponding reduction of adoption assistance of the percentage of or amount of the increase, and the effective date of the increase. Any payment increase under this rule is applied uniformly to all recipients of adoption assistance who were affected by the corresponding reduction.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0127

Adjustments to Adoption Assistance

Effective November 1, 2003, adoption assistance benefits payable under an adoption assistance agreement in effect on October 31, 2003 are changed as follows:

- (1) Monthly payments are increased by 8.108 percent.
- (2) Except as provided in section (3) of this rule, nonrecurring payments and special payments are not changed.

- (3) A special payment is increased by 8.108 percent if it was payable under an adoption assistance agreement that was in effect on January 31, 2003; was reduced on February 1, 2003; and remained in effect continuously through October 31, 2003.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.330 to 418.340

413-130-0130

Post Finalization Applications for Adoption Assistance

- (1) An adoptive parent may request the opportunity to apply for adoption assistance after the adoption has been finalized based on extenuating circumstances such as:
- (a) Relevant facts regarding the child, the biological family, or child's background were known, but not shared with adoptive parents prior to legalization;
 - (b) Adoption assistance was denied based on an assessment of the financial need of the adoptive family and the family's financial need has changed;
 - (c) Determination was made by the state that a child was ineligible for assistance, but information becomes known which indicates it would be appropriate to review this determination; or
 - (d) Failure by the state to advise adoptive parents of a special needs child of the availability of adoption assistance.
- (2) Adoptive parents shall submit a written request to the adoption assistance coordinator stating their wish to apply for adoption assistance after an adoption has been legally finalized.
- (3) Upon receipt of the written request, the Department adoption assistance staff will determine, within thirty days, whether the child meets Title IV-E eligibility requirements.
- (4) When adoptive parents request that the Department provide historic information regarding the child in order to determine eligibility for adoption assistance, the Department may obtain non-identifying genetic, social, and health history as provided by ORS 109.425 through 109.507. In addition, the Department may request a court order to review the sealed adoption file.
- (a) If it is determined that a child meets Title IV-E eligibility requirements, federal policy requires a fair hearing be held before the state may provide adoption assistance benefits:
 - (A) The adoption assistance coordinator shall write a summary of the situation and submit a hearing request form and appropriate

documentation to the Office of Administrative Hearings within 45 days of receipt of the adoptive parent request for a fair hearing.

- (B) Adoptive parents have the responsibility of proving that extenuating circumstances exist. The Department may provide corroborating facts to the adoptive parents or the Administrative Law Judge.
 - (C) The hearing will be conducted by an Administrative Law Judge in compliance with rules governing contested case hearings.
- (b) If a post legal fair hearing decision finds that extenuating circumstances exist, an adoption assistance application may be signed, effective the date of the fair hearing.
- (5) If it is determined that a child does not meet Title IV-E eligibility requirements, the adoption assistance coordinator shall prepare information for the adoption manager's review including information submitted by the adoptive parents and information from Department records. The manager will decide if extenuating circumstances (see section (1) of this rule) exist which justify accepting an application from the family.
- (a) A written finding will be sent to the adoptive parent within 30 days.
 - (b) If the adoption manager finds that extenuating circumstances do not exist, the adoptive parents may request a contested case hearing under OAR 413-130-0120. The Administrative Law Judge in such a hearing reviews whether extenuating circumstances exist so that the adoptive parents can submit an application for adoption assistance. Whether the adoption assistance application is approved is a separate determination by the Department.
- (6) If the decision, through fair hearing or adoption manager review, is that the family is eligible to apply for benefits on behalf of the child, and the application results in the award of adoption assistance benefits:
- (a) In no case shall the monthly payments (in the form of a one time lump sum payment) be retroactive for more than 24 months from the date of the signed application; and
 - (b) If after negotiation, the adoptive parent does not agree with the amount negotiated, the parent may appeal this decision under OAR 413-130-0120.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340