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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

CF 1005, "Voluntary Custody Agreement"
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 State of Oregon administers an Adoption Assistance Program that is funded by General Fund dollars and the Title IV-E Adoption Assistance Program under PL 96-272 (Adoption Assistance and Child Welfare Act of 1980). The purpose of these rules is to set forth criteria used to determine eligibility for the Adoption Assistance program. Adoption Assistance is a state administered program 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
Stats. Implemented: ORS 418.330-418.340

413-130-0005

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Values

(1) Every child needs and deserves a safe, nurturing and permanent home.

(2) Where eligible adoptive families and children need individualized supports, and meet the criteria for the Adoption Assistance Program, the Adoption Assistance Program should be used.

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

413-130-0010
Definitions

(1) "Adoption assistance" means financial and/or medical assistance to adoptive families to assist them with the costs associated with their adoptive child's needs. Financial benefits are funded by DHS's adoption assistance budget. Assistance can be in the form of cash and/or medical coverage, an agreement only or special payments.

(2) "Adoption assistance benefits" means all or any portion of the adoption assistance package of benefits which include monthly payments, nonrecurring payment, special payments and medical assistance.

(3) "Adoption Assistance Review Committee" is a committee composed of DHS field and central office staff who have expertise in the area of adoption. It meets monthly, or as necessary, to provide recommendations regarding the type of benefits in situations where a review has been requested as part of the negotiations process.

(4) "Agreement only" is an agreement between DHS and the parents signed prior to the finalization of the adoption, to provide adoption assistance when/if a need for payment and/or medical coverage arises prior to the child's 18th birthday.

(5) "Medical assistance" means payment for medical services in accordance with the administrative rules of DHS.

(6) "Monthly Payments" means adoption assistance payments paid monthly by DHS to the family on behalf of the child which are determined by negotiation between the adoptive family and the agency worker, considering relevant factors which include but are not limited to the needs of the child, the services required to meet

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those needs, cost of such services, the family's ability to pay for the services, and the community resources available.

(7) "Nonrecurring payment" means a one-time payment up to $1,500, which DHS 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.

(8) "Payment" means cash assistance to adoptive families to meet the child's needs.

(9) "Qualified Vendor Attorney" is an attorney who agrees to accept DHS's rate of reimbursement as payment in full for finalizing the adoption of a child who is eligible for adoption assistance.

(10) "Special payments" means 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 DHS and the family.

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

413-130-0020
Special Needs Eligibility Criteria for Children

A child who is in the custody of DHS or a licensed adoption agency in Oregon and is the responsibility of agency for placement and care, 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 all three of the following criteria which establish special needs status:

(1) The state has determined that the child cannot or should not be returned to the home of his/her parents. This decision shall be based on:

(a) An order from a court of competent jurisdiction terminating parental rights; or

(b) The existence of a petition for termination of parental rights; or

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(c) For children under the jurisdiction of the court, a signed relinquishment; or

(d) For children not under the jurisdiction of the court, a signed relinquishment and a subsequent court finding signed within 6 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(s).

(2) The child has at least one of the following factors or conditions which make adoptive placement difficult to achieve:

(a) Has a documented medical, physical, mental, emotional - condition or other clinically diagnosed disability or has a documented history of abuse or neglect or other identified predisposing factor that places the child at risk for future problems and need for 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/cultural minority (e.g. African American, Hispanic, Asian, Indian, Pacific Islander);

(d) Is eight years of age or older; or

(3) Reasonable but unsuccessful efforts, except where it would be against the best interests of the child, have been made to place the child for adoption without assistance. Efforts to do so must be documented as shown by statewide and/or interstate recruitment, such as registration with the Special Needs Adoption Coalition and/or the Northwest Adoption Exchange or other special needs recruitment resources, or by other documented attempts to locate an adoption resource which will not require adoption assistance. The only exception to this requirement are situations where it would not be in the best interest of the child, for example where the child has significant emotional ties to the relative or foster parent seeking to adopt the child. The reason for any such exception must be fully documented in the record.

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

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413-130-0030
Eligibility for Nonrecurring Costs Reimbursement

A separate Federal statute, Public Law 99-514, provides for the reimbursement of nonrecurring costs directly related to the adoption process. All children who meet the above criteria (See OAR 413-130-0020), will also be eligible for payment of the nonrecurring costs. In addition, children being adopted by an Oregon resident who are not the responsibility of DHS or an Oregon licensed adoption agency, shall also be eligible for nonrecurring reimbursement 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 costs.

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

413-130-0040
Title IV-E Eligibility

(1) DHS will make efforts to establish Title IV-E eligibility for all children who meet the special needs criteria. Licensed adoption agencies shall make all requested efforts to assist DHS in establishing Title IV-E eligibility. Children who meet the special needs criteria, but are determined to be ineligible for Title IV-E, will be eligible for state-funded adoption assistance.

(2) In addition to the special needs criteria a child must meet the following criteria at time of removal to be Title IV-E eligible:

(a) Financial Needs Criteria:

(A) The child's eligibility for Title IV-E was established while in foster care or other substitute care; or,

(B) A child removed from his/her parent(s)' home was AFDC eligible (rules in effect July 16, 1996) in the month the removal was initiated or would have been AFDC eligible had the family applied; or,

(C) A child removed from a relative home received AFDC (rules in effect July 16, 1996) in the month court action for the child's removal was initiated, or the child would have been AFDC eligible

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(rules in effect July 16, 1996) in the relative's home had the relative applied; or,

(D) The child was voluntarily relinquished and found AFDC eligible (rules in effect July 16, 1996) in the month the court was petitioned to review the removal of the child from the home by voluntary relinquishment; or,

(E) The child was voluntarily placed with the public or private agency in out-of-home care and was AFDC eligible (rules in effect July 16, 1996) in the month the voluntary agreement was signed and received at least one IV-E foster care payment (IV-E payment is not required for a private agency); or,

(F) The child is receiving SSI or met the requirements for SSI eligibility prior to the finalization of the adoption; or,

(G) The child is placed with his or her minor parent whose costs in a foster family home are covered by the foster care maintenance payment being made for this or her minor parent.

(b) Judicial Determination Criteria. A judicial determination that it is "contrary to the welfare" of the child to remain in the home is contained in:

(A) The first court order of removal for children removed by court order; or,

(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; or,

(C) A contrary to the welfare ruling is not required for children receiving SSI.

(D) A court order finding made within 180 days of a child voluntarily placed into care, and signed within 6 months of the date the child was last living with the parent.

(c) Living with Specified Relative Criteria (per OAR 413-100-0140). At the time the adoption petition is filed the child:

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(A) Must have lived with a relative as defined by Title IV-E criteria, (OAR 413-100-0000 through 413-100-0360) within six months prior to the month court proceedings were initiated to review the voluntary placement or relinquishment of a child; or,

(B) Must have lived with a relative as defined by Title IV-E criteria, (OAR 413-100-0000 through 413-100-0360) within six months prior to the month court proceedings leading to the judicial removal of the child were initiated.

(3) In addition to the requirements of number (2) of this rule, at the time adoption proceedings are initiated each child's IV-E adoption assistance eligibility must be reviewed to ensure continued Title IV-E eligibility. This review shall include a determination as to whether the following requirements are met:

(a) Financial Need: the child's resources must remain under $10,000; and

(b) Deprivation: the child must continue to be deprived of parental support, i.e. absence of a parent or unemployment, underemployment or incapacity in a two parent household.

(4) To determine the eligibility of children leaving the adoptive home, see 413-130-0110(8).

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

413-130-0050
Availability of New Assistance and Rate Adjustments

The availability of state funds shall govern the rate of payments which can be obligated. If all of the adoption assistance funds are obligated, DHS shall continue to accept and process applications and requests for increases in assistance and shall establish a waiting list. Assistance agreements will be granted in the order of the date of approval as funds become available.

(1) For adoptive families currently receiving a foster care payment for the child to be adopted, there can be many costs associated with the adoption. It is the expectation of DHS that there shall be no gap in service and that the foster care payment and medical coverage shall not be discontinued until the adoption

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assistance is negotiated, agreements are signed and adoption assistance benefits begin.

(2) Recruited families for special needs children often have significant cost associated with incorporating the child into the family. It is the intention of DHS to provide foster care payments and medical coverage to these families pending the beginning of the adoption assistance benefits in order to support the placement. Non IV-E eligible children placed with relatives will not be eligible to receive foster care payments.

(3) When the child is fully free for adoption, the DHS worker shall complete the adoption assistance agreement with the family and submit 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 staff shall complete the processing of the application.

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

413-130-0060
Agreement Only

(1) An agreement only shall be entered into between DHS and the adoptive parent(s) when there is no current need for adoption assistance, the parent(s) request such agreement, and the child meets adoption assistance special needs criteria.

(2) The agreement only shall become effective on the date the completed adoption assistance agreement is approved and signed by the DHS and shall automatically terminate upon the child's 18th birthday.

(3) A written request to the agency by the adoptive parent(s) to renegotiate an agreement only will be made prior to initiation of adoption assistance benefits. The parent(s) will 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 it does not want an agreement, the family must document this choice for the file by notifying the agency in writing that they will not accept an agreement.

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(5) Agreement only adoption assistance agreements shall be governed by policy for monthly payment and medical assistance agreements, payments and procedures except as noted herein.

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

413-130-0070
Monthly Payments

(1) The rate of monthly payments shall be determined by negotiation between the adoptive family and the agency worker. If necessary, the adoption assistance coordinator shall conduct the final negotiation and any future renegotiation. Consultation from the adoption assistance coordinator is available during the negotiation.

(2) To establish the amount of a monthly adoption assistance payment, agency staff shall consider 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) The amount of monthly payment will be negotiated prior to the completion of the adoption assistance agreement and may be adjusted at any time to reflect the child's current needs and family circumstances. The monthly benefits will take effect upon completion of the adoption assistance agreement for a child who is fully free for adoption and in a home that DHS central office or the private agency has designated as the adoptive placement.

(4) Medicaid, private insurance, public education, and all community resources shall be considered as resources for the child and the family when negotiating the amount of assistance. Income to the child from sources such as Social Security and Veterans benefits shall be considered in negotiating a monthly payment, but will not necessarily be deducted dollar for dollar from the amount of monthly payment.

(5) The rate of the monthly payment cannot exceed what the child would currently require if placed in family foster care. When a child's needs exceed the standard 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 Special Rate and Personal Care forms (SCF 172A and 172RN). When the child is not currently in foster care or there are no recently completed Special Rate forms available, other

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appropriate documentation may be accepted, for example: detailed letter from the parent describing the child's needs with supporting documentation such as CDRC reports, therapist assessment, school report or psychological evaluation.

(6) Upon the divorce of adoptive parents, DHS 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, DHS will notify the other parent of the request. If the change of payee is challenged, a written agreement regarding the change of payee, or a legal document designating the payee, is required. If the change of payee is challenged, DHS may withhold the payment until agreement is reached.

(7) The foster care payment made to the adoptive family prior to the initiation of adoption assistance agreement shall be discontinued when the adoption assistance benefits begin. Central office adoption assistance support staff will close the foster care payment when the adoption assistance benefits begin and will notify the branch of the date assistance begins.

(8) Adoptive parents who move out-of-state shall continue to be eligible for adoption assistance benefits. Medical coverage for the child may change. See Medical Assistance, rule number 413-130-0100 of these rules.

(9) Monthly payments may begin when all of the following criteria are met:

(a) The child is legally free for adoption;

(b) An adoption assistance application has been signed;

(c) An agreement has been signed by the adoptive parent(s) and by the agency representative;

(d) DHS or a private agency has designated this family as the adoption placement.

(10) Actual payment may be retroactive to the date of the signed adoption assistance application if the child was fully free 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.

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(12) Adoption Assistance benefits paid to adoptive parents by the agency shall be 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
Stats. Implemented: ORS 418.330-418.340

413-130-0075
Renegotiation of Amount of Monthly Payment

(1) DHS shall annually query parents receiving adoption assistance benefits to determine whether circumstances have changed, and if they are requesting a change in adoption assistance benefits.

(2) An adoptive parent may request an increase in the agreed-upon amount of adoption assistance benefits based upon the following:

(a) Changes in the child's needs. Parents shall provide substantiating documentation to DHS upon a request from DHS;

(b) Changes in the family's circumstances. Parents shall provide substantiating documentation to DHS upon request from DHS.

(3) Renegotiation of the monthly payment amount shall 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.

(4) The renegotiated adoption assistance monthly payment amount shall in no case be retroactive more than 24 months.

(5) 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.

(6) If, after negotiation, the adoptive parent does not agree with the revised amount, the parent may appeal this decision per Appeal Procedures of Adoption Assistance, OAR 413-130-0120.

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

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413-130-0080
Nonrecurring Payment for Adoption Expenses

(1) DHS may make a one-time payment of up to $1,500, nonrecurring payment to an adoptive family to assist with the costs incurred in legally finalizing the adoption of a special needs child. Nonrecurring expenses are 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. 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 and/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 DHS contract with a private agency, or expenses already covered by some other resource available to the adoptive family.

(2) Documentation of the nonrecurring adoption 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 an agreement with an DHS "vendor" attorney. Vendor attorneys are those who have an agreement with DHS to process DHS adoptions for the currently established vendor fee plus costs for filing and birth certificates. DHS will make payment directly to the vendor attorneys after adoption is legalized. For other attorneys, the adoptive family is responsible for payment and DHS will reimburse the family for reasonable charges. Reasonable charges will be considered equal to the current vendor rate, and only in extraordinary circumstances may a higher amount be considered.

(4) Nonrecurring payments will be made when the agency receives the final order of adoption.

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

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413-130-0090
Special Payments

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 DHS and the family. These expenses may be authorized by DHS for a limited duration, subject to the agency's discretion and availability of resources. Documentation shall be made available to DHS by the family when requested. Payment will be made to the adoptive family who will then be responsible to reimburse the provider for services.

Stat. Auth.: ORS 418.005
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 criteria 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; or

(b) The child and adoptive parents would meet the income and resource standards of the TANF program administered under the Adult and Family Services Division; or

(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; or

(d) Prior to the execution of the adoption assistance agreement, the child was not eligible for Medicaid coverage because he/she had income available above Adult and Family Services standards. However, the child had a

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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) All Oregon families, for whom eligibility for medical assistance has been established, shall be issued medical identification for the child through the Office of Medical Assistance Programs. Payment for medical services will be in accordance with the administrative rules of DHR.

(3) Medical coverage for Title IV-E eligible children will be 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, DHS will provide the documentation necessary to assist the adoptive family to obtain Medicaid coverage;

(c) DHS 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 Office 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 will continue to receive medical coverage from Oregon except in those cases where the other state will provide the Medicaid coverage. (See (3) above).

(5) An adoption assistance agreement shall be signed by the adoptive parents and DHS which documents that the child is eligible for adoption assistance, and that medical coverage has been requested.

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

413-130-0110

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Administration of Approved Adoption Assistance

(1) It is the responsibility of DHS 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) Applicants must submit a written application for adoption assistance to the DHS central office Permanency and Adoptions Unit through their respective DHS branch office or private adoption agency with appropriate documentation and clarification as requested.

(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.

(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 DHS branch offices submitting applications must assure that the adoptive placement status has been approved by the central office Adoption Unit;

(c) Central office adoption assistance staff are responsible to complete adoption assistance eligibility determinations, negotiate benefits, issue agreements, and maintain records.

(4) Prior to the finalization of adoptions, and to issuance of any benefits, written adoption assistance agreements are completed that:

(a) Are signed by the adoptive parent(s) 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

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(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 adoptive parents and/or the child's state of residence;

(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 a 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/DHS branch. The effective date cannot 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 shall send 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. Examples include marriage, military enlistment.

(8) In the case of an adopted child who becomes available again for adoption due to the adoptive parent(s)' relinquishment of the child, the termination of the adoptive parent(s)' parental rights to the child, or the death of the adoptive parent(s), the determination of eligibility of the adopted child for adoption assistance shall remain 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 [42 USC. 673] (a) (2) (C) of the Social Security Act.)

(9) If a child receiving adoption assistance benefits is placed in substitute 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

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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 will be renegotiated.

(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 agency may terminate the agreement upon 30 days written notice to adoptive parents when the child is no longer in the home, or the adoptive parents are no longer providing for the child's support, or in the event of legal or legislative action requiring discontinuance of adoption assistance.

(12) An adoption assistance agreement shall automatically terminate, as required by Oregon law, when the child is 18 years old.

(13) An adoption assistance agreement shall be terminated when the child leaves the home with no plan to return as in such situations as marriage, military enlistment, emancipation.

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

413-130-0115
Adoption Assistance Review Committee

(1) An Adoption Assistance Review Committee, composed of DHS central office and field staff with expertise in adoptions, 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 committee for consultation; or

(b) If, during negotiations of adoption assistance benefits, the adoption assistance staff and the 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 family and the caseworker for the family may provide information in writing for the committee's consideration.

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(3) The caseworker for the family may participate in the committee by phone.

(4) The committee shall review relevant materials and provide a recommendation regarding level of benefits to the adoption assistance staff.

(5) If the family requests further review of the adoption assistance benefit 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 shall review the materials and make a decision. If the family remains unsatisfied, they may appeal this decision according to procedures in OAR 413-130-0120.

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

413-130-0120
Appeal Procedures of Adoption Assistance
(Reference CAF Policy I-A.5.2, Contested Case Hearings)

(1) Except as provided in OAR 413-130-0125, at any time the Department takes action to deny the application, or reduce or terminate payments, recipients of adoption assistance benefits shall be notified of their right to a 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 DHS and the adoptive parents on the amount or type of benefits, the adoptive parents have the right to request a review or hearing within 30 days of notification of this right. Excluded from the right of appeal are Special Payments described in 413-130-0090(1).

(3) Requests for a hearing should be addressed in writing to the manager of the DHS central office adoptions unit. The adoption manager will complete the Hearing Request Memo and forward copies to the Adult and Family Services Hearings Unit.

(4) A summarizing written report shall be prepared by the adoption assistance coordinator within two weeks of the receipt of a request for a hearing.

(5) Hearings will be conducted by the Adult and Family Services Hearings Unit in compliance with rules governing contested case hearings.

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(6) The hearing officer will prepare and distribute a proposed final order in compliance with rules governing contested case hearings and according to any interagency agreement between DHS and the hearings unit.

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

413-130-0125
Budgetary Reductions of Adoption Assistance

(1) In the event that legislative or executive branch actions impacting DHS' budget or expenditure authority makes it necessary for DHS to implement budget reductions to the Adoption Assistance Program, DHS shall notify 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 shall be applied uniformly to all recipients of Adoption Assistance.

(3) Reductions to Adoption Assistance payments pursuant to this rule shall not be subject to negotiation between DHS 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 shall not constitute a change in circumstances warranting a change in the recipient's Adoption Assistance benefits.

(6) It is the intent of DHS to restore as much as possible any Adoption Assistance which has been reduced by operation of this rule. If additional funding becomes available to DHS to restore, in whole or in part, the reductions to Adoption Assistance payments required by this rule, DHS shall notify all recipients. If legislative or executive branch actions impacting DHS's budget or expenditure authority give DHS the ability and authority to restore, in whole or in part,

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Adoption Assistance that has been reduced by operation of this rule, DHS 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 shall will be applied uniformly to all recipients of Adoption Assistance who were affected by the corresponding reduction.

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

413-130-0127
Adjustments to Adoption Assistance Benefits

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;

Prior Version

(b) Adoption assistance was denied based on an assessment of the financial need of the adoptive family;

(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;

(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 DHS, adoption assistance staff will determine, within thirty days, whether the child meets Title IV-E eligibility requirements.

(4) When an adoptive family requests DHS to provide historic information regarding the child in order to determine eligibility for adoption assistance, DHS may obtain non-identifying genetic, social, and health history as provided by ORS 109.425 through 109.507. In addition, DHS 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 hearing officer 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. DHS may provide corroborating facts to the family or the hearing officer;

(C) The hearing will be conducted by a hearing officer in compliance with rules governing contested case hearings;

Prior Version

(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 family and information from DHS records. The manager will decide if extenuating circumstances (See OAR 413-130-0130(1)) 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 hearing under OAR 413-130-0120. The hearing officer in such a hearing reviews whether extenuating circumstances exist so that the adoptive family can submit an application for adoption assistance. Whether the adoption assistance application is approved is a separate determination by DHS.

(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 per Appeal Procedures of Adoption Assistance, OAR 413-130-0120.

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