DHS Policy
Oregon Department of Human Services

Children, Adults and Families

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Policy Title:	Adoption Assistance – Temporary OAR				
Policy Number:	I-G.3.1 413-130-0000 thru 0130			Effective Date:	6/30/11 thru 9/30/11

Approved By: *on file* Date Approved: 6-15-11

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

Reference(s):

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

Form(s) that apply:

- CF 172 PCSP Personal Care Services Plan
- CF 450 Adoption Assistance Application Packet Checklist
- CF 803 – CANS Results (Ages 0 to 5)
- CF 804 – CANS Results (Ages 6 to 20)
- 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
- DE 1005, "Facilitation of Communication Form"

Rules:

413-130-0000
Purpose

(1) The purpose of these rules (OAR 413-130-0000 to 413-130-0130) is to describe the criteria for program eligibility and the types of *adoption assistance* that may be established for --

(a) A *child* in the legal custody of:

(A) The Department;

(B) A *participating tribe*; or

(C) A *licensed adoption agency* in Oregon.

(b) A *child* relinquished by a *parent* directly to a *pre-adoptive family* residing in Oregon.

(2) These rules do not include criteria for program eligibility for *adoption assistance* for a *child* placed for adoption in Oregon by another public child welfare agency, as *adoption assistance* is the responsibility of the sending state.

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Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

413-130-0010
Definitions

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

(1) "Adoption assistance" means assistance provided on behalf of an eligible *child* or *young adult* to offset the costs associated with adopting and meeting the on-going needs of the *child* or *young adult*. *Adoption assistance* may be in the form of payments, *medical coverage*, reimbursement of *nonrecurring expenses*, or special payments.

(2) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the *pre-adoptive family* or *adoptive family* of an eligible *child* or *young adult*, setting forth the assistance the Department is to provide on behalf of the *child* or *young adult*, the responsibilities of the *pre-adoptive family* or *adoptive family* and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(3) "Adoption assistance agreement only" means a written agreement, binding on the parties to the agreement, between the Department and the *pre-adoptive family* or *adoptive family* of an eligible *child* or *young adult*, when the *pre-adoptive family* or *adoptive family* is not receiving an *adoption assistance payment* or medical coverage at the time of the agreement but may request it at a later date.

(4) "Adoption assistance base rate" means the portion of the *adoption assistance payment* that is negotiated with a *pre-adoptive family* or an *adoptive family* and cannot exceed the amount of the Oregon foster care *base rate payment* for the child's or young adult's age.

(5) "Adoption assistance payment" means a monthly payment made by the Department to the *pre-adoptive family* or *adoptive family* on behalf of an eligible *child* or *young adult*.

(6) "Adoption Assistance Review Committee" means a committee composed of local and central office staff with expertise in the area of adoption.

(7) "Adoptive family" means an individual or individuals who have legalized a parental relationship to the *child* who joined the family through a judgment of the court.

(8) "Applicable child" has the same meaning as in OAR 413-100-0335.

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

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

(b) Clothing -- including purchase and replacement;

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

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

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

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

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

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

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

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

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

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

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

(14) "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 terminated by operation of law, thus allowing for the *child* to be adopted.

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

(16) "Licensed adoption agency" means an adoption agency licensed by the state of Oregon to place children for adoption, or an adoption agency that holds a license from another state and is authorized under the laws of that state to place children for adoption.

(17) "Nonrecurring adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the *pre-adoptive family* of an eligible *child* for a one-time payment to reimburse the *adoptive family* for the reasonable and necessary expenses incurred in legally finalizing the adoption of a *child* who has been determined to have special needs.

(18) "Nonrecurring expenses" mean a one-time *payment* up to $1,500 per *child*, which the Department will pay to an *adoptive family* to assist with the reasonable and necessary expenses incurred in legally finalizing the adoption of an eligible *child*.

(19) "Parent" means the biological or adoptive mother or the legal father of the *child*. A legal father is a man who has adopted the *child* or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian *child* under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the *child* by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

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

(21) "Pre-adoptive family" means an individual or individuals who:

(a) Has been selected to be the child's *adoptive family*; and

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

(22) "Qualified alien" has the same meaning as OAR 413-100-0210(2) and 8 USC 1641(b).

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(23) "Qualified vendor attorney" means an attorney who has a price agreement with the Department to process the adoption of a *child* who is eligible for *adoption assistance*.

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

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

(b) Through the marriage of the children's or young adult's legal or biological parents; or

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

(25) "Special payment" means a *payment* for unanticipated short-term costs which are directly related to the special needs of the *child* or *young adult* or are essential to the welfare of the *child* or *young adult*, and are not covered by another resource available to the *adoptive family*.

(26) "Substitute care" means the out-of-home placement of a *child* or *young adult* who is in the legal or physical custody and care of the Department.

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

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

413-130-0015
Funding for Adoption Assistance

(1) The Department makes efforts to establish Title IV-E *adoption assistance* eligibility under Child Welfare Policy I-E.6.1, Title IV-E Foster Care, Adoption Assistance, and Guardianship Assistance Eligibility, OAR 413-100-0335 to access federal reimbursement for *adoption assistance*.

(2) A *child* determined to have special needs under OAR 413-130-0020 who is ineligible for Title IV-E funded *adoption assistance* is eligible for state funded *adoption assistance* as described in OAR 413-130-0040. Administration of state funded *adoption assistance* is dependent upon the availability of such funds.

(3) When all available state funds are obligated, the Department must continue to:

(a) Accept new applications;

(b) Accept requests to adjust an *adoption assistance payment*; and

(c) Establish a waiting list.

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(4) As state funds become available, an *adoption assistance payment* may be made according to the date that the *adoption assistance agreement* is signed by all parties. The *adoption assistance agreement* may be retroactive for up to twelve months only when a foster care *base rate payment*, *level of care payment* or personal care service payment was not made on behalf of the *child*.

(5) When state funds are unavailable and a new *adoption assistance* application is received, the *pre-adoptive family* may sign an *adoption assistance agreement only* to prevent delay in finalizing the adoption, with the understanding that *adoption assistance* may be requested at a later date.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

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413-130-0020
Special Needs Determination for Adoption Assistance Eligibility

(1) In order to be eligible for *adoption assistance*, funded through either federal or state funds, a *child* must be determined to have special needs.

(2) The Department must make the determination that the *child* has special needs under each of the following subsections:

(a) The *child* cannot or should not be returned to the home of his or her *parent* or 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 a *child* under the jurisdiction of the court, a signed relinquishment;

(D) For a *child* 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;

(E) For a *child* who can be adopted in accordance with state or tribal law without a termination of parental rights or voluntary relinquishment of parental rights, the valid reason why the *child* cannot or should not be returned to the home of his or her parents; or

(F) In the case of an orphan, verification of the death of the *parent* or parents.

(b) The *child* has at least one of the following factors or conditions that 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 significant 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); or

(D) Is eight years of age or older.

(3) A reasonable but unsuccessful effort to place the *child* with an appropriate *adoptive family* for adoption without *adoption assistance* has been made, unless such an effort is not in the best interest of the *child* for reasons including placement with a relative or another person with whom the *child* has an established significant relationship.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

413-130-0040
Eligibility for an Adoption Assistance Payment

(1) In determining eligibility for an *adoption assistance payment*, the Department must not impose an income eligibility requirement for the *pre-adoptive family* or *adoptive family*.

(2) To be eligible for a Title IV-E funded *adoption assistance payment*, a *child* must meet all of the following requirements.

(a) Be a citizen of the United States or a *qualified alien* as described in OAR 413-100-0210(2) and in 8 USC 1641 (b) or (c).

(b) When the *child* is a *qualified alien* and is placed with a pre-adoptive *parent* who is an unqualified alien, the *child* must meet the five year residency requirement set forth in The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193.

(c) Be determined eligible for Title IV-E *adoption assistance* under OAR 413-100-0335.

(3) A *licensed adoption agency*, *participating tribe*, or another individual applying to receive *adoption assistance* on behalf of a *child* determined to have special needs must make all requested efforts to assist the Department in establishing Title IV-E eligibility.

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(4) Except as provided in section (5) of this rule, a *child* determined to be ineligible for a Title IV-E *adoption assistance payment* is eligible for a state-funded *adoption assistance payment* when the *child* meets all of the following criteria.

(a) Is in the legal custody of:

(A) The Department;

(B) A *participating tribe*; or

(C) A *licensed adoption agency* and the *child* is placed with a family residing in Oregon.

(b) Is not eligible for or receiving *adoption assistance* for the same *child* through another state.

(c) Is determined to have special needs in accordance with OAR 413-130-0020.

(d) Meets the requirements in section (6) of this rule.

(5) A *child* relinquished by a *parent* directly to a family residing in Oregon who is not eligible for a Title IV-E funded *adoption assistance payment* is only eligible for a state funded *adoption assistance payment* when--

(a) A state funded *adoption assistance agreement* was previously in effect on behalf of the *child*;

(b) The *pre-adoptive family* or *adoptive family* is not eligible for or receiving *adoption assistance* for the same *child* through another state.

(c) The *child* is in a subsequent adoption; and

(d) The *child* meets the requirements in section (6) of this rule.

(6) In addition to the eligibility requirements in section (4) or (5) of this rule, a *child* must also be a citizen of the United States to receive a state funded *adoption assistance payment* when the *child* is being brought into the United States for the purpose of adoption or being placed outside of the United States, or a territory or possession thereof or the District of Columbia.

(7) When an adopted *child* becomes *legally free* for re-adoption due to the relinquishment or termination of the legal *parent* or parents rights or the death of the legal *parent* or parents:

(a) The *child* must be determined to have special needs under OAR 413-130-0020 at the time the *child* again becomes available for adoption; and

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(b) The determination of funding eligibility of the adopted *child* for *adoption assistance* remains as it was the last time the *child* was determined eligible for *adoption assistance*.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

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413-130-0050
Adoption Assistance Application Requirements and Responsibilities

(1) A *licensed adoption agency* recommending *adoption assistance* for a *pre-adoptive family* must verify and document that recruitment efforts under OAR 413-130-0020(2)(c) were made for the *child*.

(2) A *pre-adoptive family* under OAR 413-130-0040(5) may contact the Adoption Assistance and Guardianship Assistance Unit for help in submitting a written *adoption assistance* application directly to the Department.

(3) A *pre-adoptive family* of a *child* in the custody of the Department must notify the Department in writing if they choose not to accept any form of *adoption assistance*.

(4) An *adoption assistance* application is considered complete when the Adoption Assistance and Guardianship Assistance Unit has received a signed *adoption assistance* application form and all supporting documentation.

(5) Except as described in subsection (a) and (b) of this section, the Adoption Assistance and Guardianship Assistance Unit must begin negotiation of the *adoption assistance agreement* no later than 60 days after receipt of a completed *adoption assistance* application submitted for a *legally free child* in the home of an approved *pre-adoptive family*.

(a) The Department may delay negotiation of the *adoption assistance base rate* for a completed application when the *child* is due for an updated *CANS screening*, a new *CANS screening* is warranted, or a *CANS screening* is in process or completed but a decision is pending regarding the *level of care payment*.

(b) When negotiation is delayed under subsection (a) of this section, the Adoption Assistance and Guardianship Assistance Unit must begin negotiation of the *adoption assistance base rate* no later than 30 days from receipt of the final decision regarding the *level of care payment*.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

413-130-0055
Extension of Adoption Assistance for a Young Adult

(1) When an initial *adoption assistance agreement* is entered into on behalf of a *child* who is age 16 or 17, the Department may approve an extension of the *adoption assistance agreement* until the individual reaches age 21, only when the *child*, upon reaching the age of 18 on or after October 1, 2011, is:

(a) Completing secondary school (or equivalent);

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

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

(d) Employed 80 hours a month; or

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

(2) The Department will review the young adult's eligibility for continued *adoption assistance* when an extension of *adoption assistance* has been granted:

(a) At least annually; or

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

(3) In order for the extension of *adoption assistance* to continue on behalf of a *young adult*, the *adoptive family* must submit to the Department, upon request:

(a) Proof that the *young adult* continues to be enrolled in a secondary, post-secondary, vocational school or a program or activity that promotes or removes barriers to employment;

(b) Proof that the *young adult* is employed 80 hours a month; or

(c) Verification from a medical or mental health professional that the *young adult* is incapable of attending school or obtaining employment due to a medical condition.

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

(A) Ineligible for *adoption assistance*; or

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

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

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413-130-0070
Negotiation and Determination of the Monthly Adoption Assistance Payment

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(1) When *adoption assistance* is not provided, a *pre-adoptive family* or *adoptive family* may enter into an *adoption assistance agreement only*.

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

(a) The *adoption assistance base rate*, and

(b) When applicable, the *level of care payment* determined by the *CANS screening* conducted under OAR 413-020-0230.

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

(a) Is determined through discussion and negotiation between the Department and the *pre-adoptive family* or *adoptive family*.

(b) May not exceed the current foster care *base rate payment* the *child* or *young adult* would be eligible to receive in foster care under OAR 413-090-0010(1)(b).

(c) Is negotiated between the *pre-adoptive family* or *adoptive family* and the Department, taking into consideration relevant factors which include, but are not limited to:

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

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

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

(D) The circumstances of the *pre-adoptive family* or *adoptive family* and their ability to provide the required services and goods for the *child* or *young adult*; and

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

(4) When, during negotiation of the *adoption assistance base rate*, the Adoption Assistance and Guardianship Assistance Coordinator and the *pre-adoptive family* or *adoptive family* are unable to reach agreement, the Adoption Assistance and Guardianship Assistance Coordinator or the family may request a review by the *Adoption Assistance Review Committee*. When a review is requested:

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

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

(B) Notify the *pre-adoptive family* or *adoptive family* and the assigned caseworkers of the date of the committee; and

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

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

(c) The caseworker for the *pre-adoptive family* or *adoptive family* and the caseworker for the *child* or *young adult* may participate in an *Adoption Assistance Review Committee* meeting and may present information and respond to questions. The caseworkers must not participate in the deliberations of the *Adoption Assistance Review Committee*.

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

(A) Consider written documentation provided by the *pre-adoptive family* or *adoptive family*, the caseworker for the *pre-adoptive family* or *adoptive family*, the caseworker for the *child* or *young adult*, and the Adoption Assistance and Guardianship Assistance Coordinator.

(B) Review materials submitted to the *Adoption Assistance Review Committee*, deliberate and make a recommendation regarding the *adoption assistance base rate*.

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

(A) Document the recommendation of the *Adoption Assistance Review Committee*; and

(B) Submit the recommendation to the Assistant Adoption Program Manager or designee within one business day of the *Adoption Assistance Review Committee* meeting.

(f) The Assistant Adoption Program Manager or designee must:

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

(B) Make a decision and provide written notification of the decision regarding the *adoption assistance base rate* to the Adoption Assistance and

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Guardianship Assistance Coordinator within one business day of the *Adoption Assistance Review Committee* meeting.

(g) The Adoption Assistance and Guardianship Assistance Coordinator must notify the *pre-adoptive family* or *adoptive family* of the Assistant Adoption Program Manager or designee's decision, including a written notice, within ten business days of the decision.

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(5) A *pre-adoptive family* or *adoptive family* unsatisfied with the *adoption assistance base rate* decision of the Assistant Adoption Program Manager or designee under section (4)(f)(B) of this rule, may submit a written request for a review of the decision by the Adoption Program Manager or designee within fourteen days of the date of the written notice in subsection (4)(g) of this rule.

(6) The Adoption Program Manager or designee must complete each of the following actions.

(a) Review and consider:

(A) The materials submitted to the *Adoption Assistance Review Committee*;

(B) The recommendation of the committee;

(C) The decision made by the Assistance Adoption Program Manager or designee following the committee recommendation; and

(D) The information presented by the *pre-adoptive family* or *adoptive family* in the request submitted under section (5) of this rule.

(b) Make a decision within 60 days of the date of the request for review.

(c) Provide written notification to the *pre-adoptive family* or *adoptive family* and the Adoption Assistance and Guardianship Assistance Coordinator within ten business days of the decision in subsection (b) of this section.

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

(a) Is determined based on the results of a *CANS screening* conducted under OAR 413-020-0230;

(b) Cannot exceed the amount of the *level of care payment* set forth in OAR 413-090-0010(2)(g); and

(c) Is included in the *adoption assistance payment* when the *child* or *young adult* qualifies for a *level of care payment* and when requested by the *pre-adoptive family* or *adoptive family*.

(8) When a *pre-adoptive family* or *adoptive family* is unsatisfied with the final *adoption assistance* offer from the Department, consisting of the *adoption assistance base rate*

and, when applicable, a *level of care payment*, the *pre-adoptive family* or *adoptive family* has the right to a contested case hearing under Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(9) An initial *adoption assistance payment* begins on a date determined by the Department when all of the following criteria are met:

(a) The *child* is *legally free* for adoption;

(b) Unless the *child* is in the custody of a *pre-adoptive family* eligible to apply for *adoption assistance* under OAR 413-130-0040(5) or the Department has approved an *adoptive family* to apply for *adoption assistance* under OAR 413-130-0130, the Department, *participating tribe* or *licensed adoption agency* has approved the *pre-adoptive family* as the adoptive placement; and

(c) An *adoption assistance agreement* has been signed by the *pre-adoptive family* or *adoptive family* and by the Department representative.

(10) An *adoption assistance payment* is issued at the end of each month of eligibility.

(11) An *adoption assistance payment* made to a *pre-adoptive family* or an *adoptive family* by the Department is inalienable by any assignment or transfer and exempt from garnishment, levy or execution under the laws of this state.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

413-130-0075
Renegotiation of an Adoption Assistance Payment

(1) The Department or *pre-adoptive family* or *adoptive family* may request renegotiation of an *adoption assistance agreement*. When the *pre-adoptive family* or *adoptive family* has previously signed an *adoption assistance agreement only* and requests *adoption assistance* at a later date, it is considered a renegotiation.

(2) A request for renegotiation of the *adoption assistance agreement* made by a *pre-adoptive family* or *adoptive family* must:

(a) Be in writing in a format provided by the Department to the *pre-adoptive family* or *adoptive family*;

(b) Document changes in the circumstances of the *pre-adoptive family* or *adoptive family*, when applicable;

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

(d) Provide information about the financial expenses of the *pre-adoptive family* or *adoptive family* in meeting the needs of the *child* or *young adult*; and

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(e) Provide additional documentation of the child's or young adult's current behaviors when the *child* or *young adult* meets the eligibility requirements for consideration of a *level of care payment* under OAR 413-020-0230 and the *pre-adoptive family* or *adoptive family* is requesting a *level of care payment*.

(3) Renegotiation of the *adoption assistance base rate* will be conducted using the negotiation process described in OAR 413-130-0070(2)-(8).

(4) A new *adoption assistance agreement* must be signed by all parties each time *adoption assistance payment* changes as a result of renegotiation.

(5) The Department may authorize a renegotiated *adoption assistance payment* increase or decrease for the period commencing the first day of the month in which the Department receives the documentation required to complete the requested renegotiation, or another date agreed upon by the *pre-adoptive family* or *adoptive family* and the Department.

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

(a) A final order;

(b) A stipulated final order;

(c) A settlement agreement; or

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

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

413-130-0077
Eligibility for Nonrecurring Adoption Expenses

(1) Except as provided in section (2) of this rule, a *pre-adoptive family* is eligible for reimbursement of nonrecurring adoption expenses through Title IV-E funding on behalf of a *child* determined to have special needs under OAR 413-130-0020 when the *child* is in the custody of:

(a) The Department, a *participating tribe*, a *licensed adoption agency*; or

(b) An Oregon family following a direct relinquishment by the legal *parent* directly to the Oregon family.

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(2) For applications received on or after October 1, 2010, reimbursement for nonrecurring adoption expenses is prohibited on behalf of an *applicable child* who:

(a) Is not a citizen or resident of the United States; and

(b) Was either adopted outside the United States or was brought to the United States for the purpose of being adopted.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

Prior Version

413-130-0080
Payment for Nonrecurring Expenses

(1) An agreement, indicating the nature and amount of nonrecurring adoption expenses, must be signed prior to the final judgment of adoption. Payment for nonrecurring adoption expenses is made when the Department receives the final judgment of adoption.

(2) The Department will reimburse an *adoptive family* up to $1,500 for each eligible *child* for approved *nonrecurring expenses*, including but not limited to:

(a) The cost of a home study;

(b) Court costs;

(c) Legal fees, as authorized by the Department;

(d) Physical and psychological examinations required for the adoption; and

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

(3) The Department will consider nonrecurring adoption expense requests that:

(a) Are submitted with written documentation to the Adoption Assistance and Guardianship Assistance Unit;

(b) Are not in violation of state or federal law; and

(c) Do not duplicate expenses covered by:

(A) The Interstate Compact for Placement of Children;

(B) A Department contract with a *licensed adoption agency*; or

(C) Another resource available to the *adoptive family*.

(4) When a *pre-adoptive family* indicates that they will be using a *qualified vendor attorney*, the Adoption Assistance and Guardianship Assistance Unit must send the *pre-adoptive family* a list of qualified vendor attorneys.

(5) The *pre-adoptive family* may select and contact an attorney from the list of qualified vendor attorneys, in which case the *pre-adoptive family* must:

(a) Sign the legal fees agreement, and

(b) Send the legal fees agreement to the attorney, who will sign it and return it to the Department for payment after the judgment of adoption is received.

(6) The *pre-adoptive family* may privately retain an attorney, in which case:

(a) The *adoptive family* is responsible for paying the attorney; and

(b) The Department will reimburse the *adoptive family* reasonable charges equal to the amount allowed for a *qualified vendor attorney* unless the Adoption Assistance and Guardianship Assistance Coordinator has determined that a higher amount may be considered due to extraordinary circumstances.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

413-130-0090
Special Payments

(1) A request for a *special payment*:

(a) May be made after finalization of the adoption by an *adoptive family* who has an existing *adoption assistance agreement* with the Department;

(b) Must include documentation from the *adoptive family* when requested by the Department.

(2) The Department may authorize a *special payment* for a limited duration, on a case-by-case basis, subject to the availability of resources.

(3) An approved *special payment* may only be issued to the *adoptive family*.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

413-130-0100
Medical Assistance

Prior Version

(1) A *child* or *young adult* who is the subject of an *adoption assistance agreement* funded by Title IV-E funds is categorically eligible for medical assistance through Title XIX and eligible for social services through Title XX.

(2) A *child* or *young adult* who is the subject of an *adoption assistance agreement* funded with state general funds, is eligible for medical assistance under Child Welfare Policy I-E.6.2, "Title XIX and General Assistance Medical Eligibility" OAR 413-100-0400 to 413-100-0610 when:

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

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

(3) When the adoptive *child* or *young adult* resides outside of Oregon, the Department provides the necessary documentation to the state of residence of the *child* or *young adult* through the Interstate Compact on Adoption and Medical Assistance (ICAMA) to assist the *pre-adoptive family* or *adoptive family* in obtaining medical assistance for the *child* or *young adult*.

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

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

413-130-0110
Administration of Approved Adoption Assistance

(1) Except as provided in OAR 431-130-0130, in order for the Department to provide *adoption assistance* on behalf of an eligible *child*:

(a) An *adoption assistance agreement* must be signed by each individual who is a party to the agreement and a Department representative; and

(b) The *adoption assistance agreement* must be in effect before the judgment of adoption.

(2) An *adoption assistance agreement* must include each of the following:

(a) A statement indicating that an *adoption assistance agreement* remains in effect regardless of the state or residency of the *pre-adoptive family* or the *adoptive family* and the *child*.

(b) An effective date which:

Prior Version

(A) Must be after the completion of a signed *adoption assistance* application; and

(B) Except as provided in OAR 413-120-0130, must be before the date of the judgment of adoption.

(c) Information identifying the child's or young adult's eligibility to receive medical assistance and specify the child's or young adult's eligibility for Title XIX and XX.

(d) Information that ORS 192.520 allows the Oregon Health Plan (OHP) and OHP managed care plans to exchange the following protected health information without authorization from the *pre-adoptive family* or *adoptive family* for the purpose of treatment activities related to behavioral or physical health of the *child* or *young adult* when the *child* or *young adult* is the recipient of OHP services:

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

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

(C) The hospital or medical provider's Medicaid number;

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

(E) Each treatment activity's date of service;

(F) Each treatment activity's procedure or revenue code;

(G) The quantity of units or services provided; and

(H) Information about medication prescription and monitoring.

(e) Specification of the amount and nature of all *adoption assistance* to be provided.

(f) A statement informing the *pre-adoptive family* or *adoptive family* of the right to a contested case hearing under Child Welfare Policy I-A.5.2, "Contested Cases" OAR 413-010-0500 to 413-010-0535.

(3) The Department remains financially responsible for providing the services specified in the *adoption assistance agreement* if the needed service is not available in the new state or service area of residence, except as described in OAR 413-130-0100(4).

(4) The foster care *base rate payment*, *level of care payment*, any level of personal care payment, and medical coverage end when *adoption assistance* begins. Medical assistance, as determined by the child's eligibility, may continue when requested by the *pre-adoptive family* or *adoptive family*.

(5) The Department may require documentation from the *pre-adoptive family* or *adoptive family* verifying that the *child*:

Prior Version

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

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

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

(d) Has completed secondary school; or

(e) Is incapable of attending school due to a documented medical condition, mental disability or physical disability.

(6) A *pre-adoptive family* or *adoptive family* must immediately inform the Adoption Assistance and Guardianship Assistance Unit of a change in circumstances that may make them ineligible for *adoption assistance* or eligible for an *adoption assistance payment* in a different amount.

(7) An individual who is a party to an *adoption assistance agreement* may request a change of payee due to a divorce, legal separation, or other judicially recognized modification of custody.

(a) The requesting individual must provide the Department with the current address and telephone number of the current payee.

(b) The Department must notify the current payee that there has been a request to change the payee within 30 days of receipt of a request for a change of payee.

(c) Unless the current payee submits a challenge to the request to change payee within 30 days of the date the Department sends the notice in subsection (b), the request to change payee will be approved.

(d) If the change of payee is challenged, the Department requires legal documentation describing physical custody of the *child* to make a change in payee.

(e) The new payee must be one of the parties to the *adoption assistance agreement*.

(8) Overpayment.

(a) If the Department issues an *adoption assistance payment* on behalf of a *child* or *young adult* after the date the *adoption assistance agreement* automatically expires, the Department may seek reimbursement of the overpayment and the *pre-adoptive family* or the *adoptive family* must repay the Department.

(b) If the *pre-adoptive family* or *adoptive family* fails to comply with any provisions of the *adoption assistance agreement*, including failing to notify the Department of any of the events or circumstances described in section (6) of this rule, the Department may collect any *adoption assistance payment* or medical assistance

Prior Version

which the Department would not have provided had the *pre-adoptive family* or *adoptive family* complied with the provisions of the *adoption assistance agreement*.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

Prior Version

413-130-0125
Adjustments of Adoption Assistance

(1) The Department may request updated information from the *pre-adoptive family* or the *adoptive family* when the Department becomes aware of a change in circumstances that may make the *pre-adoptive family* or the *adoptive family* ineligible for *adoption assistance* or eligible for *adoption assistance* in a different amount.

(2) When the *adoptive family* divorces, legally separates, or is party to a judicially recognized modification of custody, the Department may request updated information, including financial information, to reflect the change in family circumstances.

(3) The Department may not adjust the *adoption assistance payment* without the agreement of the *adoptive family*, except when there is an across-the-board reduction or increase in a foster care *base rate payment* or *level of care payment*, the Department, following a case-by case review, based on the specific needs of the *child* or *young adult* and without concurrence of the *pre-adoptive family* or *adoptive family*, may adjust the *adoption assistance payment* to an amount that does not exceed the new foster care payment the *child* or *young adult* would receive if the *child* or *young adult* was currently in foster care. In the case of a reduction, only those payments that exceed the amount the *child* or *young adult* would be eligible for if currently in foster care would be reduced and the reduction would only be to the amount that the *child* or *young adult* would be eligible to receive if currently in foster care.

(4) The Department, with the concurrence of the *pre-adoptive family* or *adoptive family* may adjust or suspend the *adoption assistance payment*, to reflect a change in the *pre-adoptive family* or adoptive family's circumstances or expenses on behalf of the *child* or *young adult*.

(5) The Department will terminate the *adoption assistance agreement* upon ten days written notice to the *pre-adoptive family* or *adoptive family* when it becomes known to the Department that the *pre-adoptive family* or *adoptive family* is no longer providing any support to the *child* or *young adult* or legally responsible for the support of the *child* or *young adult*, including under the following circumstances--

(a) When the parental rights of the *adoptive family* have been terminated or relinquished.

(b) When the *child* becomes an emancipated minor.

(c) When the *child* or *young adult* --

(A) Marries.

(B) Enlists in the military.

(C) Dies.

(d) When the *young adult* no longer meets the eligibility requirements in 413-130-0055.

(6) The *adoption assistance agreement* automatically expires when the *child* reaches the age of 18 or, when an extension has been granted under OAR 413-130-0055, up to the age of 21 as documented in the *adoption assistance agreement*.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

Prior Version

413-130-0130
Post Judgment of Adoption Applications for Adoption Assistance

(1) An *adoptive family* asking to apply for *adoption assistance* after the judgment of adoption must submit a written request to the Adoption Assistance and Guardianship Assistance Unit, 500 Summer Street NE, E-71, Salem, Oregon 97301, based on one or more of the following extenuating circumstances:

(a) Relevant facts regarding the *child*, the biological family, or background of the *child* were known, but not shared with the *adoptive family* prior to legal finalization of the adoption;

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

(c) The Department determined the *child* was ineligible for *adoption assistance*, but information becomes known which indicates a review of the determination is appropriate; or

(d) The Department failed to advise the *adoptive family* of a special needs *child* of the availability of *adoption assistance*.

(2) Upon receipt of the written request, the Department must determine, within thirty days, whether the *child* meets Title IV-E eligibility requirements.

(3) The Department or *adoptive family* may seek historic information regarding the *child* to determine eligibility for *adoption assistance* through a:

(a) Request to the adoption registry as provided by ORS 109.425 through 109.507; or

(b) Court order to review the sealed adoption file.

(4) When a *child* is Title IV-E eligible, a decision is made through a contested case hearing on whether the *adoptive family* may apply for *adoption assistance* after the judgment of adoption based on the extenuating circumstances in section (1) of this rule:

(a) The Adoption Assistance and Guardianship Assistance Coordinator must write a summary of the situation and submit a hearing referral and supporting documentation to the Office of Administrative Hearings within 45 days of receipt of the request in section (1) of this rule.

(b) An *adoptive family* has the burden of proof to show that extenuating circumstances exist. The Department may provide corroborating facts to both the *adoptive family* and the administrative law judge.

(c) The contested case hearing is conducted under Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(5) When a *child* does not meet Title IV-E eligibility requirements, the Adoption Program Manager determines if extenuating circumstances under section (1) of this rule exist that justify accepting an *adoption assistance* application from the *adoptive family*.

(a) The Adoption Assistance and Guardianship Assistance Coordinator must prepare information for review by the Adoption Program Manager including information submitted by both the *adoptive family* and Department records.

(b) A written finding will be sent to the *adoptive family* within sixty days of the receipt of the request for review.

(c) When the Adoption Program Manager finds that extenuating circumstances do not exist, the *adoptive family* may request a contested case hearing under Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(A) The administrative law judge in the contested case hearing reviews whether the *adoptive family* may submit an application for *adoption assistance*.

(B) The approval of the *adoption assistance* application is a separate determination made by the Department.

(6) When the decision, through a contested case hearing or Adoption Program Manager review, is that the *adoptive family* is eligible to apply for *adoption assistance* on behalf of the *child*, an *adoption assistance* application may be signed, effective the date of the written request described in section (1) of this rule. The process for application in OAR 413-130-0050 and negotiation in OAR 413-130-0070 apply.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340

Prior Version

Contact(s):

- **Name:** Kathy Prouty and Carla Crane
- **Phone:** (503) 947-5358 (503) 945-5998

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- 08/21/95 *(not available electronically)*
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