



Department of Human Services
CHILDREN, ADULTS & FAMILIES

CLIENT SERVICES INDEX

ISSUED BY: Office of Safety and Permanency
for Children

TEMPORARY: 7-01-09

NUMBER: I-G.3.1
OAR: 413-130-0000 thru 0130

SECTION: G. Adoption

SUBSECTION: 3. Post Adoption
Services

SUBJECT: 1. Adoption Assistance – OAR

REFERENCES

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

FORMS

DE 1005, "Facilitation of Communication Form"
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

413-130-0000

Purpose

The purpose of these rules, OAR 413-130-0000 to 413-130-0130, is to describe the Department's responsibility to determine eligibility for adoption assistance for eligible Oregon children. Adoption assistance for children placed into Oregon from another state is the responsibility of the sending state.

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

413-130-0010

Definitions

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

- (1) "Adoption assistance" means financial assistance and medical coverage granted to an adoptive family to offset the short- and long-term costs of adopting an eligible child and may include cash payments, medical coverage, an agreement only, or special payments.
- (2) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child.
- (3) "Adoption assistance payments" mean payments paid monthly by the Department to the family on behalf of the child.
- (4) "Adoption Assistance Review Committee" means a committee composed of field and central office staff who have expertise in the area of adoption.
- (5) "Agreement only" means a contract between the Department and the family signed prior to the finalization of the adoption, to provide adoption assistance if a need for a monthly payment or medical coverage arises prior to the child's 18th birthday.
- (6) "CANS screening" means the Child and Adolescent Strength and Needs screening, a process of integrating information on a child or young adult's strengths and needs, designed to support case planning, service planning, and supervision needs of a child or young adult.
- (7) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.
- (8) "Department" means the Department of Human Services, Child Welfare.
- (9) "Legally free" means that, with respect to a child, the legal rights of all parents with legal standing have been judicially terminated, voluntarily relinquished, or otherwise dispensed with so that the child may be adopted.
- (10) "Licensed adoption agency" means an agency currently licensed in Oregon under the provisions of ORS 418.205 to 418.325 to provide adoption services.
- (11) "Medical coverage" means receipt of a medical card covering Medicaid services in accordance with the Department's administrative rules.

- (12) "Nonrecurring expenses" mean a one-time payment up to \$1,500, which the Department may pay to an adoptive family to assist with the expenses incurred in legally finalizing the adoption of a special needs child.
- (13) "Payment" means cash assistance to adoptive families to meet the child's needs.
- (14) "Personal care services" means those functional activities described in OAR 413-090-0120 consisting of mobility, transfers, repositioning, basic personal hygiene, toileting, bowel and bladder care, nutrition, medication and oxygen management, and delegated nursing tasks that a child or young adult requires to live safely in the most independent least restrictive living situation.
- (15) "Private child caring agency" means any private organization providing day treatment, adoption placement, residential care, foster care or other similar services for children, but does not include foster homes certified by the Department and homes established and maintained by fraternal organizations for the exclusive use of membership.
- (16) "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.
- (17) "Qualified alien" means, but is not limited to, permanent residents, asylees, and refugees under 8 USC 1641(b). A child who is an illegal alien or undocumented immigrant is not eligible for adoption assistance because he or she is not a qualified alien.
- (18) "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 for the currently established vendor fee plus costs for filing and birth certificates.
- (19) "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 the Department and the family.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0020

Eligibility for Adoption Assistance

A child in the custody of the Department, a Tribe with a Title IV-E Agreement, or a licensed adoption agency in Oregon is eligible for adoption assistance when the requirements of all of the following sections are met:

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

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0030

Eligibility for Nonrecurring Expenses

- (1) Any child who meets the eligibility criteria for adoption assistance under OAR 413-130-0020 is eligible for reimbursement of the nonrecurring expenses.
- (2) A child being adopted by an Oregon resident who is not the responsibility of the Department or an Oregon licensed adoption agency also is eligible for reimbursement of nonrecurring expenses if all other eligibility requirements under OAR 413-130-0020 are met.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0040

Eligibility for Adoption Assistance Payments

- (1) The Department will make efforts to establish Title IV-E eligibility for an adoption assistance payment for any child eligible for adoption assistance under OAR 413-130-0020. Licensed adoption agencies must make all requested efforts to assist the Department in establishing Title IV-E eligibility.
- (2) Additionally, a child must meet the requirements of one of the following subsections to be eligible for an adoption assistance payment:
 - (a) The child's Title IV-E eligibility was established at the time of removal.
 - (b) The child meets all eligibility requirements for Supplemental Security Income (SSI) benefits.
 - (c) The child was determined eligible for an adoption assistance payment with respect to a prior adoption and is now available for adoption because of the following:
 - (A) The prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated or relinquished; or
 - (B) The child's adoptive parents have died.
- (3) In addition to the adoption assistance eligibility criteria under OAR 413-130-0020 and the requirements of section (2) of this rule, a child must meet the following requirements, as applicable:
 - (a) For a private agency adoption, the child must have been voluntarily placed with the private agency in out-of-home care and Title IV-E eligible in the month the voluntary agreement was signed.

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

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0045

Child's Immigrant Status

- (1) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, as amended, limited federal public benefits to qualified aliens. Adoption assistance under Title IV-E of the Act is considered a federal public benefit for the purposes of the PRWORA and, therefore, limited to U.S. citizens and qualified aliens.
- (2) In addition, if a substitute caregiver or adoptive parent is not a qualified alien, a child who is otherwise eligible under section 473 of PRWORA must meet the five-year residency requirement to receive Title IV-E adoption assistance as Section 403 of PRWORA requires a qualified alien entering the United States on or after the date of enactment of PRWORA (August 22, 1996), unless excepted, to live in the United States for five years before becoming eligible for certain federal public benefits. In accordance with section 403(c)(2)(F) of PRWORA, however, a federal payment for adoption assistance is excluded from the five-year residency requirement if the child and the foster or adoptive parent with whom the child is placed are qualified aliens under OAR 413-130-0050.

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

413-130-0050

Availability of New Adoption Assistance and Adoption Assistance Payment Adjustments

- (1) The availability of state funds governs the adoption assistance payments which may be obligated. If all available adoption assistance funds are obligated, the Department continues to accept and process applications and requests for adjustments in adoption assistance payments and establishes a waiting list. Adoption assistance agreements will be granted in the order of the date of approval as funds become available.
- (2) Substitute care payments end when adoption assistance payments begin. Medical coverage continues until the adoption assistance payment is negotiated, agreements are signed, and adoption assistance benefits begin.
- (3) When a child is legally free for adoption, the Department field staff completes the adoption assistance agreement with the adoptive family and submits the agreement to the Adoption Program no later than 60 days from the date the adoptive family is selected. Within 60 days of the receipt of the completed adoption assistance agreement, Adoption Program staff completes the processing of the application. The adoption assistance application may be initiated earlier if the adoptive family has been selected and the child is not yet legally free.

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

413-130-0060

Agreement Only

- (1) An agreement only between the Department and the adoptive family is signed when there is no current need for an adoption assistance payment, the adoptive family requests such an agreement, and the child is eligible for adoption assistance under OAR 413-130-0020.
- (2) The agreement only becomes effective on the date the completed adoption assistance agreement is approved and signed by the Department, and automatically terminates upon the child's 18th birthday.
- (3) The adoptive family must make a written request to the Department to initiate any adoption assistance benefits. The adoptive family must provide documentation to the

Department describing the child's need for service at the time an adoption assistance benefit is requested.

- (4) The adoptive family must notify the Department in writing of a decision not to accept an agreement only.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0070

Determination of the Adoption Assistance Payment

- (1) The Department considers relevant factors which include but are not limited to, the needs of the child, the services required to meet those needs, cost of the services, the family's ability to provide the services, and the community resources available to establish the amount of an adoption assistance payment.
- (2) If a child under the age of eight years meets special needs status under OAR 413-130-0020(2) and has no documented medical, physical, mental, or emotional condition, or other clinically diagnosed disability, he or she will receive an adoption assistance payment that is no greater than the foster care base rate the child would receive if he or she continued in substitute care, unless the adoptive family enters into an agreement only.
- (3) The adoption assistance payment is negotiated prior to the completion of the adoption assistance agreement. The Department considers the following factors:
 - (a) The baseline for negotiation is the foster care base rate the child would receive if he or she continued in substitute care plus any enhanced supervision payment as indicated by a CANS screening.
 - (b) Effective September 1, 2009:
 - (A) An adoption assistance payment uses the child's most recent CANS screening conducted to determine the child's eligibility for enhanced supervision; and
 - (B) When the eligible adoptive child has a diagnosed medical need, other medically related documentation, including the payment under a personal care services plan, may be considered in determining the adoption assistance payment.

- (4) The adoption assistance payments take effect upon completion of the adoption assistance agreement for a child who is legally free for adoption and in a home that the Department or the private agency has designated as the adoptive placement.
- (5) Medicaid coverage, private insurance, public education, and all community resources must be considered as resources for the child and the adoptive family when determining the amount of an adoption assistance payment. A child's income from sources such as Social Security and Veterans benefits are considered in determining the adoption assistance payment, but will not necessarily be deducted dollar for dollar from the amount of the adoption assistance payment.
- (6) When adoptive parents divorce, the Department may request updated information, including financial information, to reflect the change in family circumstances. Upon receiving a request from an adoptive parent for change of payee due to divorce, the Department notifies the other parent of the request. If the change of payee is challenged, a legal document describing custody is required.
- (7) Adoptive parents who move out-of-state continue to be eligible for adoption assistance benefits. Medical coverage for the child may change under OAR 413-130-0100.
- (8) An adoption assistance payment begins when all of the following criteria are met:
 - (a) The child is legally free for adoption;
 - (b) An adoption assistance agreement has been signed by the adoptive family and by the Department representative;
 - (c) The Department or a private agency has designated the family as the adoptive family.
- (9) An adoption assistance payment may be retroactive to the date of the signed adoption assistance application if the child was legally free for adoption and in the designated placement on that date, and no foster care base rate, enhanced supervision, or personal care services payment was made for the same period.
- (10) An adoption assistance payment is issued at the end of each month of eligibility.
- (11) Adoption assistance payments made to an adoptive family by the Department are inalienable by any assignment or transfer and exempt from execution, levy, attachment, garnishment, and other legal process under the laws of this state.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0075**Renegotiation of an Adoption Assistance Payment**

- (1) An adoptive family may request an increase of an adoption assistance payment through the Department's adoption assistance coordinator based upon:
 - (a) A significant change in the child's needs; or
 - (b) A change in the adoptive family's circumstances.
- (2) Renegotiation of the adoption assistance payment is 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 adoptive family's ability to pay for the services, and the community resources available.
- (3) Effective September 1, 2009, renegotiation includes the consideration of the results of a CANS screening which is conducted prior to the renegotiation if the adoptive family demonstrates that the child's physical, mental health, behavioral, or developmental needs have worsened or required escalated care and treatment. A renegotiated adoption assistance payment is determined under OAR 413-130-0070(4).
- (4) A renegotiated adoption assistance payment may not exceed the total combined foster care base rate, enhanced supervision, and personal care service payments for a child in substitute care. When the eligible adoptive child has a diagnosed medical need, other medically related documentation, including the personal care services plan, may be considered in determining the adoption assistance payment.
- (5) A renegotiated adoption assistance payment may in no case be retroactive more than 12 months.
- (6) When the adoption assistance payment is renegotiated, a new adoption assistance agreement with the revised adoption assistance payment must be signed by the adoptive family and the Department's adoption assistance coordinator prior to a change in the payment.
- (7) If, after renegotiation, the adoptive family does not agree with the renegotiated adoption assistance payment amount, the adoptive family may appeal the decision as provided in OAR 413-130-0120.

Stat. Auth.: ORS 418.005, 418.340

Stats Implemented: ORS 418.330 - 418.340

413-130-0080**Payment for Nonrecurring Expenses**

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

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0090 Special Payments

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

requested making a request for a special payment. A special payment is made to the adoptive family who then are responsible to reimburse the provider for services.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0100

Medical Assistance

- (1) A child is eligible for Medicaid coverage when:
 - (a) The child was receiving Title IV-E foster care payments, Temporary Assistance to Needy Families (TANF), or SSI benefits at the time the adoptive placement was approved;
 - (b) The child and adoptive parents meet the income and resource standards of the Temporary Assistance for Needy Families program administered by the Office of Self Sufficiency Programs;
 - (c) Prior to the execution of the adoption assistance agreement, the child was not Title IV-E eligible, but was receiving or was eligible to receive Medicaid under the Oregon Health Plan, and the child has a documented special need for medical or rehabilitative services, or services that preclude adoption without receipt of Medicaid benefits; or
 - (d) Prior to the execution of the adoption assistance agreement, the child was not eligible for Medicaid coverage because the child had income available above Department standards for Medicaid; however, the child had a condition which required a special foster care rate plus the standard foster care rate which was greater than the amount of the child's income.
- (2) An adoptive child for whom Medicaid eligibility for has been established is issued a medical identification card for the child through the Division of Medical Assistance Programs. Payment for medical services will be in accordance with Department of Human Services administrative rules.
- (3) Medical coverage for Title IV-E eligible children is provided by the medical assistance program in the state where the child resides:
 - (a) If the child is placed outside the adoptive home and is eligible for federal funding through Title IV-E or SSI, the state in which the child resides will provide medical coverage in accordance with the rules of that state even if the adoptive family resides in a separate state.

- (b) If the adoptive family moves to another state or the child is placed for adoption in a state other than Oregon, the Department will provide the documentation necessary to assist the adoptive family to obtain Medicaid coverage.
 - (c) The Department will provide written verification of the child's Title IV-E eligibility to the appropriate coordinator of the adoption assistance program in the state where the adoptive family is residing in order to facilitate Medicaid medical coverage.
- (4) Medical coverage for children who are not eligible for Title IV-E will be provided by the Division of Medical Assistance Programs under the rules of the Oregon Health Plan. If the child is placed in another state, or the adoptive family moves from Oregon to another state, the child may continue to receive medical coverage from Oregon, except in those cases where the other state will provide the Medicaid coverage (see section (3) of this rule).
- (5) An adoption assistance agreement must be signed by the adoptive family and the Department which documents that the child is eligible for adoption assistance, and that medical coverage has been requested.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0110

Administration of Approved Adoption Assistance

- (1) It is the responsibility of Department and licensed private agency staff to:
- (a) Notify or advise the prospective adoptive family of the availability of adoption assistance for an eligible child;
 - (b) Provide the prospective adoptive family with a copy of OAR 413-130-0000 to 413-130-0130; and
 - (c) Assist the prospective adoptive family in making an application for adoption assistance, if appropriate.
- (2) A prospective adoptive family must submit a written application for adoption assistance to the Adoption Program through their respective Department branch office worker or private adoption agency worker.
- (3) A prospective adoptive family applying for adoption assistance must be approved by the respective adoption agency as being suitable adoptive parents who meet all state standards including certification standards.

- (a) A licensed adoption agency recommending adoption assistance for a prospective adoptive family is responsible to verify and document on the adoption assistance application that efforts were made to place the child without adoption assistance.
 - (b) The Department branch offices submitting an adoption assistance application must assure that the adoptive placement status has been approved by the Adoption Program.
- (4) Prior to the finalization of adoptions and issuance of any benefits, written adoption assistance agreements must be completed that meet all of the following requirements. The agreement must ---
- (a) Be signed by each adoptive parent and the adoption assistance coordinator. An adoption assistance agreement establishes the child's monthly eligibility for benefits, as well as for nonrecurring expenses.
 - (b) State the duration of the agreement.
 - (c) State the amount of adoption assistance benefits, if any, and specify:
 - (A) The amount of the adoption assistance monthly payment, if any, and
 - (B) The nature and amount of any other payments, services, and assistance to be provided, including nonrecurring adoption expenses.
 - (d) State that the agreement remains in effect regardless of the state of residence of the adoptive family and the child.
 - (e) State whether the child will receive medical benefits, and specify the child's eligibility for Title XIX and Title XX.
 - (f) State that the adoptive parents have the right to a contested case hearing under Child Welfare Policies I-A.5.2, "Contested Cases" OAR 413-010-0500 to 413-010-0535 and I-A.5.2.1, "Contested Cases" for any denial, reduction, or suspension of adoption assistance benefits.
- (5) The initial effective date of the adoption assistance agreement is determined by the Adoption Program, taking into consideration the request of the adoptive family and the recommendations of the adoption agency or Department branch office. The effective date may not be prior to the completion of a signed assistance agreement, and must be effective no later than the date the adoption is finalized.

- (6) Annually, the Adoption Program sends a letter to adoptive families, except those with an agreement only, inquiring whether there has been a change in circumstances or need for benefits.
- (7) No assistance may be provided to adoptive parents if the adoptive 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. An adoptive parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military.
- (8) In the case of an adopted child who becomes legally free for adoption due to the adoptive parent or parents' relinquishment of the child, the termination of the adoptive parent or parents' parental rights to the child, or the death of the adoptive parent or parents, the determination of eligibility of the adopted child for adoption assistance remains based on the eligibility of the child as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance benefits. The child must also meet special needs criteria at the time the child again becomes available for adoption. (This rule is intended to meet the requirements of Sec. 473 (a)(2)(C) of the Social Security Act, 42 USC 673.)
- (9) If a child receiving adoption assistance benefits is placed in substitute care, adoption assistance benefits may be adjusted, continued, or suspended. If the adoptive family is involved in the child's treatment, and the plan is for the child to return home, the family may ask to have the adoption assistance suspended, continued, or adjusted to reflect current expenses. When the child returns to the care of the adoptive family, adoption assistance benefits may be reviewed upon request by the adoptive family.
- (10) An adoptive family must immediately inform the agency when a change in circumstances indicates that there is no longer a need for adoption assistance.
- (11) The Department may terminate the agreement upon 30 days written notice to the adoptive family when the child is no longer in the home, and the adoptive family is no longer providing any support for the child.
- (12) An adoption assistance agreement automatically terminates, as required by Oregon law, when the child is 18 years old.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0115

Adoption Assistance Review Committee

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

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0120

Right to a Contested Case Hearing

- (1) Except for a termination required by law or legislative action, on a child's 18th birthday, or under OAR 413-130-0125, at any time the Department takes action to deny an application for, reduce, or terminate an adoption assistance payment, a recipient of adoption assistance benefits must be notified of the right to a contested case hearing.

- (2) If agreement cannot be reached between the Department and the adoptive family on the amount or type of benefits, the adoptive family has the right to request a contested case hearing within 30 days of receipt of notification of this right. Excluded from the right of appeal are special payments under OAR 413-130-0090.
- (3) Requests for a contested case hearing must be addressed in writing to the Adoption Program manager.
- (4) The Adoption Program manager or designee must ---
 - (a) Assure that the individual who requests the hearing receives a written statement that sets out the facts and the particular sections of the statutes and rules on which the Department based its initial decision; and
 - (b) Forward the contested case hearing request to the Office of Administrative Hearings (OAH).
- (5) Hearings will be conducted under Child Welfare Policy I-A.5.2.1, "Contested Cases".
- (6) The administrative law judge prepares and distributes a proposed order under Child Welfare Policy I-A.5.2.1, "Contested Cases" and according to any interagency agreement between the Department and OAH.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0125

Budgetary Reductions of Adoption Assistance

Once a child is adopted and determined to be eligible for Title IV-E adoption assistance, an adoption assistance payment may not be adjusted automatically without the agreement of the adoptive family for any reason. This includes any statewide reduction in foster care base rates and adoption assistance payments made for budgetary reasons.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

413-130-0130

Post Finalization Applications for Adoption Assistance

- (1) An adoptive family may request the opportunity to apply for adoption assistance after the adoption has been finalized based on the following extenuating circumstances:

- (a) Relevant facts regarding the child, the biological family, or child's background were known, but not shared with adoptive parents prior to legalization;
 - (b) Adoption assistance was denied based on an assessment of the financial need of the adoptive family and the adoptive family's financial need has changed;
 - (c) Determination was made by the state that a child was ineligible for assistance, but information becomes known which indicates it would be appropriate to review this determination; or
 - (d) Failure by the state to advise the adoptive family of a special needs child of the availability of adoption assistance.
- (2) An adoptive family must submit a written request to the Department's adoption assistance coordinator indicating the desire to apply for adoption assistance after an adoption has been legally finalized.
- (3) Upon receipt of the written request, the Adoption Program staff determine, within thirty days, whether the child meets Title IV-E eligibility requirements.
- (4) When an adoptive family requests that the Department provide historic information regarding the child to determine eligibility for adoption assistance, the Department may obtain non-identifying genetic, social, and health history information as provided by ORS 109.425 through 109.507. In addition, the Department may request a court order to review the sealed adoption file.
- (a) If it is determined that a child meets Title IV-E eligibility requirements, federal policy requires a contested case hearing be held before the state may provide adoption assistance benefits:
 - (A) The Department's adoption assistance coordinator must write a summary of the situation and submit a hearing request form and appropriate documentation to the Office of Administrative Hearings within 45 days of receipt of the adoptive parent request for a contested case hearing.
 - (B) An adoptive family has the burden of proof to show that extenuating circumstances exist. The Department may provide corroborating facts to the adoptive family or the administrative law judge.
 - (C) The contested case hearing will be conducted under Child Welfare Policy I-A.5.2.1, "Contested Cases".
 - (b) If a post legal contested case hearing decision finds that extenuating circumstances exist, an adoption assistance application may be signed, effective the date of the contested case hearing.

- (5) If it is determined that a child does not meet Title IV-E eligibility requirements, the Department's adoption assistance coordinator must prepare information for the Adoption Program manager's review including information submitted by the adoptive family and information from Department records. The Adoption Program manager decides if extenuating circumstances under section (1) of this rule exist which justify accepting an adoption assistance application from the adoptive family.
- (a) A written finding will be sent to the adoptive family within 30 days.
 - (b) If the Adoption Program manager finds that extenuating circumstances do not exist, the adoptive family may request a contested case hearing under OAR 413-130-0120. The administrative law judge in such a hearing reviews whether extenuating circumstances exist so that the adoptive family may submit an application for adoption assistance. Whether the adoption assistance application is approved is a separate determination by the Department.
- (6) If the decision, through 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, and the adoption assistance application results in the award of adoption assistance:
- (a) The adoption assistance payments (in the form of a one time lump sum payment) may not be retroactive for more than 12 months from the date of the signed adoption assistance application; and
 - (b) If after negotiation, the adoptive family does not agree with the amount negotiated, the family may appeal the decision under OAR 413-130-0120.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340