



PERMANENT ADMINISTRATIVE ORDER

CWP 113-2018

CHAPTER 413
DEPARTMENT OF HUMAN SERVICES
CHILD WELFARE PROGRAMS

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RULES:

413-020-0000, 413-020-0200, 413-020-0230, 413-070-0000, 413-070-0917, 413-070-0959, 413-070-0964, 413-070-0969, 413-070-0974, 413-130-0000, 413-130-0050, 413-130-0070, 413-130-0075, 413-130-0110, 413-130-0112, 413-130-0125

AMEND: 413-020-0000

REPEAL: Temporary 413-020-0000 from CWP 102-2018

RULE TITLE: Definitions

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Adjusting CANS Screening definition to be consistent across divisions.

RULE TEXT:

The following definitions apply to OAR chapter 413, division 20.

(1) "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.

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

(3) "Age-appropriate or developmentally appropriate activities" means:

(a) Activities or items that are generally accepted as suitable for children or young adults of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child or young adult, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and

(b) In the case of a specific child or young adult, activities or items that are suitable for the child based on the developmental stages attained by the child or young adult with respect to the cognitive, emotional, physical, and behavioral capacities of the child or young adult.

(4) "BRS" means Behavior Rehabilitation Services, a Medicaid-funded program that provides behavioral intervention,

counseling, or skill building services in a professional, shelter, or residential (including therapeutic foster care formerly referred to as proctor care) placement setting.

(5) "CANS screener" means an individual, who performs CANS screenings under the supervision of the Level of Care Manager or designee, and who annually completes the training in the use of the Oregon CANS Comprehensive Screening Tool with a documented reliability score of 0.70 or greater.

(6) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on the needs and strengths of a child or young adult:

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

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

(c) To determine if a child or young adult qualifies for a level of care payment for the purpose of negotiating or renegotiating an adoption assistance or guardianship assistance payment.

(7) "CANS rescreen" means a type of CANS screening that is completed when a child or young adult is living with a certified family and the certified family has observed ongoing, documented changes in behavior or functioning which:

(a) Have not improved after a revision of the supervision actions and activities provided by the certified family and other individuals, and the last CANS screening was completed more than 90 days prior to the rescreen referral date; or

(b) Endanger the safety of the child or young adult or the safety of others and the last CANS screening was completed more than 90 days prior to the rescreen referral date; or

(c) The child or young adult has undergone a major life event or transition.

(8) "Caseworker" means the agency staff person assigned primary responsibility for a child or young adult served by the Department.

(9) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which he or she resides, to a child or young adult in the care or custody of the Department.

(10) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster care home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

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

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

(13) "Designated Consultant Neonatologist" means a neonatologist whose services are available to Child Welfare to review medical information and consult with Child Welfare and other experts deemed necessary in cases of suspected medical neglect.

(14) "Designated hospital liaison" means an individual, usually the hospital administrator, designated by each respective hospital to assist Child Welfare with coordination, consultation, and prompt notification of suspected cases of medical neglect.

(15) "Disabled infant" means a child of less than one year of age having a physical or mental impairment which may substantially limit one or more major life functions such as breathing, seeing, hearing, walking, caring for one's self, performing manual tasks, learning, and working.

(16) "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.

(17) "Foster parent" means an individual who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(18) "Guardian" means an individual who has been granted guardianship of the child through a judgment of the court.

(19) "Guardianship assistance" means assistance provided on behalf of an eligible child or young adult to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the child or young adult. "Guardianship

assistance" may be in the form of payments, medical coverage, or reimbursement of nonrecurring guardianship expenses.

(20) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the guardian 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 guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(21) "Hospital Review Committee (HRC)" is a committee established by a medical facility or hospital to offer counsel and review in cases involving a disabled infant with life-threatening conditions.

(22) "Indian child" means any unmarried person who is under age 18 and either:

(a) Is a member or citizen of an Indian tribe; or

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.

(23) "Legal custodian" means a person, agency, or institution with legal custody of a child and all of the following duties and authority:

(a) To have physical custody and control of a child.

(b) To supply the child with food, clothing, shelter, and incidental necessities.

(c) To provide the child with care, education, and discipline.

(d) To authorize ordinary medical, dental, psychiatric, psychological, and other remedial care or treatment for the child and, in an emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care.

(e) To make such reports and to supply such information as the court may require.

(f) To apply for any benefits to which the child is entitled and to use them to pay for the child's care.

(24) "Legal custody" means that a person or agency has legal authority:

(a) To have physical custody and control of a child;

(b) To supply the child with food, clothing, shelter and other necessities;

(c) To provide the child with care, education and discipline;

(d) To authorize medical, dental, psychiatric, psychological, hygienic or other remedial care or treatment for the child, and in any emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care; and

(e) "Legal custody" includes temporary custody of a child under an order of a court.

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

(26) "Mechanical restraint" means the use of any physical device to involuntarily restrain the movement of all or a portion of a child's body as a means of controlling his or her physical activities in order to protect the child or other persons from injury. "Mechanical restraint" does not apply to movement restrictions stemming from medicinal, dental, diagnostic, or surgical procedures which are based on widely accepted, clinically appropriate methods of treatment by qualified professionals operating within the scope of their licensure.

(27) "Medical neglect" means the failure to provide adequate medical care, including the withholding of medically indicated treatment, from a disabled infant with life-threatening conditions.

(28) "Medical Neglect Investigator" means Child Welfare staff designated and trained to provide consultation and complete investigations of alleged medical neglect reports.

(29) "Medically indicated treatment" means treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's reasonable medical judgment, is most likely to be effective in amelioration or correcting a life-threatening condition. It does not include the failure to provide treatment other than nutrition, hydration, or medication to an infant when, in the treating physician's reasonable medical judgment, any of the following circumstances apply:

- (a) The infant is chronically irreversibly comatose.
- (b) The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of survival of the infant.
- (c) The provisions of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.
- (30) "Participating tribe" means a federally-recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.
- (31) "Permanent custody" means legal custody of a child:
- (a) Who has been permanently committed to the Department by the juvenile court after parental rights have been terminated under ORS 419B.527; or
- (b) Who has been released and surrendered to the Department by the parents under ORS 418.270.
- (32) "Physical custodian" means a person or agency, including a child's legal or biological parent, a relative, foster parent, adoptive parent, or a licensed child-caring agency who is authorized by the Department to provide a residence and day-to-day care for a child who is in the legal custody of the Department.
- (33) "Physical restraint" means the act of restricting a child or young adult's voluntary movement as an emergency measure to manage and protect the child or young adult or others from injury when no alternate actions are sufficient to manage the child or young adult's behavior. "Physical restraint" does not include temporarily holding a child or young adult to assist him or her or assure his or her safety, such as preventing a child from running onto a busy street.
- (34) "Potential guardian" means an individual who:
- (a) Has been approved by the Department or participating tribe to be a child's guardian; and
- (b) Is in the process of legalizing the relationship to the child through the judgment of the court.
- (35) "Pre-adoptive family" means an individual or individuals who:
- (a) Has been selected to be a child's adoptive family; and
- (b) Is in the process of legalizing the relationship to the child through the judgment of the court.
- (36) "Reasonable and prudent parent standard" means the standard, characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child or young adult while encouraging the emotional and developmental growth of the child or young adult, that a substitute care provider shall use when determining whether to allow a child or young adult to participate in extracurricular, enrichment, cultural, and social activities.
- (37) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- (38) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.
- (39) "Seclusion" means the involuntary confinement of a child alone in a specifically designed room from which the child is physically prevented from leaving.
- (40) "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.
- (41) "Supervision plan" means a documented set of strategies that is developed to assist a relative caregiver or foster parent in providing the additional support, observation, direction, and guidance necessary to promote and ensure the safety and well-being of a child or young adult.
- (42) "Voluntary custody" means legal custody given to the Department, by written agreement, by a parent or guardian of a child.
- (43) "Voluntary Custody Agreement" means a written agreement between the Department and the parent or guardian of a child, which transfers legal custody to the Department; the Department assumes all parental authority and responsibilities that the agreement does not specifically reserve to the parents or guardians, as permitted by state law; and the Department provides the child substitute care or treatment, or both, if the family falls within a circumstance described in OAR 413-020-0010(2)(a)-(c).
- (44) "Voluntary Placement Agreement" means a binding, written agreement between the Department and the parent or

guardian of a child that does not transfer legal custody to the Department but that specifies, at a minimum, the legal status of the child and the rights and obligations of the parent or guardian, the child, and the Department while the child is in placement.

(45) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening condition.

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

STATUTORY/OTHER AUTHORITY: ORS 418.005

STATUTES/OTHER IMPLEMENTED: ORS 109.056, ORS 418.015, ORS 418.270, ORS 418.275, ORS 418.280, ORS 418.285

AMEND: 413-020-0200

REPEAL: Temporary 413-020-0200 from CWP 102-2018

RULE TITLE: Purpose

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Adjusting language to clarify negotiation or renegotiation of assistance after a CANS screening.

RULE TEXT:

The purpose of OAR 413-020-0200 to 413-020-0255, is to describe the responsibilities of the Department to:

- (1) Identify the supervision needs of a child or young adult in substitute care with a certified family;
- (2) Develop a supervision plan describing the actions and activities provided by a certified family, the Department, and other individuals to meet the child or young adult's need for enhanced supervision;
- (3) Describe the responsibilities of the certified family and the Department when physical restraint is used;
- (4) Monitor the completion of behavior and crisis management training when physical restraint is included in a child or young adult's supervision plan; and
- (5) Conduct a CANS screening to determine the child's or young adult's eligibility for a level of care payment for the purpose of negotiating or renegotiating guardianship assistance pursuant to OAR 413-070-0900 to 413-070-0974 or negotiating or renegotiating adoption assistance pursuant to OAR 413-130-0000 to 413-130-0130.

STATUTORY/OTHER AUTHORITY: ORS 418.005

STATUTES/OTHER IMPLEMENTED: ORS 418.005

AMEND: 413-020-0230

REPEAL: Temporary 413-020-0230 from CWP 102-2018

RULE TITLE: Referral for and Review of the CANS Screening

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Including situations in which a CANS screening referral may be submitted.

RULE TEXT:

(1) The Department must complete a CANS screening referral for a child or young adult in its legal custody:

(a) Within the first 21 days of a child's initial placement in substitute care with a certified family;

(b) When the child or young adult has continuously lived with a certified family, ten months from the date of the most recent CANS screening and annually thereafter, unless section (2) of this rule applies. Effective November 17, 2017, all children entering foster care and in the Department's legal custody, regardless of level of care, must be referred as described in this subsection; or

(c) Unless section (2) of this rule applies, five business days after a child or young adult, whose initial placement in substitute care was a BRS placement, moves to the home of a certified family.

(2) The caseworker of the child or young adult must consult with the Adoption Assistance and Guardianship Assistance Unit prior to submitting a CANS screening referral when a child's permanency plan is adoption or guardianship and the caseworker has submitted an adoption assistance application or a guardianship assistance application.

(3) The caseworker of the child or young adult may, after consultation with and approval by a supervisor, complete and submit to the Level of Care Manager or designee, a CANS screening referral when a child or young adult returns to a placement with a certified family after a BRS placement of six months or longer, unless section (2) of this rule applies.

(4) If the caseworker of the child or young adult determines that a CANS rescreen is necessary, the caseworker may, after consultation with and approval by a supervisor, complete and submit to the Level of Care Manager or designee, a CANS rescreen referral.

(5) An adoption assistance coordinator or guardianship assistance coordinator may complete and submit a CANS screening referral to the Level of Care Manager or designee under the following circumstances:

(a) Written documentation of the current behavior and functioning of the child or young adult has been submitted to the adoption assistance or guardianship assistance coordinator by one of the following individuals:

(A) An adoptive family of the child or young adult, regardless of whether there has been a previous CANS screening;

(B) A child's pre-adoptive family when the child is not in the legal custody of the Department;

(C) A guardian of the child or young adult, regardless of whether there has been a previous CANS screening; or

(D) A potential guardian of the child or young adult who has been approved by a participating tribe.

(b) The written documentation submitted under subsection (a) of this section demonstrates ongoing behaviors and functioning which have not improved with recommended behavioral interventions, counseling or other professional services and one of the following apply:

(A) A CANS screening has never been completed;

(B) A CANS screening has not been completed within the past twelve months; or

(C) The child or young adult exhibits a significant, ongoing change in behavior or functioning since the CANS screening that was completed within the last 12-month period; and

(c) The adoptive family or guardian has requested a renegotiation of the adoption assistance or guardianship assistance payment.

(6) The Level of Care Manager, or designee, within five business days of receipt of a CANS screening referral submitted under section (3) or (4) of this rule:

(a) May approve a CANS screening after reviewing the referral, if the child or young adult's behavior and functioning, as described in the referral, indicate a CANS screening is needed to assess the need for enhanced supervision and a level of care payment;

(b) Must notify the individual who submitted the CANS screening referral whether a CANS screening has been

approved and the basis for the decision; and

(c) If the referral is approved, must send the approved CANS screening referral to a CANS screener.

(7) A CANS screener, upon receipt of the CANS screening referral submitted under section (1), (2) or (3) of this rule must:

(a) Review the referral information;

(b) Contact the caseworker, when the child is in substitute care, to gather information about the child or young adult's strengths and needs;

(c) Contact the certified family, pre-adoptive family, adoptive family, potential guardian identified by a participating tribe, or guardian of the child or young adult and gather information about the child or young adult's strengths and needs;

(d) Contact the child or young adult and other individuals who provide services to the child or young adult as appropriate and gather sufficient information to understand the child or young adult's strengths and needs to complete the CANS screening; and

(e) When a child or young adult has current suicidal ideation or intent:

(A) Notify the child or young adult's caseworker or adoption or guardianship assistance coordinator and, if applicable, notify the pre-adoptive family, adoptive family, potential guardian, or guardian; and

(B) Immediately develop a supervision plan with the certified family when the child or young adult is in substitute care with a certified family.

(8) After the CANS screener has gathered information regarding the child or young adult's strengths and needs, as described in subsections (6)(a)-(d), the CANS screener rates each element of a child or young adult's behavior and functioning on a scale of zero to three, in a manner consistent with the principles of the Child and Adolescent Needs and Strengths Comprehensive Screening Tool appropriate for the child or young adult's age. The CANS screener documents the appropriate rating for each element and provides written explanation for any rating of either two or three on an element that is a need and any rating of zero or one on an element that is a strength.

(a) When the child is five years old or younger, the CANS screener rates the child using the DHS 9601 - Child and Adolescent Needs and Strengths Comprehensive Screening Tool Ages Birth through Five, dated November 2017, which by reference is incorporated in OAR 413-090-0010(2)(f)(A).

(b) When the child or young adult is six years old or older, the CANS screener rates the child or young adult using the DHS 9602 - Child and Adolescent Needs and Strengths Comprehensive Screening Tool ages Six through Twenty dated November 2017, which by reference is incorporated in OAR 413-090-0010(2)(f)(B).

(c) The Department maintains these documents on the Department's website. Printed copies of these documents may be obtained by contacting the Department of Human Services, Child Welfare, ATTN: Level of Care Manager, 500 Summer Street NE, E-93, Salem, OR 97301.

(9) The CANS screener must complete the activities in sections (6) and (7) and submit the CANS screening results to the Level of Care Manager or designee within 15 business days following the receipt of the referral.

(10) Within 10 business days of the receipt of the CANS screening results, the Level of Care Manager or designee:

(a) Reviews the CANS screening results;

(b) Contacts the CANS screener when results appear inconsistent with the referral information or documentation of a child or young adult's strengths and needs and may instruct the CANS screener to:

(A) Gather additional information;

(B) Reapply the CANS ratings; and

(C) Resubmit the CANS screening results.

(c) Approves the CANS screening results unless subsection (b) applies; and

(d) Applies the CANS algorithm which by reference is incorporated in OAR 413-090-0010(2)(f)(C) to the approved CANS screening results to determine whether:

(A) The child or young adult living with a certified family is eligible for a level of care payment and requires enhanced supervision; or

- (B) The child or young adult eligible for adoption assistance or guardianship assistance qualifies for a level of care payment for the purpose of negotiating or renegotiating an adoption assistance or guardianship assistance payment.
- (11) The Level of Care Manager or designee may approve a revision of the ratings of an approved CANS screening when new or different information relevant to the correct application of the CANS screening has been presented:
- (a) In preparation for a contested case hearing requested under OAR 413-010-0500(2)(a)-(c):
 - (b) During an informal conference under OAR 413-010-0520; or
 - (c) During the renegotiation of an adoption assistance agreement under OAR 413-130-0075 or a guardianship assistance agreement under OAR 413-070-0969.
- (12) The Level of Care Manager or designee sends the CANS screening results to the following individuals:
- (a) The child or young adult's caseworker and the certified family, with whom the child or young adult is living, on behalf of the child or young adult; or
 - (b) The adoption assistance and guardianship assistance coordinator and child or young adult's pre-adoptive family, adoptive family, guardian or the potential guardian identified by a participating tribe.
- (13) When the caseworker receives a child or young adult's CANS screening results, the caseworker must:
- (a) Contact the certified family to review the CANS screening results;
 - (b) When the CANS screening results indicated the child or young adult currently has suicidal ideation or intent, review the supervision plan developed during the CANS screening no later than one business day after the receipt of the CANS screening results to determine whether the plan continues to be appropriate;
 - (c) Incorporate the needs and strengths identified in the CANS screening into the case plan; and
 - (d) Determine whether a supervision plan must be developed, modified, or terminated under OAR 413-020-0233 and 413-020-0236.

STATUTORY/OTHER AUTHORITY: ORS 418.340, ORS 418.005

STATUTES/OTHER IMPLEMENTED: ORS 418.340, ORS 418.005, ORS 418.330, ORS 418.335

AMEND: 413-070-0000

REPEAL: Temporary 413-070-0000 from CWP 102-2018

RULE TITLE: Definitions

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Correcting the definition of CANS screening, current caretaker and parent.

RULE TEXT:

The following definitions apply to OAR chapter 413, division 70.

- (1) "Adoption" means a legal or administrative process that establishes a permanent legal parent-child relationship between a child and an adult who is not already the child's legal parent and terminates the legal parent-child relationship between the adopted child and any former parent.
- (2) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.
- (3) "Affected family members" means biological and legal parents, extended family members, and any person within the fifth degree of consanguinity to the child.
- (4) "Age-appropriate or developmentally appropriate activities" means:
 - (a) Activities or items that are generally accepted as suitable for children or young adults of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child or young adult, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and
 - (b) In the case of a specific child or young adult, activities or items that are suitable for the child or young adult based on the developmental stages attained by the child or young adult with respect to the cognitive, emotional, physical, and behavioral capacities of the child or young adult.
- (5) "Antipsychotic medication" means a medication, specified in class 28:16:08 by the American Hospital Formulary Service, used to treat psychosis and other conditions.
- (6) "APPLA" means Another Planned Permanent Living Arrangement, a permanency plan for a stable secure living arrangement for a child who has reached the age of 16 or young adult that includes building relationships with significant people in the child's life that may continue after substitute care. APPLA is the least preferred permanency plan of the five permanency plans for a child or young adult and is appropriate only after the permanency plans of reunification, adoption, guardianship, and placement with a fit and willing relative have been determined not in the best interests of a child or young adult.
 - (a) "Planned" means the arrangement is intended, designed, and deliberate.
 - (b) "Permanent" means enduring and stable.
- (7) "Assessment" means the determination of a child or young adult's need for mental health services through interviewing the child or young adult and obtaining all pertinent medical and psychosocial history information from the individual, family, and collateral sources. The "assessment:"
 - (a) Addresses the current complaint or condition presented by the child or young adult;
 - (b) Determines a diagnosis; and
 - (c) Provides treatment direction and individualized services and supports.
- (8) "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 special or unique nutritional needs of the child or young adult;
 - (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 appropriate for the age of the child or young adult;

- (e) Personal incidentals, including personal care items, entertainment, reading materials, and miscellaneous items; and
- (f) Transportation, including gas, oil, and vehicle maintenance and repair costs for local travel associated with providing the items listed above, and transportation to and from extracurricular, child care, recreational, and cultural activities.
- (9) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on the needs and strengths of a child or young adult:
- (a) To identify case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family;
- (b) To determine the level of care payment while in substitute care with a certified family; and
- (c) To determine if a child or young adult qualifies for a level of care payment for the purpose of negotiating or renegotiating an adoption assistance or guardianship assistance payment.
- (10) "Caregiver relationship" means a relationship between a person and a child or young adult that meets all of the following requirements:
- (a) The relationship has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child's life if the child is less than six months of age. A "caregiver relationship" does not include a relationship between a child or young adult and a person who is an unrelated foster parent of the child or young adult unless the relationship continued for a period of at least twelve consecutive months.
- (b) The person had physical custody of the child or young adult or resided in the same household as the child or young adult and provided the child or young adult on a daily basis with the love, nurturing, and other necessities required to meet the psychological and physical needs of the child or young adult.
- (c) The child or young adult depended on the relationship to meet the needs of the child or young adult.
- (11) "CASA" means a court appointed special advocate: a volunteer who is appointed by the court, is a party to the juvenile proceeding, and advocates for the child pursuant to ORS 419B.112.
- (12) "Certificate of Approval" means a document that the Department issues to approve the operation of a child-specific relative caregiver home, child-specific foster home, pre-adoptive home, or a regular foster home.
- (13) "Child" means a person under 18 years of age.
- (14) "Child-family contact" means communication between the child or young adult and family and includes, but is not limited to, visitation with the child or young adult, participation in the child or young adult's activities, and appointments, phone calls, e-mail, and written correspondence.
- (15) "Child's home" means the home from which the child is removed under the provisions of ORS 419B.150.
- (16) "Committee facilitator" means a Department staff member appointed as a member of the committee to facilitate a permanency or adoption committee meeting.
- (17) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The "concurrent permanent plan" is developed simultaneously with the plan to return the child to the parents or legal guardians.
- (18) "Conditions for return" means a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan.
- (19) "Cultural heritage" means the language, customary beliefs, social norms, and material traits including, but not limited to, the dress, food, music, and dance of a racial, religious, or social group that are transmitted from one generation to another.
- (20) "Current caretaker" means a foster parent who:
- (a) Is currently caring for a child in the care and custody of the Department and has a permanency plan or concurrent permanent plan of adoption; and
- (b) Has cared for the child or at least one sibling of the child for at least 12 months or for one-half of the child's or sibling's life if the child or sibling is younger than two years of age. Time spent caring for the child or sibling under this definition is calculated cumulatively.
- (21) "Department" means the Department of Human Services, Child Welfare.

- (22) "Designee" means a person who the designator directly and immediately supervises or a person with equal or greater management responsibility than the designator.
- (23) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of the child or young adult when the child or young adult qualifies for a level of care payment.
- (24) "Entity" means any organization or agency including, but not limited to a private child placing agency, that is separate and independent of the Department, performs functions pursuant to a contract or subcontract with the Department, and receives federal funds.
- (25) "Extended family member" means a person ordinarily recognized as the refugee child's parent by the custom of the child's culture, or a person 18 years of age or older who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.
- (26) "Family member" means any person related to the child or young adult by blood, marriage, or adoption, including, but not limited to the parents, grandparents, stepparents, aunts, uncles, sisters, brothers, cousins, and great-grandparents. "Family member" also includes the registered domestic partner of a person related to the child, a child 12 years of age or older, and when appropriate, a child younger than 12 years of age. Under the Indian Child Welfare Act (ICWA), "family member" has the meaning given by the law or custom of the child's tribe.
- (27) "Fit and willing relative" means an individual who meets the eligibility criteria in OAR 413-070-1010.
- (28) "Foster care agency" means a private child-caring agency that offers to place children by taking physical custody of and then placing the children in a home certified by the agency.
- (29) "Foster care placement" means any action removing, or which could result in the removal of, a child from his or her parent or Indian custodian, such as court-ordered supervision in the home, for placement in foster care, with a guardian, or in an institution where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated.
- (30) "Foster parent" means an individual who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.
- (31) "General applicant" means an individual who:
- (a) Is neither a relative or current caretaker; and
 - (b) Has submitted a completed application to adopt a child.
- (32) "Grandparent" for purposes of notification, visitation, contact, or communication ordered by the court under ORS 419B.876 means the legal parent of the child or young adult's legal parent, regardless of whether the parental rights of the child's or young adult's legal parent have been terminated under ORS 419B.500 to 419B.524.
- (33) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.
- (34) "Guardianship assistance" means assistance provided by the Department to the guardian on behalf of an eligible child or young adult to offset costs associated with meeting the ongoing needs of the child or young adult. "Guardianship assistance" may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.
- (35) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.
- (36) "Guardianship assistance agreement only" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian of an eligible child or young adult, when the potential guardian or guardian is not receiving a guardianship assistance payment or medical coverage at the time of the agreement but may request it at a later date.
- (37) "Guardianship assistance payment" means a monthly payment made by the Department to the guardian on behalf of the eligible child or young adult.
- (38) "Guardianship Assistance Review Committee" means a committee composed of local and central office

Department staff with expertise in the area of guardianship.

(39) "ICWA" means the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901-63.

(40) "Impending danger safety threat" means a family behavior, condition, or circumstance that meets all five safety threshold criteria. When it is occurring, this type of threat to a child is not immediate, obvious, or occurring at the onset of the CPS intervention. This threat is identified and understood more fully by evaluating and understanding individual and family functioning.

(41) "Incapacity" means a physical or mental illness, or impairment that reduces substantially or eliminates the individual's ability to support, care for, or meet the needs of the child and is expected to be permanent.

(42) "Independent living housing subsidy" means a payment to assist in covering the cost of room, board, or other monthly expenses made to an eligible individual who is at least 16 years of age and is in the care and custody of the Department and living independently.

(43) "Indian" means any person who is a member of or eligible for membership in an Indian tribe or who is an Alaskan native and a member of a Regional Corporation as defined in 43 USC section 1606.

(44) "Indian child" means any unmarried person who is under age 18 and either:

(a) Is a member or citizen of an Indian tribe; or

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.

(45) "Indian child's tribe" means the Indian tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member or eligible for membership in more than one Indian tribe, it is the Indian tribe with which the Indian child has the most significant contacts.

(46) "Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996" ("IEPA") means section 1808 of the act which is entitled "Removal of Barriers to Interethnic Adoption", and affirms and strengthens the prohibition against discrimination in adoption or foster care placements, and is codified in 42 USC section 671(a)18.

(47) "Legal assistance specialist" means an Adoption Program staff member who provides consultation on the technical and legal processes to achieve a permanency plan for a child in the legal custody of the Department.

(48) "Level of care payment" means the payment provided to an approved or certified family based on the need for enhanced supervision of a child or young adult determined by applying the CANS algorithm to the results of the CANS screening.

(49) "Licensed medical professional" means an individual who meets the criteria of both of the following subsections:

(a) The individual holds at least one of the following valid licensures or certifications:

(A) Physician licensed to practice in the State of Oregon;

(B) Nurse practitioner certified by the Oregon State Board of Nursing under ORS 678.375; or

(C) Physician assistant licensed to practice in the State of Oregon.

(b) The individual's training, experience, and competence demonstrate expertise in children's mental health, the ability to conduct a mental health assessment, and the ability to provide psychotropic medication management for children and young adults.

(50) "Medically accepted indication," defined in ORS 418.517, means any use for a covered outpatient drug that is approved under the Federal Food, Drug and Cosmetic Act, or recommended by the Pharmacy and Therapeutics Committee, or the use of which is supported by one or more citations included or approved for inclusion in any of the following compendia:

(a) American Hospital Formulary Services drug information;

(b) United States Pharmacopoeia drug information or any successor publication;

(c) The DRUGDEX Information System; or

(d) Peer-reviewed medical literature.

(51) "Multiethnic Placement Act of 1994" means federal statutes which prohibit discrimination based on race, color, or national origin as considerations in adoption and foster placements.

(52) "Nonrecurring guardianship assistance agreement" means a written agreement, binding on the parties to the

agreement, between the Department and the potential guardian of an eligible child for a one-time payment to reimburse the guardian for the reasonable and necessary expenses incurred in legally finalizing the guardianship.

(53) "Nonrecurring guardianship expenses" means a one-time payment of up to \$2,000 per child that the Department will make to a guardian to assist with the reasonable and necessary expenses associated with obtaining legal guardianship of an eligible child.

(54) "Office of Developmental Disabilities Services" means the Department of Human Services, Office of Developmental Disabilities Services.

(55) "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 416.610, or by a juvenile court. In cases involving an Indian child under the ICWA, parent means any biological parent of an Indian child, or any Indian who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include an unwed biological father where paternity has not been acknowledged or established. "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.

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

(57) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or a potential permanency resource when the child or young adult likely is not returning to his or her parent.

(58) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child or young adult. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume responsibility for the child or young adult during the remaining years of dependency and be accessible and supportive to the child or young adult in adulthood.

(59) "Permanent foster care" means the out of home placement of a child or young adult in which there is a long-term foster care agreement between each substitute caregiver and the Department approved by the juvenile court under which the substitute caregiver commits to raise a child in substitute care until the age of majority and be accessible to and supportive of the child into adulthood, until the court determines that APPLA - "permanent foster care" is no longer the appropriate permanency plan for the child or young adult.

(60) "Potential guardian" means an individual who:

- (a) Has been approved by the Department or participating tribe to be the guardian of a child; and
- (b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(61) "Provider" means an individual approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(62) "Psychotropic medication," defined in ORS 418.517, means medication, the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including, but not limited to antipsychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

(63) "Qualified mental health professional" means an individual who meets the requirements of both of the following subsections:

(a) Holds at least one of the following educational degrees:

- (A) Graduate degree in psychology;
- (B) Bachelor's degree in nursing and is licensed by the state of Oregon;
- (C) Graduate degree in social work;
- (D) Graduate degree in a behavioral science field;

- (E) Graduate degree in recreational, art, or music therapy; or
- (F) Bachelor's degree in occupational therapy and is licensed by the State of Oregon.
- (b) Whose education and experience demonstrates the competencies to:
 - (A) Identify precipitating events;
 - (B) Gather histories of mental and physical disabilities, alcohol and drug use, past mental health services, and criminal justice contacts;
 - (C) Assess family, social, and work relationships;
 - (D) Conduct a mental status examination;
 - (E) Document a multiaxial DSM diagnosis;
 - (F) Develop and supervise a treatment plan;
 - (G) Conduct a mental health assessment; and
 - (H) Provide individual, family, or group therapy within the scope of his or her practice.
- (64) "Race" means American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, White.
- (65) "RCWAC" means the Refugee Child Welfare Advisory Committee.
- (66) "Reasonable and prudent parent standard" means the standard, characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child or young adult while encouraging the emotional and developmental growth of the child or young adult, that a substitute care provider shall use when determining whether to allow a child or young adult in substitute care to participate in extracurricular, enrichment, cultural, and social activities.
- (67) "Refugee child" has the meaning given the term in ORS 418.925.
- (68) "Registered domestic partner" means an individual joined in a domestic partnership that is registered by a county clerk in accordance with ORS 106.300 to 106.340.
- (69) "Relative" means any of the following:
 - (a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:
 - (A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.
 - (B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great. Individuals with one common biological parent are half-blood relatives.
 - (C) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.
 - (D) A spouse of anyone listed in paragraphs (A) to (C) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.
 - (b) An individual with one of the following relationships to the child or young adult:
 - (A) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.
 - (B) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.
 - (C) An individual defined as a relative of a refugee child or young adult under OAR 413-070-0300 to 413-070-0380.
 - (D) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.
 - (E) A registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.
 - (F) The adoptive parent or an individual who has been designated as the adoptive resource of a sibling of the child or young adult.
 - (G) An unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of

the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (C) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult;
and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (A) to (C) of subsection (a) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(70) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(71) "Safety service provider" means a participant in a protective action plan, initial safety plan, or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.

(72) "Sibling" means one of two or more children or young adults who are related, or would be related but for a termination or other disruption of parental rights, in one of the following ways:

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

(b) Through the marriage of the legal or biological parents of the children or young adults; 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.

(73) "Special immigrant juvenile status" means a legal process to obtain lawful permanent resident status for a child who does not have lawful permanent resident status because he or she entered the United States without inspection and who meets the other criteria required by federal law.

(74) "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.

(75) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(76) "Successor legal guardian" means an individual who has been named in the guardianship assistance agreement, including any amendments to the agreement, as a replacement legal guardian in the event of the death or incapacity of the guardian.

(77) "Supervised visit" means a child-family contact that includes a designated third party to protect the emotional and physical safety of a child or young adult.

(78) "Title VI of Civil Rights Act of 1964" prohibits discrimination on the basis of race, color or national origin under programs receiving federal assistance through the United States Department of Health and Human Services.

(79) "Tribal court" means the court which holds jurisdiction over Indian child custody proceedings and is either a Court of Indian Offenses, a court established and operated under code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(80) "Urgent medical need" means the onset of psychiatric symptoms requiring professional attention within 48 hours to prevent a serious deterioration in a child or young adult's mental or physical condition.

(81) "Visit" means planned, in-person contact between the child or young adult and one or more family members.

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

STATUTORY/OTHER AUTHORITY: ORS 418.005

STATUTES/OTHER IMPLEMENTED: ORS 418.005, ORS 419A.004

AMEND: 413-070-0917

REPEAL: Temporary 413-070-0917 from CWP 102-2018

RULE TITLE: Eligibility for Guardianship Assistance

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Clarifying eligibility for Title IV-E guardianship assistance.

RULE TEXT:

(1) To be eligible for Title IV-E guardianship assistance, a child must meet all of the following:

- (a) Be a United States citizen or qualified non-citizen as described in OAR 413-100-0210 and in 8 USC section 1641(b) or (c).
- (b) Be placed in the United States or a possession thereof.
- (c) Have resided in the home of the potential guardian for a period of at least six consecutive months during which the potential guardian was fully licensed, certified, or approved by the state or a participating tribe as meeting the licensure or certification requirements for a foster family home in the state where the home is located.
- (d) Be placed with the potential guardian who meets the relative definition as described in OAR 413-070-0000(69)(a) to (e).
- (e) Demonstrate a strong attachment to the potential guardian.
- (f) Be removed from his or her home pursuant to a voluntary placement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.
- (g) Be eligible for Title IV-E foster care maintenance payments.
- (h) Be in the care or custody of the Department or participating tribe.
- (i) Be placed with a potential guardian who indicates an economic need to care for the child.

(2) Each sibling of a child or young adult eligible for Title IV-E guardianship assistance is also eligible for Title IV-E guardianship assistance when:

- (a) The sibling meets the eligibility requirements in subsections , (b) and (i) of section (1) of this rule;
- (b) The sibling is placed in a guardianship with the same potential guardian or guardian, whether the siblings are placed at the same time or not; and
- (c) The potential guardian or guardian and the Department or participating tribe agree that placing the child's sibling in the home of the potential guardian or guardian is appropriate.

(3) To be eligible for state-funded guardianship assistance, a child must:

- (a) Be ineligible for Title IV-E funded guardianship assistance;
 - (b) Except as provided in section (5) of this rule, meet the eligibility requirements in subsections (a) to (e) and (i) of section (1) of this rule; and
 - (c) Except as provided in section (5) of this rule, be in the care or custody of the Department.
- (4) Each sibling of a child or young adult eligible for state-funded guardianship assistance as described in section (3) of this rule is also eligible for state-funded guardianship assistance when:
- (a) The sibling is ineligible for Title IV-E foster care payments;
 - (b) The sibling meets the eligibility requirements in subsections (a) and (i) of section (1) of this rule;
 - (c) The sibling is placed in a guardianship with the same potential guardian or guardian, whether the siblings are placed at the same time or not; and
 - (d) The potential guardian or guardian and the Department agree that placing the child's sibling in the home of the potential guardian or guardian is appropriate.

(5) For state-funded guardianships, the Director of the Department may authorize a waiver of the eligibility requirements in subsections (1)(c) to (h) of this rule under the following circumstances:

- (a) The child has or had an open assessment or open case with the Department;
- (b) The Department recommends the guardianship be established to prevent the child from entering Oregon foster care or to expedite the child leaving Oregon foster care;

- (c) Pursuant to OAR 413-120-0440 to 413-120-0475, the guardian and all adults living in the home of the guardian have been approved through a Department-approved, fingerprint-based criminal records check of the National Crime Information Databases (NCID) and a Child Abuse and Neglect (CAN) registry check; and
- (d) The Department reviews known information regarding the guardian and all adults living in the home and determines they have the ability to meet the safety, well-being, and permanency needs of the child.
- (6) For consideration of guardianship assistance under section (5) of this rule, the Child Welfare Program Manager must submit a written recommendation to the Child Permanency Program Manager outlining why it is in the best interest of the child to receive guardianship assistance pursuant to section (5) of this rule.
- (7) When a recommendation outlined in section (6) of this rule is received, the Child Permanency Program Manager must submit it to the Director of the Department for review and consideration.
- (8) The child must be consulted regarding the guardianship arrangement when the child has attained 14 years of age.
- (9) In the event of the death or incapacity of the guardian, a child eligible for Title IV-E or state-funded guardianship assistance remains eligible if a successor legal guardian is named in the guardianship assistance agreement, including any amendments to the agreement, prior to the death or incapacity of the guardian, and the requirements of OAR 413-070-0925(2) are met.
- (10) All of the following must be documented in the child's case plan:
- (a) How the child meets the eligibility requirements.
 - (b) The steps the Department or participating tribe has taken to determine that return to the home or adoption is not appropriate.
 - (c) The efforts the Department or participating tribe has made to discuss adoption with the child's relative caregiver and the reasons adoption is not an option.
 - (d) The efforts the Department or participating tribe has made to discuss kinship guardianship with the child's parent or parents or the reasons why efforts were not made.
 - (e) The reason a permanent placement with a potential relative guardian and receipt of a kinship guardian assistance payment is in the child's best interests.
 - (f) The reasons for any separation of siblings during placement. If the child's placement with the potential relative guardian does not include siblings, the case plan must also include a description of the reasons the child is separated from siblings during placement.
- (11) A guardianship assistance agreement must be signed by the potential guardian and a Department representative before guardianship has been legally established by a state or participating tribal court.

STATUTORY/OTHER AUTHORITY: Or. Laws 2015, ch 840, ORS 409.050, ORS 418.005

STATUTES/OTHER IMPLEMENTED: Or. Laws 2015, ch 840, ORS 418.005, ORS 409.010, ORS 411.141

AMEND: 413-070-0959

REPEAL: Temporary 413-070-0959 from CWP 102-2018

RULE TITLE: Court Order of Guardianship

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Clarifying language surrounding which payments end upon court order of guardianship.

RULE TEXT:

(1) Except for guardianships established pursuant to OAR 413-070-0917(5), guardianship assistance may only be provided for a legal guardianship established under ORS 419B.365 or ORS 419B.366, as provided under ORS 419B.367 to 419B.369, or as provided by the statutory code or laws of a participating tribe.

(2) The Department or participating tribe may not pursue a court order establishing an assisted guardianship until a guardianship assistance agreement between the Department and the potential guardian has been signed by all parties.

(3) The Department or participating tribe, through counsel if the child is in the care or custody of the Department, must move the court for an order establishing the guardianship and, when the child is in the care or custody of the Department or participating tribe, directing one of the following:

(a) Termination of Department or participating tribe's care or custody and dismissal of the Department or participating tribe as a party to the case; or

(b) If the child has been committed permanently to the Department, an order setting aside the order of permanent commitment and relieving the Department of responsibility for the care, placement, and supervision of the child.

(4) The Department may not provide guardianship assistance if the court establishes guardianship but orders the Department or participating tribe to continue supervision of the child or guardian.

(5) Once the court signs the order of guardianship, the foster care base rate payment, any level of care payment, and any level of personal care payment provided by the Department end. If the guardian requests that medical assistance from the Department continue after the guardianship has been finalized, and the child is eligible, the Department may continue to provide medical assistance for the child.

STATUTORY/OTHER AUTHORITY: ORS 418.005, ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 411.141, ORS 418.005, ORS 409.010

AMEND: 413-070-0964

REPEAL: Temporary 413-070-0964 from CWP 102-2018

RULE TITLE: Required Reports and Communication

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Clarifying when to report changes in circumstances that make the child or young adult ineligible or eligible for a different amount for guardianship assistance.

RULE TEXT:

(1) A guardian receiving guardianship assistance must immediately report, orally or in writing, to the Adoption Assistance and Guardianship Assistance Unit any changes in circumstances of the child or young adult or guardian that makes the child or young adult ineligible for guardianship assistance including when:

(a) The child or young adult:

(A) Is emancipated;

(B) Dies;

(C) Marries;

(D) Is adopted; or

(E) Enlists in the military.

(b) The court:

(A) Vacates the guardianship; or

(B) Terminates wardship over the child or young adult, unless the guardianship is a tribal court guardianship and the guardianship remains in effect under tribal law.

(2) A guardian receiving guardianship assistance must immediately report, orally or in writing, to the Department's Adoption Assistance and Guardianship Assistance Unit any changes in circumstances of the child or young adult or guardian that may make the child or young adult ineligible for guardianship assistance or eligible for guardianship assistance in a different amount, including when:

(a) The child or young adult:

(A) Is out of the home of a guardian for more than a thirty-day period or, if more than one guardian, is out of the home of both guardians for more than a thirty-day period;

(B) Has a change in behavior and functioning that meets the eligibility requirements for a CANS screening referral in accordance with OAR 413-020-0230(5);

(C) Is placed in substitute care;

(D) Is no longer receiving financial support from a guardian or, if there is more than one guardian, both guardians;

(E) Is incarcerated for more than a thirty-day period; or

(F) Has a change in any benefit received other than tribal dividend payments.

(b) A guardian is, or if more than one guardian, both guardians are:

(A) No longer legally responsible for the financial support of the child or young adult;

(B) No longer responsible for the child or young adult; or

(C) No longer providing support to the child or young adult.

(c) A guardian seeks to terminate or modify the guardianship.

(d) The court:

(A) Modifies the guardianship, or

(B) Awards child custody or guardianship to another individual.

(3) A guardian receiving a guardianship assistance payment must immediately report, orally or in writing, to the Adoption Assistance and Guardianship Assistance Unit the following:

(a) When there are two guardians and one guardian dies, the surviving guardian must notify the Department.

(b) When there is a change in address.

(c) When a guardian, child, or young adult is planning to move from his or her state of residency.

(4) Guardians appointed under ORS 419B.367 are required to submit an annual report to the court within 30 calendar days after each annual anniversary of the court appointment of guardianship. Guardianships established under a tribal court may also have a requirement to send written reports to the court.

(5) The Department may:

(a) Send notification to a guardian of any court reports required under section (4) of this rule;

(b) Request a guardian to submit a copy of the court report to the Department;

(c) Notify the court or participating tribe of circumstances that may affect a child's eligibility for guardianship assistance; and

(d) Send inquiries to a guardian to ensure the child continues to be eligible for guardianship assistance.

(6) Guardians must respond to inquiries from the Adoption Assistance and Guardianship Assistance Unit within 30 calendar days or as required by the unit.

STATUTORY/OTHER AUTHORITY: ORS 418.005, ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 418.005, ORS 409.010, ORS 411.141

AMEND: 413-070-0969

REPEAL: Temporary 413-070-0969 from CWP 102-2018

RULE TITLE: Renegotiation of a Guardianship Assistance Agreement

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Adding clarifying language for CANS screenings documentation.

RULE TEXT:

- (1) A potential guardian or guardian may request that the Department consider renegotiation of the guardianship assistance agreement. The request for renegotiation must:
 - (a) Be in writing in a format provided by the Department to the potential guardian or guardian;
 - (b) Document changes in the circumstances of the potential guardian or guardian, when applicable;
 - (c) Document the needs of the child or young adult;
 - (d) Provide information about the financial expenses of the potential guardian or guardian in meeting the needs of the child or young adult;
 - (e) Provide information about the expenses required to meet the needs of the child or young adult; and
 - (f) If the potential guardian or guardian is requesting a CANS screening, provide written documentation of the child's or young adult's current behaviors and functioning that meet the eligibility requirements for a CANS screening referral under OAR 413-020-0230.
- (2) Renegotiation of the guardianship assistance payment will be conducted as described in OAR 413-070-0939.
- (3) The Department may require a renegotiation of the guardianship assistance agreement when the Department determines that the child or young adult is eligible for guardianship assistance in a different amount, as described in OAR 413-070-0974.
- (4) A new guardianship assistance agreement must be signed by all parties each time a new guardianship assistance payment is agreed upon by the potential guardian or guardian and the Department.
- (5) Unless section (6) of this rule applies, the Department may authorize a renegotiated guardianship assistance payment increase or decrease beginning on a date no earlier than the first day of the month in which the Department receives the written request for renegotiation.
- (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.

STATUTORY/OTHER AUTHORITY: ORS 418.005, ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 411.141, ORS 418.005, ORS 409.010

AMEND: 413-070-0974

REPEAL: Temporary 413-070-0974 from CWP 102-2018

RULE TITLE: Review, Adjustment, Suspension, Expiration, and Termination of Guardianship Assistance

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Adding clarifying language when the Department's obligation to provide assistance ends.

RULE TEXT:

(1) The Department may review a guardianship assistance agreement when the Department:

(a) Receives information indicating that the child or young adult may no longer be eligible for guardianship assistance or may be eligible for guardianship assistance in a different amount, including when the Department receives information regarding any of the circumstances described in OAR 413-070-0964;

(b) Determines, when the child or young adult is not residing in the home of the guardian, that a periodic review of the guardianship assistance agreement is required;

(c) Receives information that indicates a review is necessary based on a change in the needs of the child or young adult or circumstances of the family;

(d) Receives information that the young adult no longer meets the requirements for continued assistance, if the Department has agreed to extend guardianship assistance under OAR 413-070-0918; or

(e) Determines that the guardian has not complied with the requirements of the guardianship assistance agreement.

(2) Department review of a guardianship assistance agreement may result in a renegotiation, suspension, adjustment, or termination of the guardianship assistance agreement or guardianship assistance payments.

(3) Guardianship assistance may be adjusted at any time by mutual agreement between the guardian and the Department.

(4) When there is an across-the-board reduction or increase in the base rate payment or level of care payment that the child or young adult would be eligible to receive if the child or young adult were in foster care, the Department may, after a case-by-case review and without concurrence of the guardian, adjust the monthly guardianship assistance payment to an amount that does not exceed the new foster care payment the child or young adult would be eligible to receive if currently in foster care, as follows:

(a) 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.

(b) In the case of an increase, the Department, considering the needs of the child or young adult and the circumstances of the guardian, may increase the guardianship assistance payment to an amount that does not exceed the new foster care payment the child or young adult would receive if currently in foster care.

(5) If, upon review under section (1) of this rule or an adjustment under section (4) of this rule, the Department intends to adjust guardianship assistance without the concurrence of the guardian, the Department will provide the guardian with written notice as described in OAR 413-010-0500 to 413-010-0535.

(6) Unless terminated under sections (7) or (8) of this rule, the guardianship assistance agreement and the Department's obligation to provide guardianship assistance expires automatically on the date any of the following events occur:

(a) When the child:

(A) Reaches the age of 18 or, when an extension has been granted under OAR 413-070-0918, no later than the date identified in the guardianship assistance agreement;

(B) Is emancipated;

(C) Dies;

(D) Marries;

(E) Is adopted;

(F) Enlists in the military; or

(G) No longer meets the requirements for continued guardianship assistance if the Department has agreed to continue

guardianship assistance under OAR 413-070-0918.

(b) A guardian dies, or if more than one guardian, both die.

(c) The court:

(A) Vacates the guardianship order or otherwise terminates the guardianship;

(B) Terminates wardship over the child or young adult, unless the guardianship is a tribal court guardianship and the guardianship remains in effect under tribal law; or

(C) Appoints another individual as guardian of the child or young adult.

(7) Guardianship assistance may be suspended at any time by mutual agreement between the Department and the guardian.

(8) After a review and on a case-by-case basis, the Department may terminate a guardianship assistance agreement upon ten calendar days written notice to the guardian when the Department determines that --

(a) The guardian is no longer responsible for the child or young adult;

(b) The guardian is no longer providing support to the child or young adult; or

(c) The child or young adult is no longer eligible for guardianship assistance or is eligible for guardianship assistance in a different amount.

(9) If a child receiving guardianship assistance is subsequently adopted by the guardian, the child may be eligible for adoption assistance under OAR 413-130-0000 to 413-130-0130.

STATUTORY/OTHER AUTHORITY: ORS 418.005, ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 411.141, ORS 418.005, ORS 409.010, ORS 411.141

AMEND: 413-130-0000

REPEAL: Temporary 413-130-0000 from CWP 102-2018

RULE TITLE: Definitions

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Adjusting CANS screening and parent definition to be consistent across divisions. Added definition of Indian child.

RULE TEXT:

The following definitions apply to rules in OAR chapter 413, division 130.

- (1) "Adoptee" pursuant to ORS 109.425 means an individual who has been adopted in the State of Oregon.
- (2) "Adoption" has the meaning given in OAR 413-120-0000(1).
- (3) "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.
- (4) "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.
- (5) "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.
- (6) "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.
- (7) "Adoption Assistance Review Committee" means a committee composed of local and central office Department staff with expertise in the area of adoption.
- (8) "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.
- (9) "Adoptive parent" means an adult who has become a parent of a child through adoption.
- (10) "Agency" means a public or private organization licensed or authorized under Oregon laws to place children for adoption.
- (11) "Applicable child" has the same meaning as in OAR 413-100-0335.
- (12) "Assisted search" means the work carried out to locate and make confidential contact with a sought for individual upon the application of an authorized requester.
- (13) "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 special or unique nutritional needs of the child or young adult;
 - (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 appropriate for the age of the child or young adult;
 - (e) Personal incidentals, including personal care items, entertainment, reading materials, and miscellaneous items; and
 - (f) Transportation, including gas, oil, and vehicle maintenance and repair costs for local travel associated with providing the items listed above, and transportation to and from extracurricular, child care, recreational, and cultural activities.
- (14) "Birth parent" means:
 - (a) The woman or man who is legally presumed, under the laws of this state, to be the mother or father of genetic origin

of a child; and

(b) A putative father of the child if the birth mother alleges he is the father and the putative father, by written affidavit or surrender and release executed within three years of the relinquishment of the child by the birth mother or the termination of parental rights of the birth mother, acknowledges being the biological father of the child.

(15) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on the needs and strengths of a child or young adult:

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

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

(c) To determine if a child or young adult qualifies for a level of care payment for the purpose of negotiating or renegotiating an adoption assistance or guardianship assistance payment.

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

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

(18) "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.

(19) "Fee" means the maximum fixed amount that the Department or Oregon licensed adoption agency may charge to register, for requests of non-identifying information, and to conduct an assisted search.

(20) "Guardian" means an individual who has been granted guardianship of the child through a judgment of the court.

(21) "Genetic and social history" means a comprehensive report, when obtainable, of the health status and medical history of the birth parents and other individuals related to the child.

(a) The "genetic and social history" may contain as much of the following as is available:

(A) Medical history.

(B) Health status.

(C) Cause of and age at death.

(D) Height, weight, eye and hair color.

(E) Ethnic origins.

(F) Religion, if any.

(b) The "genetic and social history" may include the health status and medical history of:

(A) The birth parents.

(B) A putative father, if any.

(C) Siblings to the birth parents, if any.

(D) Siblings to a putative father, if any.

(E) Other children of either birth parent, if any.

(F) Other children of a putative father, if any.

(G) Parents of the birth parents.

(H) Parents of a putative father, if any.

(22) "Health history" means a comprehensive report, when obtainable, of the health status and medical history of the child at the time of placement for adoption, including neonatal, psychological, physiological, and medical care history.

(23) "Identifying information" means names and addresses of birth parents, putative fathers, adult adoptee, and adult adoptee genetic siblings.

(24) "Independent adoption" means any adoption where the consent is given by other than the Department or a licensed adoption agency.

(25) "Indian child" means any unmarried person who is under age 18 and either:

(a) Is a member or citizen of an Indian tribe; or

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.

(26) "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.

(27) "Level of care payment" means the payment provided to an approved or certified family, based on the need for enhanced supervision of a child or young adult determined by applying the CANS algorithm to the results of the CANS screening.

(28) "Licensed adoption agency" means an:

(a) Approved child-caring agency of this state acting by authority of ORS 418.270 and OAR 413-215-0401 to 413-215-0481; and

(b) Agency or other organization that is licensed, or otherwise authorized, to provide adoption services pursuant to the laws of that state, country, or territory.

(29) "Non-identifying information" means genetic and social history and health history which excludes information identifying any birth parent, birth family, putative father, putative father's family, adoptee, or adoptive parent.

(30) "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.

(31) "Nonrecurring expenses" mean a one-time payment up to \$2,000 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.

(32) "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 416.610, or by a juvenile court. In cases involving an Indian child under the ICWA, parent means any biological parent of an Indian child, or any Indian who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include an unwed biological father where paternity has not been acknowledged or established. "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.

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

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

(a) Has been selected to be the adoptive family of the child; and

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

(35) "Progeny" means the children or descendants of a person and the person's descendants in successive generations.

(36) "Putative father" means a man who, under the laws of this state, is not legally presumed to be the father of genetic origin of a child, but who claims or is alleged to be the father of genetic origin of the child.

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

(38) "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.

(39) "Registry" means a voluntary adoption registry established under ORS 109.450 and maintained by:

(a) An Oregon licensed adoption agency or successor agency; or

(b) The Department for all adoptions not arranged through an Oregon licensed adoption agency.

(40) "Requester" means an individual duly registered on a voluntary adoption registry who requests an assisted search, and who has filed an application and paid the applicable fee.

(42) "Searcher" means one of the following qualified entities that may conduct an assisted search:

(a) The Department;

(b) An Oregon licensed adoption agency; or

- (c) A third party individual or entity who has been delegated to or contracted with by the Department or an Oregon licensed adoption agency.
- (43) "Sibling" means one of two or more children or young adults who are related, or would be related but for a termination or other disruption of parental rights, in one of the following ways:
- (a) By blood or adoption through a common parent;
 - (b) Through the marriage of the legal or biological parents of the children or young adults; 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.
- (44) "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.
- (45) "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.
- (46) "Successor agency" means an agency which has the adoption records of another agency because of the merger of the agencies or because an agency has ceased doing business and has given its adoptions records to the "successor agency" as provided in ORS 109.435(2).
- (47) "Voluntary adoption registry" means a voluntary registry operated by the Department or licensed adoption agency:
- (a) Where birth parents, putative fathers, and adult adoptees may register their willingness to the release of identifying information to each other;
 - (b) That provides for the disclosure of identifying information to birth parents and their genetic offspring;
 - (c) That provides for the transmission of non-identifying health and social and genetic history of specified persons; and
 - (d) That provides for the disclosure of specific identifying information under certain circumstances to Indian tribes, governmental agencies, or to an individual settling an estate.
- (48) "Work Product" means any records, information, or other materials obtained or developed by the Department or licensed adoption agency during the course of the assisted search.
- (49) "Young adult" means a person aged 18 through 20 years.

STATUTORY/OTHER AUTHORITY: ORS 418.005, ORS 418.340

STATUTES/OTHER IMPLEMENTED: ORS 418.005, ORS 418.340, ORS 418.330, ORS 418.335

AMEND: 413-130-0050

REPEAL: Temporary 413-130-0050 from CWP 102-2018

RULE TITLE: Adoption Assistance Application Requirements and Responsibilities

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Corrected a language error for clarity.

RULE TEXT:

(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 subsections (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 calendar 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 Adoption Assistance and Guardianship Unit may delay negotiation of the adoption assistance payment 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. The unit must begin negotiation no later than 30 calendar days from receipt of the final decision regarding the level of care payment.

(b) The Adoption Assistance and Guardianship Unit may delay negotiation following a request by the caseworker, the pre-adoptive family, or adoptive family when there are extenuating circumstances regarding the child or family. The unit must begin negotiation no later than 30 calendar days from notification that the extenuating circumstance causing the delay has been resolved.

STATUTORY/OTHER AUTHORITY: ORS 418.005, ORS 418.340

STATUTES/OTHER IMPLEMENTED: ORS 418.005, ORS 418.340, ORS 418.330, ORS 418.335

AMEND: 413-130-0070

REPEAL: Temporary 413-130-0070 from CWP 102-2018

RULE TITLE: Negotiation and Determination of the Monthly Adoption Assistance Payment

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Including additional factors the Department must consider when negotiating the monthly adoption assistance payment and clarifying payments' status and application.

RULE TEXT:

- (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:
 - (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) combined with, if applicable, the level of care payment determined by the CANS screening conducted under OAR 413-020-0230
 - (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.
 - (F) An adoption assistance payment may be reduced when other sources of income are received by the pre-adoptive family or adoptive family or the child or young adult.
 - (d) Is intended to be combined with the resources of the pre-adoptive family or adoptive family to provide for the needs of the child or young adult.
- (3) When, during negotiation of the adoption assistance payment, 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 adoption worker 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 workers may 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 adoption worker 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 one or more

recommendations regarding the adoption assistance payment.

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

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

(B) Submit the documentation to the Post Adoption Services Program Manager or designee within one business day of the Adoption Assistance Review Committee meeting.

(4) The Post Adoption Services Program Manager or designee must complete each of the following actions:

(a) Attend the Adoption Assistance Review Committee and ask any clarifying questions, but not participate in the deliberation or recommendation of the Adoption Assistance Review Committee.

(b) Review and consider:

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

(B) The recommendations of the committee; and

(C) The information presented by the pre-adoptive family or adoptive family under subsection (4)(b) of this rule.

(c) Make a decision within 30 calendar days of receipt of the documentation under paragraph (4)(e)(B) of this rule; and

(d) 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.

(5) When a pre-adoptive family or adoptive family is not satisfied with the final adoption assistance offer from the Department the pre-adoptive family or adoptive family has the right to a contested case hearing under OAR 413-010-0500 to 413-010-0535.

(6) 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.

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

(8) An adoption assistance payment made to a pre-adoptive family or an adoptive family by the Department is inalienable, not assignable or transferable, exempt from execution, levy, attachment, garnishment, and any other legal process under the laws of Oregon.

(9) The adoptive family may apply to be the designated payee for any benefit the child or young adult receives if the benefit program allows such application.

STATUTORY/OTHER AUTHORITY: ORS 418.005, ORS 418.340

STATUTES/OTHER IMPLEMENTED: ORS 418.005, ORS 418.340, ORS 418.330, ORS 418.335

AMEND: 413-130-0075

REPEAL: Temporary 413-130-0075 from CWP 102-2018

RULE TITLE: Renegotiation of an Adoption Assistance Payment

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Minor change adds clarity in requesting a CANS screening.

RULE TEXT:

(1) The Department, 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

(e) If the pre-adoptive family or adoptive family is requesting a CANS screening, provide written documentation of the child's or young adult's current behaviors and functioning that meet the eligibility requirements for a CANS screening referral under OAR 413-020-0230.

(3) Renegotiation of the adoption assistance payment will be conducted using the negotiation process described in OAR 413-130-0070(2) to (5).

(4) A new adoption assistance agreement must be signed by all parties each time the 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.

STATUTORY/OTHER AUTHORITY: ORS 418.005, ORS 418.340

STATUTES/OTHER IMPLEMENTED: ORS 418.005, ORS 418.340, ORS 418.330, ORS 418.335

AMEND: 413-130-0110

REPEAL: Temporary 413-130-0110 from CWP 102-2018

RULE TITLE: Administration of Approved Adoption Assistance

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Clarified when the effective date must occur and added references.

RULE TEXT:

(1) Except as provided in OAR 413-130-0130, 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, except as provided in OAR 413-130-0130, must be before the date of the judgment of adoption.

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

(d) Information that ORS 192.558 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 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:

(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 calendar 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 calendar days of the date the Department sends the notice in subsection (b) of this section, 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 and OAR 413-130-0112, the Department may collect any adoption assistance payment or medical assistance which the Department would not have provided had the pre-adoptive family or adoptive family complied with the provisions of the adoption assistance agreement.

STATUTORY/OTHER AUTHORITY: ORS 418.005, ORS 418.340

STATUTES/OTHER IMPLEMENTED: ORS 418.005, ORS 418.340, ORS 418.330, ORS 418.335

ADOPT: 413-130-0112

REPEAL: Temporary 413-130-0112 from CWP 102-2018

RULE TITLE: Required Communication

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: New rule adds clarification as to when a pre-adoptive or adoptive family must report changes in circumstances that affect eligibility or changes to other life situations, such as address.

RULE TEXT:

(1) A pre-adoptive family or adoptive family receiving adoption assistance must immediately report, orally or in writing, to the Adoption Assistance and Guardianship Assistance Unit any changes in circumstances of the child or young adult, pre-adoptive family or adoptive family that makes the child or young adult ineligible for adoption assistance including, but not limited to when:

(a) The child or young adult:

(A) Is emancipated;

(B) Dies;

(C) Marries;

(D) Enlists in the military; or

(E) No longer meets the eligibility requirements for extension of adoption assistance under OAR 413-130-0055.

(b) The parental rights of the adoptive parent or, if there is more than one adoptive parent, both adoptive parents to the child or young adult have been terminated or relinquished.

(2) A pre-adoptive family or adoptive family receiving adoption assistance must immediately report, orally or in writing, to the Department's Adoption Assistance and Guardianship Assistance Unit any changes in circumstances of the child or young adult, pre-adoptive family or adoptive family that may make the child or young adult ineligible for adoption assistance or eligible for an adoption assistance payment in a different amount including when:

(a) The child or young adult:

(A) Is out of the home of the pre-adoptive family or adoptive parent for more than a thirty-day period or, if more than one adoptive parent, is out of the home of both adoptive parents for more than a thirty-day period;

(B) Has a change in behavior and functioning that meets the eligibility requirements for a CANS screening referral set forth in Oregon Administrative Rules (OAR) 413-020-0230(5).

(C) Is placed in substitute care;

(D) Is no longer receiving financial support from the pre-adoptive family or the adoptive parent or, if there is more than one adoptive parent, both adoptive parents;

(E) Is incarcerated for more than a thirty-day period; or

(F) Has a change in any benefit received.

(b) A pre-adoptive family or an adoptive parent is, or if more than one adoptive parent, both adoptive parents are:

(A) No longer legally responsible for the financial support of the child or young adult;

(B) No longer responsible for the child or young adult; or

(C) No longer providing support to the child or young adult.

(3) A pre-adoptive family or adoptive family receiving an adoption assistance payment must immediately report, orally or in writing, to the Adoption Assistance and Guardianship Assistance Unit the following:

(a) When there is a change of address.

(b) When the pre-adoptive family or adoptive family, child or young adult is planning to move from his or her state of residency.

(c) When there are two adoptive parents and one adoptive parent dies, the surviving adoptive parent must notify the Department.

(4) A pre-adoptive family or adoptive family must respond to inquiries from the Adoption Assistance and Guardianship Assistance Unit within 30 calendar days or as required by the unit.

STATUTORY/OTHER AUTHORITY: ORS 418.005, ORS 418.340

STATUTES/OTHER IMPLEMENTED: ORS 418.005, ORS 418.340, ORS 418.330, ORS 418.335

AMEND: 413-130-0125

REPEAL: Temporary 413-130-0125 from CWP 102-2018

RULE TITLE: Review, Adjustment, Suspension, Expiration, and Termination of Adoption Assistance

NOTICE FILED DATE: 08/17/2018

RULE SUMMARY: Changed rule title; adjusted rule to clarify when the Department may request updated information from the family; that Department review may result in a renegotiation, suspension, etc.; when contact with the family is lost, how the Department may proceed; how assistance may be adjusted; what the Department may request upon a change in circumstance in the family.

RULE TEXT:

- (1) The Department may review an adoption assistance agreement and request updated information from the pre-adoptive family or the adoptive family when the Department:
- (a) Receives information indicating that the child or young adult may no longer be eligible for adoption assistance or may be eligible for an adoption assistance payment in a different amount, including when the Department receives information regarding any of the circumstances described in OAR 413-130-0112;
 - (b) Determines, when the child or young adult is not residing in the home of the pre-adoptive family or adoptive family, that a periodic review of the adoption assistance agreement is required;
 - (c) Receives information that indicates a review is necessary based on a change in the needs of the child or young adult or circumstances of the family;
 - (d) Receives information that the young adult no longer meets the requirements for continued assistance, if the Department has agreed to extend adoption assistance under OAR 413-130-0055;
 - (e) Determines that the pre-adoptive family or adoptive family has not complied with the requirements of the adoption assistance agreement; or
 - (f) Receives information or otherwise becomes aware that the pre-adoptive family or adoptive family is no longer providing support for the child or young adult or is no longer legally responsible for the support of the child.
- (2) Department review of an adoption assistance agreement may result in a renegotiation, suspension, adjustment, or termination of the adoption assistance agreement or adoption assistance payments.
- (3) The Department may suspend adoption assistance payments upon ten calendar days written notice to the pre-adoptive family or adoptive family when the Department is unable to establish contact with the pre-adoptive family or adoptive family and
- (a) The Department receives information that the pre-adoptive family or adoptive family is no longer providing support for the child or young adult; or
 - (b) The Department receives information that the pre-adoptive family or adoptive family is no longer legally responsible for the support of the child.
- (4) Adoption assistance may be adjusted at any time by mutual agreement between the pre-adoptive family or adoptive family and the Department.
- (5) 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.
- (6) When there is an across-the-board reduction or increase in the base rate payment or level of care payment that the child or young adult would be eligible to receive if the child or young adult were in foster care, the Department may, after a case-by-case review and without concurrence of the adoptive family, 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 currently in foster care, as follows:
- (a) 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.

(b) In the case of an increase, the Department, considering the needs of the child or young adult and the circumstances of the adoptive family, may increase the adoption assistance payment to an amount that does not exceed the new foster care payment the child or young adult would receive if currently in foster care.

(7) If, upon review under section (1) of this rule or an adjustment under section (6) of this rule, the Department intends to adjust an adoption assistance payment without the concurrence of the pre-adoptive family or adoptive family, the Department will provide the pre-adoptive family or adoptive family with written notice as described in OAR 413-010-0500 to 413-010-0535.

(8) Unless terminated under sections (9) or (10) of this rule, the adoption assistance agreement and the Department's obligation to provide adoption assistance expires automatically on the date any of the following events occur:

(a) When the child:

(A) Reaches the age of 18 or, when an extension has been granted under OAR 413-130-0055, no later than the date identified in the adoption assistance agreement;

(B) Is emancipated;

(C) Dies;

(D) Marries;

(E) Enlists in the military; or

(F) No longer meets the requirements for continued adoption assistance if the Department has agreed to continue adoption assistance under OAR 413-130-0055.

(b) The parental rights of the adoptive parent or, if there is more than one adoptive parent, both adoptive parents to the child or young adult have been terminated or relinquished.

(c) The adoptive parent dies or, if more than one adoptive parent, both die.

(d) The Department or agency having guardianship or custody of the child removes the child from the home of the pre-adoptive family prior to finalization of the adoption.

(9) Adoption assistance may be suspended at any time by mutual agreement between the Department and the pre-adoptive family or adoptive family.

(10) After a review and on a case-by-case basis, the Department may terminate an adoption assistance agreement upon ten calendar days written notice to the pre-adoptive family or adoptive family when the Department determines that:

(a) The pre-adoptive family or adoptive family is no longer responsible for the child or young adult;

(b) The pre-adoptive family or adoptive family is no longer providing support to the child or young adult; or

(c) The child or young adult is no longer eligible for adoption assistance or is eligible for adoption assistance in a different amount.

STATUTORY/OTHER AUTHORITY: ORS 418.005, ORS 418.340

STATUTES/OTHER IMPLEMENTED: ORS 418.005, ORS 418.340, ORS 418.330, ORS 418.335