

DEPARTMENT OF HUMAN SERVICES  
OFFICE OF CHILD WELFARE PROGRAMS

CHAPTER 413  
DIVISION 20

CASE MANAGEMENT

*Updated 11/1/2018*

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# Definitions

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## 413-020-0000

### Definitions

(Amended 11/1/2018)

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.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.056, 418.015, 418.270, 418.275, 418.280, 418.285

## Voluntary Custody Agreement

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### 413-020-0005

#### Purpose

(Amended 10/01/15)

The purpose of OAR 413-020-0005 to 413-020-0050 is to describe:

- (1) The circumstances in which parents or guardians and the Department may enter into a *Voluntary Custody Agreement* concerning a *child* who is in the *legal custody* of the parents or guardians; and
- (2) The responsibilities of the parents or guardians and the Department in connection with these agreements.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.056, 418.015, 418.270, 418.275, 418.280, 418.285

### 413-020-0010

#### Voluntary Custody Agreement

(Amended 08/06/17)

- (1) Under a "*Voluntary Custody Agreement*", the parent or legal *guardian* gives the Department the *legal custody* of the *child*. The Department assumes all parental and legal responsibilities that the agreement does not specifically reserve to the parents or legal guardians as permitted under ORS 418.015 and becomes the *child's legal custodian*.
- (2) It is appropriate for the Department to place a *child* in *substitute care* and provide services if all of the following subsections apply:
  - (a) The parent or legal *guardian* requests the Department take custody of the *child*.
  - (b) The parent or legal *guardian* is immediately and temporarily unable to fulfill his or her parental responsibilities.
  - (c) This inability will be alleviated with short-term placement when one of the following conditions exists:

- (A) The *child* cannot remain at home due to a temporary crisis in the family, and cannot safely stay with a member of the extended family or another responsible adult who is well known to the *child*.
  - (B) The parent or legal *guardian* is temporarily or will be temporarily unable to fulfill parental responsibilities due to a diagnosed medical or mental health condition.
  - (C) The *child* needs to be placed outside the home due to problems in the family that could compromise the safety of a family member, and a placement of limited duration in conjunction with intensive services is likely to reunite the family and reduce safety concerns.
- (3) A *Voluntary Custody Agreement* is not appropriate when the Department's Child Protective Services has determined, within the past 12 months, that the parent or legal *guardian* was the perpetrator of a founded disposition of child abuse or neglect or when the parent or legal *guardian* is unwilling to be a permanent resource for the *child*.
  - (4) If the Department knows or has reason to know that the child is an *Indian child*, the Department must comply with OAR 413-115-0050 and OAR 413-115-0090.
  - (5) A Child Welfare Program Manager must approve entering into a *Voluntary Custody Agreement*.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.056, 418.015, 418.270, 418.275, 418.280, 418.285

## **413-020-0020**

### **Legal Consent**

(Amended 08/06/17)

- (1) Only a parent or *guardian* who has *legal custody* of the *child* may enter into a *Voluntary Custody Agreement* (CF 1005).
- (2) All persons who have *legal custody* of the *child* must sign the agreement unless one person with *legal custody* of the *child* is missing.
- (3) If one person with *legal custody* of the *child* is missing, all other persons with *legal custody* of the *child* must sign the agreement and must provide the Department the persons and places likely to have knowledge of the missing person's whereabouts. The Department must immediately begin a reasonably diligent search to find the other person with *legal custody* of the *child* to provide him or her notice of the agreement.
- (4) The parent or *guardian* must provide information to the Department about insurance and other financial resources to meet the medical, dental, and mental health needs of the *child* by completing a Medical Resource Report Form (DHS 415H).

- (5) If the Department knows or has reason to know the *child* is an *Indian child*, each parent or Indian custodian who has *legal custody* must sign the *Voluntary Custody Agreement* in a hearing before a judge of a court with appropriate jurisdiction. The *child* must be more than 10 days old.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015

### **413-020-0025**

#### **Developing the Family Support Services Case Plan when a Parent or Legal Guardian Enters into a Voluntary Custody Agreement with Child Welfare**

*(Adopted 03/20/07)*

- (1) The *caseworker* must develop a family support services case plan as described in OAR 413-030-0016 with the parent or legal *guardian* who signs a *Voluntary Custody Agreement*.
- (2) The *caseworker* must develop a visit and contact plan as described in OAR 413-070-0800 to 413-070-0880.
- (3) The parent or legal *guardian* must agree to:
- (a) Full and ongoing cooperation in developing the family support services case plan as described in OAR 413-030-0006(2)(a)-(c) and making decisions for the *child* based on the child's identified needs;
  - (b) Visit and financially support the *child* to the fullest extent possible; and
  - (c) Work cooperatively with the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

### **413-020-0040**

#### **Required Reviews**

*(Amended 03/20/07)*

Federal and state law, including the Adoptions and Safe Families Act (Pub. L. 105-89), require review of the cases of all children placed in *substitute care*. The *child* placed by the Department with a *Voluntary Custody Agreement* will be scheduled for Citizen Review Board and court reviews pursuant to OAR 413-040-0100 to 413-040-0170.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015

## 413-020-0045

### Criteria for Continuing a Voluntary Custody Agreement After a Child Reaches 18 Years of Age

(Adopted 03/20/07)

- (1) The Department determines that the *child* will need placement services after reaching 18 years of age and continues a *Voluntary Custody Agreement* after the *child* reaches 18 years per ORS 418.027(5) if:
  - (a) One of the conditions in OAR 413-020-0010(2)(a)-(c), which led the Department to assume *voluntary custody* of the *child*, continues at the time of the child's 18th birthday;
  - (b) The *young adult* agrees to the Department's continued assumption of all parental and legal responsibilities that the *Voluntary Custody Agreement* does not specifically reserve to the parents or legal guardians; and
  - (c) The District Manager approves the continuation of the *Voluntary Custody Agreement*.
- (2) The court must determine continued custody is in the best interests of the *young adult* and approve the continuation of the *Voluntary Custody Agreement* every 180 days.

Stat. Auth.: ORS 418.005, 418.027

Stats. Implemented: ORS 418.015, 418.027

## 413-020-0050

### Termination of Voluntary Agreement

(Amended 08/06/17)

- (1) Either the Department or a parent or legal *guardian* who signed the agreement may terminate the agreement by providing 48 hours written notice. If an agreement continues after the *child* reaches 18 years of age, a *young adult* may terminate the agreement by providing 48 hours written notice.
- (2) If a parent or legal *guardian* requests the termination of the voluntary agreement and there is reason to believe the *child* will be unsafe if returned to the home of the parent or legal *guardian*, the *caseworker* must report the information to a CPS screener.
- (3) If the withdrawal of consent is by a parent or Indian custodian concerning a *child* who is an *Indian child* under the Indian Child Welfare Act, who is in *substitute care* and the subject of a "*Voluntary Custody Agreement*" with the Department, the following applies:
  - (a) The parent or Indian custodian may withdraw consent orally or in writing at any time;

- (b) An *Indian child* shall immediately be released to the parent or Indian custodian upon withdrawal of a voluntary consent; and
- (c) Notification to the court, and other actions are required when return of an *Indian child* to the parent or Indian custodian would place the *child* in imminent danger or harm.

Stat. Auth.: ORS 418.005, 418.027

Stats. Implemented: ORS 418.015, 418.027

# Voluntary Placement Agreement

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## 413-020-0060

### Purpose

(Adopted 03/20/07)

These rules, OAR 413-020-0060 to 413-020-0090, describe:

- (1) The circumstances in which parents or legal guardians and the Department may enter into a *Voluntary Placement Agreement* to place a *child*, who is in the *legal custody* of the parents or legal guardians, for care or services from the Department; and
- (2) The responsibilities of the parents or legal guardians and the Department in connection with these agreements.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015, 418.312

## 413-020-0070

### Voluntary Placement Agreement Limitations

(Adopted 03/20/07)

- (1) Under a *Voluntary Placement Agreement*, the parent or legal *guardian* retains legal authority over the *child* and is obligated to continue to exercise and perform all parental authority and legal responsibilities, except those that the parent or legal *guardian* specifically delegates to the Department by a binding agreement. The agreement specifies, while the *child* is in placement, the legal status of the *child* and the rights and obligations of the parent or legal *guardian*, the *child*, and the Department.
- (2) The Department must use a *Voluntary Placement Agreement* (CF 499) under ORS 418.312 in all cases in which the sole reason for placing the *child* in a foster home, group home, or institutional child care setting is the need to obtain services for the child's emotional, behavioral, or mental disorder or developmental or physical disability.
- (3) Under a *Voluntary Placement Agreement*, the Department has responsibility for the child's placement and care.
- (4) The parent or legal *guardian* who requests *substitute care* for the *child* through a *Voluntary Placement Agreement* may enter into a child support agreement with the Division of Child Support (DCS) or receive a child support order.
  - (a) The *caseworker* must inform the parent or legal *guardian* that he or she may enter into a non-adversarial support agreement with DCS to discharge support

obligations. Other, existing child obligations of the parent or legal *guardian* are not superseded by support agreements with DCS.

- (b) The *caseworker* must provide the parent or legal *guardian* who signs the *Voluntary Placement Agreement* with the "DCS Referral for Non-Adversarial Support Agreement" (CF 496). The parent or legal *guardian* completes the form and returns it to the *caseworker*. If the form is not returned to the *caseworker* within 30 days, a support order may be entered.
- (c) The *caseworker* must forward the completed form (CF 496) and a signed copy of the *Voluntary Placement Agreement* to the Children's Benefits Unit of the Department.
- (5) The parent or legal *guardian* must provide information to the Department about insurance and other financial resources to meet the medical, dental, and mental health needs of the *child* by completing a Medical Resource Report Form (DHS 415H).
- (6) A Child Welfare Program Manager must approve entering into a *Voluntary Placement Agreement*.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015, 418.312

## **413-020-0075**

### **Legal Consent**

(Amended 08/06/17)

- (1) Only a parent or *guardian* who has *legal custody* of the *child* may enter into a *Voluntary Placement Agreement*.
- (2) All persons who have *legal custody* of the *child* must sign the agreement unless one person with *legal custody* of the *child* is missing.
- (3) If one person with *legal custody* of the *child* is missing, all other persons with *legal custody* of the *child* must sign the agreement and must provide the Department the persons and places likely to have knowledge of the missing person's whereabouts. The Department must immediately begin a reasonably diligent search to find the other person with *legal custody* of the *child* to provide him or her notice of the agreement.
- (4) If the *child* is an *Indian child* the Department must comply with OAR 413-115-0100.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015, 418.312

### **413-020-0080**

## **Developing the Family Support Services Case Plan and a Voluntary Placement Agreement with the Department**

*(Adopted 03/20/07)*

- (1) The *caseworker* must prepare the *Voluntary Placement Agreement* (CF 499), which must specify the legal status of the *child* and the rights and obligations of the parent or legal *guardian*, the *child*, and the Department.
- (2) The *caseworker* must develop a family support services case plan (see OAR 413-030-0016) with the parent or legal *guardian* who signs a *Voluntary Placement Agreement*.
- (3) The *caseworker* must develop a visit and contact plan as described in OAR 413-070-0800 to 413-070-0880.
- (4) The parent or legal *guardian* must agree to:
  - (a) Full and ongoing cooperation in the family support services case plan described in OAR 413-030-0006(2)(a)-(c) and in making decisions for the *child* based on the *child's* identified needs;
  - (b) Visit and financially support the *child* to the fullest extent possible; and
  - (c) Work cooperatively with the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015, 418.312

### **413-020-0085**

## **Required Reviews**

*(Adopted 03/20/07)*

Federal and state law, including the Adoptions and Safe Families Act (Pub. L. 105-89), require review of the cases of all children in *substitute care*. The *child* placed by the Department with a *Voluntary Placement Agreement* will be scheduled for Citizen Review Board and court reviews pursuant to OAR 413-040-0100 to 413-040-0170. Under state law:

- (1) When the *child* remains in voluntary placement for more than 180 days, the juvenile court must make a determination within the first 180 days of the placement that the placement is in the best interests of the *child*.
- (2) The juvenile court must hold a permanency hearing as provided in ORS 419B.476 to determine the future status of the *child* no later than 14 months after the *child's* original

voluntary placement and not less frequently than once every 12 months thereafter during the continuation of the child's original voluntary placement.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015, 418.312

#### **413-020-0090**

### **Termination of Voluntary Agreement**

*(Amended 08/06/17)*

- (1) Either the Department or a parent or legal *guardian* who signed the *Voluntary Placement Agreement* may terminate the agreement by providing 48 hours written notice. The child support agreement may be terminated at the same time by sending a copy of the written termination notice to the Children's Benefits Unit of the Department.
- (2) If the parent or legal *guardian* requests the termination of the *Voluntary Placement Agreement* and there is reason to believe the *child* is unsafe, the *caseworker* must report the information to a CPS screener.
- (3) OAR 413-115-0100(6) governs the withdrawal of consent by a parent or Indian custodian concerning an *Indian child* who is in *substitute care* and the subject of a *Voluntary Placement Agreement* with the Department.
- (4) A *Voluntary Placement Agreement* ends when the *child* reaches 18 years of age.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015, 418.312, 419C.080

# Guardian and Legal Custodian Consents

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## **413-020-0100**

### **Purpose**

(Amended 01/09/03)

The purpose of OAR 413-020-0100 through 413-020-0170 is to:

- (1) Define the Department's authority as *guardian* and *legal custodian* of children in its care or in the care of its agents;
- (2) Specify how that authority will be exercised by the Department and its agents; and
- (3) Specify requirements to be met when this authority is exercised.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.640, 418.312

## **413-020-0120**

### **Responsibility of Staff to Secure a Legal Consent**

(Amended 10/01/15)

When the legal consent of a parent or *guardian* is needed for a *child* in the care and custody of the Department, the *caseworker* shall secure the consent of the person authorized to approve the proposed service or activity. Relevant information shall be provided to the authorized person to assure the Department's authority to consent, the need for and advisability of the service or activity and, when feasible, the concurrence of parents and physical custodians.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.640, 418.312

## **413-020-0130**

### **Department Authority in Voluntary Placement and Voluntary Custody Agreements**

(Amended 10/01/15)

- (1) When a parent or *guardian* of a *child* authorizes a voluntary placement with the Department, the parent or *guardian* remains *guardian* of the *child* and retains legal authority, and is obligated to continue to exercise and perform all parental duties and legal responsibilities except those delegated to the Department by the signed CF 499 Voluntary Placement Agreement.

- (2) In the event the parent or legal *guardian* is unavailable or unwilling to fulfill the responsibilities of a *guardian*, the Department will petition the Juvenile Court and request authority to provide essential services to the *child*.
- (3) When a *child* is in the *voluntary custody* of the Department, the Department or the *physical custodian* exercises the authority of a *legal custodian* as assigned in the CF 1005 Voluntary Custody Agreement.
- (4) Voluntary custody agreements are covered in OAR 413-020-0005 to 413-020-0050 and voluntary placement agreements are covered in OAR 413-020-0060 to 413-020-0090.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.640, 418.312

### **413-020-0140**

#### **Exercise and Delegation of Legal Authority**

*(Amended 10/01/15)*

- (1) When the Department has *legal custody* of a *child* through a *Voluntary Custody Agreement*, a court order, or a Release and Surrender Agreement, the Department will exercise its authority through Department staff and through delegation to other persons as described in this rule.
- (2) Physical Custodian. The Department delegates the following responsibilities to the *physical custodian*. This delegation continues as long as the *child* or *young adult* is in the *legal custody* of the Department and resides with the *physical custodian*. Any exception to this rule must be given in writing to the custodian of the *child* or *young adult* and a copy will be maintained in the *child* or *young adult*'s case record with the Department. The Department will delegate to the *child's physical custodian* its authority to consent to:
  - (a) Enrollment and disenrollment of the *child* or *young adult* in regular public school; assisting with selecting or changing class schedules; authorizing absence from school; and enrollment in free and reduced meal programs. Consent for standardized testing and assessment. Assessment and implementation of special education, unless the *child* or *young adult* has a surrogate parent assigned (see OAR 581-015-2000). School pictures, except those listed under subsection (2)(b) of this rule;
  - (b) Routine medical care and dental care, including vaccinations and immunization; routine examinations and lab tests;
  - (c) Short term inter-county travel;
  - (d) Application for work permits or releases; and

- (e) Participation of the *child* or *young adult* in *age-appropriate or developmentally appropriate activities*, including extracurricular, enrichment, cultural, and social activities. When determining whether to allow a *child* or *young adult* to participate, the *physical custodian* must apply the *reasonable and prudent parent standard*. When applying the *reasonable and prudent parent standard*, the *physical custodian* must consider:
  - (A) The age, maturity, and developmental level of the *child* or *young adult*;
  - (B) The nature and inherent risks of harm; and
  - (C) The best interest of the *child* or *young adult* based on information known by the caregiver.
  
- (3) The *caseworker* may exercise the Department's consent authority to any action to which the *physical custodian* may consent. In addition, the *caseworker* may exercise the Department's authority to give consent for the following:
  - (a) Psychiatric or psychological evaluation, outpatient psychiatric or psychological treatment, and behavioral rehabilitation services for the *child*; and
  - (b) Photographs taken for publicity purposes or media promotions that may draw attention to the individual.
  
- (4) District Manager or Designee. The District Manager or designee may exercise the Department's consent authority to any action to which the *physical custodian* or *caseworker* may consent. In addition, the District Manager or designee may exercise the Department's authority to consent to all of the following actions with respect to children serviced by the district:
  - (a) Emergency medical care and/or surgery, to include anesthesia.
  - (b) Major medical and surgical procedures that are not extraordinary or controversial, to include anesthesia.
  - (c) Admission to SAIP (Secure Adolescent Inpatient Program), SCIP (Secure Children's Inpatient Program), or a private hospital for purpose of psychiatric treatment.
  - (d) Enrollment in specialized schools, including private, charter, alternative, international study program, GED, or home schools.
  - (e) Application for driver's training, permits and license.
  - (f) Interstate travel and international travel.

- (g) Examination by law enforcement agency (e.g., polygraphs, interrogations without a warrant, etc.).
- (h) Use of firearms for purpose of recreational hunting, target practice, and/or Hunter Safety Course.

Stat. Auth.: ORS 161.390, 418.005

Stats. Implemented: ORS 109.640, 161.327, 161.336, 161.341, 161, 346, 161.365, 161.370, 418.005, 418.312

## **413-020-0150**

### **Exercise and Delegation of Guardian Authority**

*(Amended 10/01/15)*

- (1) When the Department has *legal custody* of a *child* or *young adult* through a court order in which the Department has specifically been given guardianship, or a Release and Surrender Agreement, the Department will exercise its authority through Department staff as described in this rule.
- (2) District Manager or Designee: may exercise the Department's authority to consent to the following actions with respect to children served by that district:
  - (a) Enlistment of a *child* in the Armed Forces or the Job Corps; and
  - (b) Marriage.
- (3) Department Child Permanency Program Manager: may exercise the Department's authority under ORS 109.325 to consent to the adoption of a *child* who is in the *permanent custody* of the Department.
- (4) Department Chief Operating Officer or Department Director for Child Welfare, or in their absence and in the event of an emergency the Deputy Director for Child Welfare or Field Services may consent to any of the following actions for a *child*:
  - (a) Termination of a pregnancy, except when a young woman 15 years of age or older exercises her statutory right to consent to her own termination of a pregnancy.
  - (b) Extraordinary or controversial medical or surgical procedures, such as Do Not Resuscitate Order (DNR), organ transplants, kidney dialysis, open heart surgery, transgender medical services, or any procedure involving substantial life threat.
  - (c) Any medical or surgical procedure to which a legal parent or *guardian* of the *child* or the *child* is opposed.

- (d) Sterilization under ORS chapter 436, but only when such procedure is necessary to protect the child's life.
- (5) Department Director, Director for Child Welfare, Deputy Director for Child Welfare, and Deputy Director for Field Services may exercise the Department's authority to consent to any action to which the *physical custodian*, *caseworker*, and District Manager may consent.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.325, 109.640, 418.312

### **413-020-0160**

#### **Actions Not Authorized**

(Amended 10/01/15)

- (1) A Department employee may not consent to educational planning which is defined as the responsibility of a parent or surrogate parent (see OAR 581-015-2000).
- (2) A Department employee or agent may not exercise the Department's authority to give consent to the purchase of, or ownership of, a motor vehicle by a *child in legal custody* of the Department. This prohibition does not prevent a *child in the legal custody* of the Department from exercising the right to purchase or own a motor vehicle on his or her own account.
- (3) A Department employee may not co-sign or counter-sign any purchase contract for a *child* or *young adult* in the Department's custody.
- (4) A Department employee may not accept responsibility or serve as conservator of a child or young adult's property or estate.
- (5) A Department employee or agent may not consent to the sterilization of a *child* or *young adult*, except pursuant to ORS chapter 436, and to save the child or young adult's life.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.640, 418.312

### **413-020-0170**

#### **General Provisions**

(Amended 10/01/15)

- (1) The Department acknowledges the right of a minor 15 years of age or older to consent to hospital care, medical and surgical diagnosis, or treatment without the consent of the parent or *guardian* see ORS 109.640).

- (2) The Department acknowledges the right of a minor 14 years of age or older to obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder or chemical dependency, excluding methadone maintenance, by a physician (see ORS 109.675).
- (3) Whenever Department staff exercise the agency's authority to authorize actions described as the responsibility of a *guardian* under these rules, Department staff must:
  - (a) Consider the impact of the proposed action upon the welfare of the *child*, the child's family and the community prior to deciding whether to consent to or authorize the proposed action;
  - (b) Consult with the *physical custodian* of the *child*;
  - (c) When the *child* is not in the *permanent custody* of the Department, make reasonable efforts to consult the child's parents or guardians about the action proposed and consider the parents or guardians' preference concerning the action proposed prior to making a decision to consent to or authorize the proposed action unless there is cause to believe such consultation will be detrimental to the *child*; and
  - (d) Prepare a brief written record of the circumstances of the action consented to whenever the Department provides a written consent for actions defined as the responsibility of a *guardian*. The written record and a copy of any consent made in writing will be filed in the child's case record.
- (4) In any case where Department staff consider it necessary or appropriate, they may notify the juvenile court, or seek the court's concurrence, prior to consenting to or authorizing any of the actions described in these rules with respect to children in the Department's custody.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.640, 109.675

# CANS Screening and Enhanced Supervision

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## 413-020-0200

### Purpose

(Amended 11/1/2018)

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.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

## 413-020-0230

### Referral for and Review of the CANS Screening

(Amended 11/1/2018)

- (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.

Stat. Auth.: ORS 418.005, 418.340

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

### **413-020-0233**

#### **When a Supervision Plan is Required**

*(Amended 5/15/18)*

- (1) The *caseworker* must develop a *supervision plan* with the *certified family* with whom the *child* or *young adult* lives within 30 days of:
  - (a) The receipt of the *CANS screening* results that indicates *enhanced supervision* is necessary to maintain the safety and support the well-being of the *child* or *young adult* and the *child* or *young adult* qualifies for a *level of care payment*; or
  - (b) When a *child* or *young adult* who has *enhanced supervision* needs and is receiving a level of care moves from one *certified family* to another *certified family*.
- (2) A *supervision plan* is not required for a *level of care payment* determined for the purpose of negotiating an *adoption assistance* or *guardianship assistance payment*.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

### **413-020-0236**

#### **Development, Documentation, and Termination of a Supervision Plan**

*(Amended 01/15/13)*

- (1) After the *caseworker* has reviewed the *CANS screening* results for a *child* or *young adult* living with a *certified family* that indicates the *child* or *young adult* has *enhanced supervision* needs and qualifies for a *level of care payment*, the *caseworker* must:
  - (a) Contact the *certified family* to explain the supervision needs identified in the *CANS screening* results; and

- (b) During a meeting with the *certified family*, the *child* or *young adult*, as appropriate, and others who may participate in a *supervision plan*, explain the supervision requirements necessary to maintain the safety and support the well-being of the *child* or *young adult* and develop a *supervision plan* that meets the supervision needs of the *child* or *young adult*.
  - (A) If the *child* or *young adult* qualifies for Level 1 (moderate needs), the *supervision plan* must require the *certified family* to provide an environment with the additional support, direction, observation, and guidance from the *certified family* necessary to ensure a *child* or young adult's safety and well-being, beyond the level of supervision that typically is required for a *child* or *young adult* of the same age.
  - (B) If the *child* or *young adult* qualifies for Level 2 (intermediate needs), the *supervision plan* must require the *certified family* to provide a structured environment, additional support, direction, observation, and guidance necessary to ensure a *child* or young adult's safety and well-being, beyond the level of supervision that typically is required for a *child* or *young adult* of the same age.
  - (C) If the *child* or *young adult* qualifies for Level 3 (advanced needs), the *supervision plan* must require the *certified family* to provide a highly structured environment, additional support, direction, observation, and guidance necessary to ensure a *child* or young adult's safety and well-being, beyond the level of supervision that typically is required for a *child* or *young adult* of the same age.
- (2) The *supervision plan* must include:
  - (a) The supervision actions or activities that are to be provided by the *certified family* and other individuals to meet the *child* or young adult's identified needs. Examples of appropriate supervision actions or activities may include, but are not limited to: proactive use of space, use of routine, structure of the environment, positive reinforcement, and de-escalation techniques;
  - (b) The actions and assistance the Department will provide to support the *certified family* in addressing the supervision needs of the *child* or *young adult* and to maintain the *child* or *young adult* in the home;
  - (c) The actions the *child* or *young adult* will take to support the *supervision plan*;
  - (d) The persons responsible for monitoring the *child* or young adult's supervision needs and the supervision actions and activities;
  - (e) How the persons responsible for monitoring the *child* or young adult's supervision needs and the supervision actions and activities are to communicate with each other; and

- (f) A requirement that the *supervision plan* be reviewed during the first monthly face-to-face contact described in OAR 413-080-0054 after the date the *supervision plan* is signed by the individuals identified in section (3) of this rule.
- (3) The *supervision plan* must be signed by:
    - (a) The *caseworker*;
    - (b) The *certified family*;
    - (c) The *child* or *young adult*, if able; and
    - (d) Any other individuals who are to provide specific actions or activities in the *supervision plan*.
  - (4) The *supervision plan* must be approved by the caseworker's supervisor.
  - (5) A *supervision plan* may include *physical restraint* as a supervision action or activity only if the *certified family* has completed the *physical restraint* training requirements described in OAR 413-020-0240.
  - (6) A *supervision plan* that authorizes a *certified family* to use *physical restraint* must:
    - (a) Focus on intervention strategies that are designed to modify a *child* or young adult's behavior without the need for *physical restraint*;
    - (b) Explain that a *physical restraint* is to be used only when the *child* or young adult's behavior poses an imminent danger to self or others, and when no alternate actions are sufficient to stop a *child* or young adult's behavior;
    - (c) Be approved by the Child Welfare program manager; and
    - (d) Require the *certified family*:
      - (A) To document and report the circumstances of each use of *physical restraint* in writing as soon as reasonably possible after the use of *physical restraint* on a form approved by the Department, which explains:
        - (i) The behavior that required the use of *physical restraint*;
        - (ii) The specific attempts to stop the *child* or young adult's behavior without the use of *physical restraint*;
        - (iii) The time the *physical restraint* started; and
        - (iv) The time the *physical restraint* ended.

- (B) To orally report to the *child* or young adult's *caseworker* or the caseworker's supervisor within one business day of the *physical restraint*; and
  - (C) To submit the documentation required in paragraph (A) of this subsection to the *child* or young adult's *caseworker* within two business days after the use of *physical restraint*.
- (7) The *caseworker* must provide a copy of the signed *supervision plan* to the *certified family* and the certified family's *certifier*, and file a copy in the Department's information system.
- (8) When a *child* or *young adult* has a *supervision plan* and the *CANS screening* results indicate that the *child* or *young adult* no longer has *enhanced supervision* needs and no longer qualifies for a *level of care payment*, the *caseworker* must:
- (a) Terminate the *supervision plan*;
  - (b) Document in the Department's information system the date the *supervision plan* terminated and the reason the plan terminated; and
  - (c) Notify the *certified family* and the certified family's *certifier* that the *supervision plan* terminated and the reason the plan terminated.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

## **413-020-0240**

### **Use of Physical Restraint**

*(Amended 12/28/11)*

- (1) A *physical restraint* may be used by a *certified family* when the behavior of a *child* or *young adult* places the *child* or *young adult* or others in imminent risk of harm and only when:
- (a) Good judgment indicates that a *physical restraint* may safely be implemented; and
  - (b) The *certified family* has received the individual Behavior and Crisis Management Training in *physical restraint* specific to the supervision needs of the *child* or *young adult* by Department trained staff.
- (2) *Physical restraint* must be implemented with the least force necessary to prevent the risk of harm to self or others and should end as soon as the risk of harm no longer exists.

- (3) If the behavior of a *child* or *young adult* places the *child* or *young adult* or others in imminent risk of harm, and good judgment indicates that a *physical restraint* cannot be implemented safely, the *certified family* must call the local law enforcement agency to request intervention. The *certified family* must:
  - (a) Orally report the incident to the *caseworker* and the caseworker's supervisor as soon as reasonably possible;
  - (b) Document the incident in writing on a form approved by the Department; and
  - (c) Submit the completed form to the *caseworker* within two business days.
- (4) If the *child* or *young adult* is injured during the incident, whether or not a *physical restraint* is used, the *certified family* immediately must notify the Department's emergency 24-hour contact.
- (5) A *certified family* may not use *mechanical restraint* or *seclusion* of a *child* or *young adult* in an emergency or at any other time as a supervision action or activity.
- (6) Notwithstanding the training required in OAR 413-020-0255, when a situation arises and the behavior of a *child* or *young adult* places the *child* or *young adult* or another individual in imminent risk of harm and if good judgment indicates that a *physical restraint* may safely be implemented, the *certified family* may use a *physical restraint* even when:
  - (a) The *certified family* has not attended Behavior and Crisis Management Training; or
  - (b) The *child* or *young adult* does not have a *supervision plan*.
  - (c) If *physical restraint* is used under this section, the *certified family* must document and report the incident in accordance with the requirements of OAR 413-020-0236(6)(c).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

### **413-020-0245**

#### **Responsibilities in Monitoring a Child or Young Adult's Supervision in a Certified Family**

(Amended 01/15/13)

- (1) During each monthly face-to-face contact described in OAR 413-080-0054, in addition to assessing the safety of the *child* or *young adult*, Department staff must determine:

- (a) Whether the *certified family* is meeting the supervision needs of the *child* or *young adult*.
  - (b) Whether the supervision needs of the *child* or *young adult* have changed.
  - (c) If there is a current *supervision plan*, whether the supervision actions and activities described in the *supervision plan* are effective in meeting the *child* or young adult's supervision needs.
- (2) If, after assessing the safety of the *child* or *young adult* as described in OAR 413-080-0054, the *caseworker* determines that the *child* or *young adult* currently is safe in the home but his or her supervision needs are not being met, the *caseworker* must:
- (a) Consult with the certified family's *certifier* or the certifier's supervisor to determine if available resources or training are able to provide the additional support the *certified family* may need to meet the *child* or young adult's supervision needs;
  - (b) If there is a current *supervision plan* for the *child* or *young adult*, determine whether the *supervision plan* should be revised, and if so, meet with the *certified family* to revise the plan; and
  - (c) Determine whether there has been an observed, ongoing change in a *child* or young adult's behavior or functioning such that the observed changes must be documented and submitted with a *CANS screening* under referral OAR 413-020-0230(2).
- (3) The *caseworker* documents the monitoring activities described in this rule in the Department's information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

## **413-020-0255**

### **Training and the Planned Use of Physical Restraint**

*(Amended 12/28/11)*

- (1) The Department has approved and schedules Behavior and Crisis Management Training as the standard training curriculum for any *certified family* who requires training on crisis management. The training curriculum focuses on strengthening a certified family's supervision skills.
- (2) Before implementing a *supervision plan* that authorizes a *certified family* to use *physical restraint*, the *caseworker* must:

- (a) Consult with the *certifier* to confirm that the *certified family* has completed Behavior and Crisis Management Training; and
  - (b) Contact the Level of Care Manager to schedule the *certified family* to receive Behavior and Crisis Management Training, by Department-trained staff, in *physical restraint* specific to the supervision needs of the *child* or *young adult*.
- (3) A foster care coordinator or designee may approve comparable behavior and crisis management training obtained by a *certified family* for a specific *child* or *young adult* in place of Behavior and Crisis Management Training if:
- (a) The training was selected by a school district and used in the school; or
  - (b) The training was approved by the Department of Human Services, Addictions and Mental Health Division and used in a Children's Intensive Mental Health Treatment Services program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

# Investigation of Suspected Medical Neglect

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**413-020-0600**

## **Purpose**

*(Adopted 12/29/95)*

- (1) The purpose of these rules is to comply with Public Law 98-457, which requires that procedures be established within Oregon's Child Protective Services (hereafter referred to as CPS) program to respond to reports of suspected *medical neglect*, including reports of withholding *medically indicated treatment* for disabled infants with life-threatening conditions. The regulations indicate that the focus of the Department CPS work will be, "as it is in responding to other reports of child abuse and neglect, to protect the *child* and assist the family." Hospitals are encouraged to form review committees to assist with medical and ethical dilemmas arising in the care of disabled infants with life-threatening conditions. Due to the sensitive nature of these cases and the specialized skills required to complete the investigations, the Department will designate a Child Welfare staff person in each of the three cities having tertiary care centers (Portland, Eugene, and Medford) to be a specialist in *Medical Neglect* investigations. These *Medical Neglect* Investigators, along with the CPS program manager, will be available to provide telephone consultation and investigations or reports alleging *medical neglect* of handicapped infants with life-threatening conditions. The *Medical Neglect* Investigators will form a special investigation "Team" with a *Designated Consultant Neonatologist* and a local CPS *caseworker*.
- (2) The federal regulations emphasize that parents are the decision makers concerning treatment for their *disabled infant* based on advice and *reasonable medical judgment* of their physician(s) with advice from the *Hospital Review Committee*, if one exists. It is not the Department nor the *HRC*, nor any other committee, who makes decisions regarding the care and treatment for a *child* except in highly unusual circumstances where the course treatment is inconsistent with applicable standards established by law.
- (3) The legislation requires that appropriate nutrition, hydration, and medication shall always be provided to the infant, and that the effectiveness of treatment shall not be based on subjective opinions about the future "quality of life" of an infant. In response to a report of *medical neglect* of a *disabled infant* with a life-threatening condition, Department's investigative role is to determine if the decision made to withhold treatment was based on *reasonable medical judgment* consistent with the definition of "*withholding of medically indicated treatment*." (See OAR 413-020-0000.)

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

## 413-020-0620

### Policy

(Adopted 12/29/95)

Intake. Any person may make a report that a handicapped infant in a medical facility is not receiving adequate and necessary medical care. Reports which indicate withholding of medical treatment from disabled newborns with life-threatening conditions will be considered an emergency and assigned for investigation within one hour. Each Child Welfare branch will develop local procedures to assure that such reports received after normal work hours will be promptly investigated. Anonymous reports will be accepted at Intake.

- (1) Obtain from the reporting person as much of the following information as possible:
  - (a) Name and address of the hospital;
  - (b) Name and address of infant and infant's parents;
  - (c) The infant's name and birth date;
  - (d) The name of the infant's attending physician;
  - (e) The condition of the infant and in particular information regarding whether the infant may die or suffer harm within the immediate future if *medically indicated treatment* is withheld;
  - (f) The basis of the reporter's suspicion or belief that *medically indicated treatment* or appropriate nutrition, hydration, or medication is being or will be withheld;
  - (g) Name of the person making the report, source of the information, position to have reliable information (i.e. nurse, friend, family member, etc.), address and telephone number.
- (2) Criteria to determine if an investigation is indicated:
  - (a) Would the reported circumstances, if true, constitute "*medical neglect*";
  - (b) Is there reasonable cause to believe that *medically indicated treatment* is being withheld? This must be based on the condition of the *child*, health care professional's statements, information that the parents have refused to consent to treatment, and consultation with the worker's supervisor;
  - (c) A *Medical Neglect Investigator* will be contacted to help determine if assignment for a CPS investigation is indicated. (Consultation with a *Designated Consultant Neonatologist* from a hospital other than the one where the infant is receiving treatment may be utilized at this point.

- (3) Reporting the Alleged Neglect. When a report of suspected *medical neglect* is received, the local Law Enforcement Agency will be contacted per ORS 419B.020.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

## **413-020-0630**

### **Preliminary Investigation**

*(Adopted 12/29/95)*

- (1) When a report of suspected *medical neglect* of a *disabled infant* with life-threatening conditions is received and assigned for investigations, the CPS *caseworker* will immediately contact a *Medical Neglect Investigator* for consultation and assistance in initiating a preliminary investigation. The *Medical Neglect Investigator* will have the responsibility to determine the role/activities of the CPS *caseworker* and the *Medical Neglect Investigator* during preliminary investigation and "on site" investigation of a report. The *Medical Neglect Investigator* will conduct the investigations whenever possible.
- (2) During the preliminary investigations, the CPS *caseworker* or *Medical Neglect Investigator* will contact the *Designated Consultant Neonatologist* from a hospital other than the one where the infant is receiving care, for consultation and assistance. (Names of consultant neonatologists are available from the CPS program manager).
  - (a) The *Medical Neglect Investigator* (or *Designated Consultant Neonatologist*) shall contact the hospital liaison, advise that person of the nature of the reported suspected *medical neglect*, and request assistance to obtain the following information:
    - (A) Whether the infant is in the hospital;
    - (B) The name and location of the infant's parents;
    - (C) The medical condition of the infant, i.e., does the infant have a life-threatening condition;
    - (D) The nature of the care and treatment being provided to the infant and what, if any, additional or alternative treatment could be provided;
    - (E) If the infant's parents are in agreement with the care and treatment being provided or if they have refused to consent to recommended treatment;
    - (F) If there is a critical time pressure and thus a need for immediate court action;
    - (G) The analysis of the *HRC* or other review body;

- (H) Whether the attending physician has consulted with other medical professionals concerning the care and treatment of the infant and whether the medical professionals are in agreement with the care and treatment being given.
- (b) If treatment is indicated and recommended by the physician and the parents are refusing to consent to treatment, then court action should be immediately initiated or further counseling with the parents pursued. In addition to filing a petition in juvenile court, Child Welfare shall request that a guardian ad litem (GAL) or court appointed special advocate (CASA) be appointed for the *child*.
- (c) Criteria for continuing or closing preliminary investigation:
  - (A) If the facts confirmed by the treatment team indicate any of the following circumstances, then the investigation shall be terminated and the case closed: (The facts should be documented in the case file.)
    - (i) The infant is chronically and irreversibly comatose;
    - (ii) The provision of treatment would merely prolong dying, not be effective in ameliorating or correcting all the infant's life-threatening conditions, or otherwise be futile in terms of survival of the infant;
    - (iii) The provision of treatment would be virtually futile in terms of survival of the infant and the treatment itself under such circumstances would be inhumane.
  - (B) Where there remains doubt about the hospital's compliance with state laws, parents refuse to authorize medically-indicated treatment, or there is a need for additional information to substantiate a conclusion, the investigation should be continued.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

## **413-020-0640**

### **Investigation**

*(Adopted 12/29/95)*

When additional information is necessary to substantiate a conclusion to the *medical neglect* report, the *Medical Neglect Investigator* shall form a special investigative team with a consultant neonatologist from a hospital other than the one where the infant is receiving care, a local CPS *caseworker* and any other necessary professionals such as a nutritionist or the local district attorney. The on-site investigation shall be completed in the shortest possible time.

- (1) The Medical Investigator, with the assistance of the special investigation team members and *designated hospital liaison*, will complete the following:
  - (a) Interview treating physicians and others involved in the treatment;
  - (b) Arrange as early as possible meeting with *HRC* or other hospital review boards or committees. Determine at minimum the following: Did the *HRC* verify the diagnosis? How were the parents involved in the process? What treatment alternatives exist?
  - (c) Review medical records. The parents shall be requested to sign a release of information to allow CPS investigation and/or medical consultant to review records. If determined necessary, court intervention may be used to give access to medical records;
  - (d) Interview parents (after first determining with hospital social worker appropriateness and context for interviewing parents) to determine the parent's understanding of the child's condition and treatment alternatives, the decisions they have made, and the basis for those decisions.
- (2) When necessary, the *Medical Neglect Investigator* may take the following actions:
  - (a) Make an on-site visit to the medical facility to observe the care and treatment being provided to the infant;
  - (b) If an alternative diagnosis was not entertained, and no consultants brought in, or there was not a procedure for reviewing the diagnosis and treatment recommendation, then the investigator may wish to arrange for an independent medical consultant and/or exam. The *Medical Neglect Investigator* shall recommend to the parent(s) that an independent medical examination or evaluation be performed. If the parent(s) do not consent, the specialist will seek a court order to obtain an independent medical examination or evaluation.
- (3) Concluding the Investigation
  - (a) Following the investigation, the *Medical Neglect Investigator* will determine:
    - (A) Whether the report of suspected *medical neglect* of the handicapped infant with life-threatening conditions is valid. Information from the *HRC* or consulting physicians, including the *Designated Consultant Neonatologist*, shall be used to determine whether the treating physician exercised *reasonable medical judgment*. The *reasonable medical judgment* of the treating physician may differ from that of other physicians. Grounds for overriding the refusal of the parents of the infant to consent to medical care and treatment exist only if any *reasonable medical judgment* would be that treatment is medically indicated. The parents' refusal to consent shall be respected if the attending physician, the Review Committee, or a consulting physician finds that treatment is not medically indicated;

- (B) Whether further action should be taken by the Department, and if there is a basis for juvenile court jurisdiction.
- (b) If the parents of the infant refuse to consent to the medical care and treatment found to be necessary and adequate by the attending physician and the *HRC*, or by another consulting medical professional, or the attending physician refuses to provide treatment, Child Welfare shall initiate the filing of a petition in juvenile court on behalf of the infant requesting the court to take jurisdiction of the infant so that *medically indicated treatment* may be provided. Child Welfare will also request that a Guardian Ad Litem (GAL) or Court Appointed Special Advocate (CASA) be appointed for the *child*. The *caseworker* will document these actions in the case record;
- (c) If the infant's parents do not desire medical treatment beyond that being provided and if the *reasonable medical judgment* of the attending physician, *HRC*, or other consulting medical professional is that *medically indicated treatment* is being provided, the *Medical Neglect Investigator* will document this agreement in the case record. The CPS *caseworker* will close the case and take no further action;
- (d) If the infant's parents desire medical care or treatment for the infant which is not being provided by the attending physician or the medical facility, the *Medical Neglect Investigator* will advise the parents of their option to seek another medical opinion or additional medical resources. The *Medical Neglect Investigator* shall document the advice given the parents in the case record, the *caseworker* will close the case and take no further action;
- (e) The Child Welfare *caseworker* shall assist the parent(s) with referrals to support groups, community educational resources, and agencies which provide services for disabled infants and their families, and to agencies with financial resources for medical and rehabilitative services;
- (f) Following completion of the investigation, the *Medical Neglect Investigator* shall notify the assistant administrator for the Program Operations by telephone of the report, the investigation and the actions taken. The telephone report is to be followed by a written report and documented in the case record.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

## **413-020-0650**

### **Annual Information Update**

*(Adopted 12/29/95)*

Each local Child Welfare branch manager shall contact each hospital in their county and obtain the name, title, and telephone number of the *designated hospital liaison* who is responsible for

coordination, consultation, and notification of Child Welfare of cases of suspected *medical neglect*. The branch managers shall update this information annually.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005