

**DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 308**

**IN-HOME SUPPORT FOR CHILDREN
WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES**

EFFECTIVE DECEMBER 28, 2013

411-308-0010 Statement of Purpose

(Amended 12/28/2013)

(1) The rules in OAR chapter 411, division 308 prescribe standards, responsibilities, and procedures for providing in-home support for children with intellectual or developmental disabilities to prevent out-of-home placement, or to return a child with an intellectual or developmental disability back to the family home from a residential setting other than the child's family home.

(2) In-home supports are designed to increase a family's ability to care for a child with an intellectual or developmental disability in the family home.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-308-0020 Definitions

(Amended 12/28/2013)

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 308:

(1) "Abuse" means "abuse" of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" means basic personal everyday activities, including but not limited to tasks such as eating, using the restroom, dressing, grooming, bathing, and transferring.

(3) "ADL" means "activities of daily living" as defined in this rule.

(4) "Annual Plan" means the written summary a services coordinator completes for a child, who is not enrolled in waiver or Community First Choice services. An Annual Plan is not an Individual Support Plan and is not a plan of care for Medicaid purposes.

(5) "Attendant Care" means the Medicaid state plan funded essential supportive daily care described in OAR 411-308-0120 that is delivered by a qualified provider to enable a child to remain in, or return to, the child's family home.

(6) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(7) "Behavior Consultant" means a contractor with specialized skills who develops a Behavior Support Plan.

(8) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow to cause a child's challenging behaviors to become unnecessary and to change the provider's own behavior, adjust environment, and teach new skills.

(9) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to a child's intellectual or developmental disability that prevents the child from accomplishing activities of daily living, instrumental activities of daily living, health related tasks, and cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(10) "Case Management" means the functions performed by a services coordinator. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(11) "CDDP" means "Community Developmental Disability Program" as defined in this rule.

(12) "Child" means an individual who is less than 18 years of age applying for, or determined eligible for, in-home support.

(13) "Children's Intensive In-Home Services" means the services described in:

(a) OAR chapter 411, division 300, Children's Intensive In-Home Services, Behavior Program;

(b) OAR chapter 411, division 350, Medically Fragile Children Services; or

(c) OAR chapter 411, division 355, Medically Involved Children's Program.

(14) "Chore Services" mean the services described in OAR 411-308-0120 that are needed to restore a hazardous or unsanitary situation in a child's family home to a clean, sanitary, and safe environment.

(15) "Community Developmental Disability Program (CDDP)" means the entity that is responsible for plan authorization, delivery, and monitoring of developmental disability services according to OAR chapter 411, division 320.

(16) "Community First Choice (K Plan)" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.

(17) "Community Nursing Services" mean the services described in OAR 411-308-0120 that include nurse delegation, training, and care coordination for a child living in the child's family home.

(18) "Community Transportation" means the services described in OAR 411-308-0120 that enable a child to gain access to community services, activities, and resources that are not medical in nature.

(19) "Cost Effective" means that a specific service, support, or item of equipment meets a child's service needs and costs less than, or is comparable to, other similar service, support, or equipment options considered.

(20) "CPMS" means the Client Processing Monitoring System.

(21) "Crisis" means the risk factors described in OAR 411-320-0160 are present for which no appropriate alternative resources are available and a child meets the eligibility requirements for crisis diversion services in OAR 411-320-0160.

(22) "Day" means a calendar day unless otherwise specified in these rules.

(23) "Department" means the Department of Human Services.

(24) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(25) "Director" means the director of the Department's Office of Developmental Disability Services or the director's designee.

(26) "Employer-Related Supports" mean the activities that assist a family with directing and supervising provision of services described in a child's Annual Plan. Employer-related supports include but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools, such as job descriptions;
and

(d) Fiscal intermediary services.

(27) "Environmental Accessibility Adaptations" mean the physical adaptations described in OAR 411-308-0120 that are necessary to ensure the health, welfare, and safety of a child in the child's family home, or that enable a child to function with greater independence in the family home.

(28) "Exit" means termination or discontinuance of in-home support.

(29) "Family":

(a) Means a unit of two or more people that includes at least one child with an intellectual or developmental disability where the child's primary caregiver is:

(A) Related to the child with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting a child with an intellectual or developmental disability when the child is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining a child's eligibility for in-home supports as a resident in the family home;

(B) Identifying people who may apply, plan, and arrange for individual supports; and

(C) Determining who may receive family training.

(30) "Family Home" means a child's primary residence that is not under contract with the Department to provide services as a certified foster home for children with intellectual or developmental disabilities or a licensed or certified residential care facility, assisted living facility, nursing facility, or

other residential support program site. Family home may include a certified child welfare foster home.

(31) "Family Training" means the training and counseling services described in OAR 411-308-0120 that are provided to a child's family to increase the family's capacity to care for, support, and maintain the child in the child's family home.

(32) "Fiscal Intermediary" means a person or entity that receives and distributes in-home support funds on behalf of the family of an eligible child according to the child's Individual Support Plan or Annual Plan.

(33) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(34) "Functional Needs Assessment" means a comprehensive assessment that documents:

(a) Physical, mental, and social functioning; and

(b) Risk factors, choices and preferences, service and support needs, strengths, and goals.

(35) "General Business Provider" means an organization or entity selected by the parent or guardian of an eligible child and paid with in-home support funds that:

(a) Is primarily in business to provide the service chosen by the child's parent or guardian to the general public;

(b) Provides services for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the child.

(36) "Guardian" means a person or agency appointed and authorized by a court to make decisions about services for a child.

(37) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) and 1115 of the Social Security Act.

(38) "IADL" means "instrumental activities of daily living" as defined in this rule.

(39) "ICF/MR" means intermediate care facilities for the mentally retarded. Federal law and regulations use the term "intermediate care facilities for the mentally retarded (ICF/MR)". The Department prefers to use the accepted term "individual with intellectual disability (ID)" instead of "mental retardation (MR)". However, as ICF/MR is the abbreviation currently used in all federal requirements, ICF/MR is used.

(40) "In-Home Support" means individualized planning and service coordination, arranging for services to be provided in accordance with Individual Support Plans, and purchase of supports that are not available through other resources that are required for children with intellectual or developmental disabilities who are eligible for in-home support services to live in the child's family home. In-home supports are designed to:

(a) Prevent unwanted out-of-home placement and maintain family unity; and

(b) Whenever possible, reunite families with children with intellectual or developmental disabilities who have been placed out of the family home.

(41) "In-Home Support Funds" mean public funds contracted by the Department to the community developmental disability program (CDDP) and managed by the CDDP to assist families with the identification and selection of supports for children with intellectual or developmental disabilities according to the child's Individual Support Plan or Annual Plan.

(42) "Incident Report" means the written report of any injury, accident, act of physical aggression, or unusual incident involving a child.

(43) "Independent Provider" means a person selected by a child's parent or guardian and paid with in-home support funds to personally provide services to the child.

(44) "Individual" means a person with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(45) "Individual Support Plan" means the written details of the supports, activities, and resources required for a child to achieve and maintain personal outcomes. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. Individual support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an ISP. The ISP is the child's plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(46) "Instrumental Activities of Daily Living (IADL)" mean the activities other than activities of daily living, including but not limited to:

- (a) Meal planning and preparation;
- (b) Budgeting;
- (c) Shopping for food, clothing, and other essential items;
- (d) Performing essential household chores;
- (e) Communicating by phone or other media; and
- (f) Traveling around and participating in the community.

(47) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(48) "ISP" means "Individual Support Plan" as defined in this rule.

(49) "K Plan" means "Community First Choice" as defined in this rule.

(50) "Level of Care" means a child meets the following institutional level of care for an intermediate care facility for individuals with intellectual or developmental disabilities (formerly referred to as an ICF/MR):

(a) The child has a condition of an intellectual disability or a developmental disability as defined in OAR 411-320-0020 and meets the eligibility criteria for developmental disability services as described in OAR 411-320-0080; and

(b) The child has a significant impairment in one or more areas of adaptive functioning. Areas of adaptive functioning include self direction, self care, home living, community use, social, communication, mobility, or health and safety.

(51) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who comes in contact with and has reasonable cause to believe a child with or without an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child with or without an intellectual or developmental disability, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(52) "Natural Supports" means the parental responsibility for a child who is less than 18 years of age and the voluntary resources available to the child from the child's relatives, friends, neighbors, and the community that are not paid for by the Department.

(53) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(54) "Nursing Care Plan" means the plan developed by a nurse that describes the medical, nursing, psychosocial, and other needs of a child and how those needs are met. The Nursing Care Plan includes the tasks

that are taught or delegated to a qualified provider or the child's family. When a Nursing Care Plan exists, it is a supporting document for an Individual Support Plan or Annual Plan.

(55) "OHP" means the Oregon Health Plan.

(56) "Oregon Intervention System" means the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. The Oregon Intervention System uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety. .

(57) "Parent" means biological parent, adoptive parent, stepparent, or legal guardian.

(58) "Person-Centered Planning":

(a) Means a timely and formal or informal process for gathering and organizing information that helps --

(A) Determine and describe choices about personal goals, activities, services, providers, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with a child's cultural considerations, needs, and preferences.

(59) "Personal Care Services" means assistance with activities of daily living, instrumental activities of daily living, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding.

(60) "Plan of Care" means the written plan of Medicaid services required by Medicaid regulation. Oregon's plan of care is the Individual Support Plan.

(61) "Plan Year" means 12 consecutive months from the start date specified on a child's authorized Individual Support Plan or Annual Plan.

(62) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(63) "Primary Caregiver" means a child's parent, guardian, relative, or other non-paid parental figure that provides direct care at the times that a paid provider is not available.

(64) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts the child's freedom of movement.

(65) "Provider" means a person who is qualified as described in OAR 411-308-0130 to receive payment from the Department for providing support and services to a child according to the child's Individual Support Plan or Annual Plan.

(66) "Provider Organization" means an entity selected by a child's parent or guardian and paid with in-home support funds that:

(a) Is primarily in business to provide supports for children with intellectual or developmental disabilities;

(b) Provides supports for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the child.

(67) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(68) "Regional Process" means a standardized set of procedures through which a child's needs and funding to implement supports are reviewed for approval. The regional process includes review of the potential risk of out-of-home placement, the appropriateness of the proposed supports, and cost effectiveness of the child's Annual Plan. Children who meet the crisis eligibility under OAR 411-308-0060(2) may be granted access to in-home supports through the regional process.

(69) "Relief Care" means the intermittent services described in OAR 411-308-0120 that are provided on a periodic basis of not more than 14 consecutive days for the relief of, or due to the temporary absence of, a child's primary caregiver.

(70) "Services Coordinator" means an employee of a community developmental disability program, Department, or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor in-home support, and to act as a proponent for children with intellectual or developmental disabilities and their families. A services coordinator is a child's person-centered plan coordinator as defined in the Community First Choice state plan,

(71) "Specialized Equipment and Supplies" means the devices, aids, controls, supplies, or appliances described in OAR 411-308-0120 that enable a child to increase the child's ability to perform activities of daily living or to perceive, control, or communicate with the environment in which the child lives.

(72) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(73) "Supplant" means take the place of.

(74) "Support" means the assistance that a child and the child's family requires, solely because of the effects of the child's intellectual or developmental disability, to maintain or increase the child's age-appropriate independence, achieve a child's age-appropriate community presence and participation, and to maintain the child in the child's family home. Support is subject to change with time and circumstances.

(75) "These Rules" mean the rules in OAR chapter 411, division 308.

(76) "Volunteer" means any person providing services without pay to support the services and supports provided to a child.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-308-0030 In-Home Support Administration and Operation
(Amended 12/28/2013)

(1) FISCAL INTERMEDIARY SERVICES. The CDDP must provide, or arrange a third party to provide, fiscal intermediary services for all families. The fiscal intermediary receives and distributes in-home support funds on behalf of a child's family. The responsibilities of the fiscal intermediary include payments to vendors as well as all activities and records related to payroll and payment of employer-related taxes and fees as an agent of a child's family who employs a person to provide services, supervision, or training in the family home or community. In this capacity, the fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

(2) GENERAL RECORD REQUIREMENTS. The CDDP must maintain records of services to children in accordance with OAR 411-320-0070, ORS 179.505, ORS 192.515 to 192.518, 45 CFR 205.50, 45 CFR 164.512, Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any Department administrative rules and policies pertaining to service records.

(a) DISCLOSURE. For the purpose of disclosure from medical records under these rules, CDDPs are considered "providers" as defined in ORS 179.505(1) and ORS 179.505 is applicable.

(A) Access to records by the Department does not require authorization by a child's family.

(B) For the purposes of disclosure from non-medical records, all or portions of the information contained in the non-medical record may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) SERVICE RECORDS. Records for children who receive in-home support must be kept up-to-date and must include:

(A) An easily accessed summary of basic information as described in OAR 411-320-0070, including the date of the child's enrollment in in-home support;

(B) Records related to receipt and disbursement of in-home support funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-308-0130, and documentation of family acceptance or delegation of the record keeping responsibilities outlined in this rule. Records must include:

(i) Itemized invoices and receipts to record the purchase of any single item;

(ii) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals;

(iii) Written professional support plans, assessments, and reviews to document the acceptable provision of behavior support, nursing, and other professional training and consultation services; and

(iv) Pay records to record employee services, including timesheets signed by both employee and employer.

- (C) Incident reports, including those involving CDDP staff;
- (D) Assessments used to determine required supports, preferences, and resources;
- (E) When a child is not Medicaid eligible, documentation of the child's eligibility for crisis services and approval of the child's services through a regional process;
- (F) The child's ISP or Annual Plan and reviews;
- (G) The services coordinator's correspondence and notes related to plan development and outcomes; and
- (H) Family satisfaction information.

(c) GENERAL FINANCIAL POLICIES AND PRACTICES. The CDDP must:

- (A) Maintain up-to-date accounting records consistent with generally accepted accounting principles that accurately reflect all in-home support revenue by source, all expenses by object of expense, and all assets, liabilities, and equities; and
- (B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement.

(d) RECORDS RETENTION. Records must be retained in accordance with OAR chapter 166, division 150, Secretary of State, Archives Division.

- (A) Financial records, supporting documents, statistical records, and all other records (except service records) must be retained for a minimum of three years after the close of the contract period, or until audited.
- (B) Service records must be kept for a minimum of seven years.

(3) COMPLAINTS AND APPEALS. The CDDP must provide for review of complaints and appeals by or on behalf of children related to in-home support as set forth in OAR 411-320-0170.

(4) DENIAL, TERMINATION, SUSPENSION, OR REDUCTION OF SERVICES FOR MEDICAID RECIPIENTS.

(a) Each time the CDDP takes an action to deny, terminate, suspend, or reduce a child's access to services covered under Medicaid, the CDDP must notify the child's parent or guardian of the right to a hearing and the method to request a hearing. The CDDP must mail the notice by certified mail or personally serve the notice to the child's parent or guardian 10 days or more prior to the effective date of the action.

(A) The CDDP must use the Notification of Planned Action form or a comparable Department-approved form for such notification.

(B) This notification requirement does not apply if an action is part of, or fully consistent with, a child's ISP and the child's parent or guardian has agreed with the action by signing the child's ISP.

(b) A notice required by subsection (a) of this section must include:

(A) The action the CDDP intends to take;

(B) The reasons for the intended action;

(C) The specific Oregon Administrative Rules that support, or the change in federal or state law that requires, the action;

(D) The appealing party's right to request a hearing in accordance with OAR chapter 137, ORS chapter 183, and 42 CFR Part 431, Subpart E;

(E) A statement that the CDDP files on the subject of the hearing automatically becoming part of the hearing record upon default for the purpose of making a prima facie case;

(F) A statement that the actions specified in the notice take effect by default if a Department representative does not receive a request for a hearing within 45 days from the date that the CDDP mails or personally serves the notice of planned action;

(G) In cases of an action based upon a change in law, the circumstances under which a hearing is granted; and

(H) An explanation of the circumstances under which CDDP services are continued if a hearing is requested.

(c) If a child's parent or guardian disagrees with a decision or proposed action by the CDDP to deny, terminate, suspend, or reduce the child's access to services covered under Medicaid, the party may request a hearing as provided in ORS chapter 183. The request for a hearing must be in writing on a Department approved form and signed by the child's parent or guardian. The signed form must be received by the Department within 45 days from the date the CDDP mailed the notice of action.

(d) A child's parent or guardian may request an expedited hearing if the child's parent or guardian feels that there is an immediate, serious threat to the child's life or health if the normal timing of the hearing process is followed.

(e) If a child's parent or guardian requests a hearing before the effective date of the proposed action and requests that the existing services be continued, the Department shall continue the services.

(A) The Department must continue the services until whichever of the following occurs first:

(i) The current authorization expires;

(ii) The administrative law judge issues a proposed order and the Department issues a final order; or

(iii) The child is no longer eligible for Medicaid benefits.

(B) The Department must notify the child's parent or guardian that the Department is continuing the service. The notice must inform the child's parent or guardian that, if the hearing is resolved against the child, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(f) The Department may reinstate services if:

(A) The Department takes an action without providing the required notice and the child's parent or guardian requests a hearing;

(B) The Department fails to provide the notice in the time required in this rule and the child's parent or guardian requests a hearing within 10 days of the mailing of the notice of action; or

(C) The post office returns mail directed to the child's parent or guardian, but the location of the child's parent or guardian becomes known during the time that the child is still eligible for services.

(g) The Department must promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the child, or the Department decides in the child's favor before the hearing.

(h) The Department representative and the child's parent or guardian may have an informal conference, without the presence of the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the child's parent or guardian to settle the matter;

(B) Ensure the child's parent or guardian understands the reason for the action that is the subject of the hearing request;

(C) Give the child's parent or guardian an opportunity to review the information that is the basis for that action;

(D) Inform the child's parent or guardian of the rules that serve as the basis for the contested action;

(E) Give the child's parent or guardian and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the child's parent or guardian wishes to have any witness subpoenas issued; and

(G) Give the Department an opportunity to review its action or the action of the CDDP.

(i) The child's parent or guardian may, at any time prior to the hearing date, request an additional conference with the Department representative. At the Department representative's discretion, the Department representative may grant an additional conference if it facilitates the hearing process.

(j) The Department may provide the child's parent or guardian the relief sought at any time before the final order is issued.

(k) The child's parent or guardian may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal is effective on the date the Department or the Office of Administrative Hearings receives the withdrawal. The Department must issue a final order confirming the withdrawal to the last known address of the child's parent or guardian. The child's parent or guardian may cancel the withdrawal up to 10 working days following the date the final order is issued.

(l) Proposed and final orders.

(A) In a contested case, the administrative law judge must serve a proposed order to the child's parent or guardian and the Department.

(B) If the administrative law judge issues a proposed order that is adverse to the child, the child's parent or guardian may file exceptions to the proposed order to be considered by the Department. The exception must be in writing and must be received by the Department no later than 10 days after service of the proposed order. The child's parent or guardian may not submit additional evidence after this period unless the Department grants prior approval.

(C) After receiving the exceptions, if any, the Department may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

(5) OTHER OPERATING POLICIES AND PROCEDURES. The CDDP must develop and implement such written statements of policy and procedure, in addition to those specifically required by this rule, as are necessary and useful to enable the CDDP to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-308-0040 Required In-Home Support
(Amended 12/28/2013)

(1) The CDDP must provide or arrange for the following services to support all children receiving in-home support in the family home:

(a) SERVICE COORDINATION.

(A) Assistance for families to determine needs, plan supports in response to needs, and develop individualized plans based on available natural supports and public resources;

(B) Assistance for families to find and arrange the resources to provide planned supports;

(C) Assistance for families and children (as appropriate) to effectively put the child's ISP or Annual Plan into practice including help to monitor and improve the quality of personal supports and to assess and revise the child's ISP or Annual Plan goals; and

(D) Assistance to families to access information, referral, and local capacity building services through the county's family support program under OAR chapter 411, division 305.

(b) EMPLOYER-RELATED SUPPORTS.

(A) Fiscal intermediary services in the receipt and accounting of in-home support services on behalf of families in addition to making payment with the authorization of families; and

(B) Assistance to families to fulfill roles and obligations as employers of support staff when staff is paid with in-home support funds.

(2) The CDDP must inform families about in-home support when a child is determined eligible for developmental disability services. The CDDP must provide accurate, up-to-date information that must include:

(a) Criteria for entry and for determining how much assistance with supports shall be available, including information about eligibility for in-home supports and how these supports are different from family support services the child and family may have received under OAR chapter 411, division 305;

(b) An overview of common processes encountered in using - in-home support, including the in-home support planning process and the regional processes (as applicable);

(c) Responsibility of providers of in-home support and CDDP employees as mandatory reporters of child abuse;

(d) A description of family responsibilities in regard to use of public funds;

(e) An explanation of family rights to select and direct the providers of services authorized through an eligible child's ISP or Annual Plan and purchased with in-home support funds from among those qualified according to OAR 411-308-0130 to provide supports; and

(f) Information on complaint and appeal rights and how to raise and resolve concerns about in-home supports.

(3) The CDDP must make information required in sections (1) and (2) of this rule available using language, format, and presentation methods appropriate for effective communication according to each family's needs and abilities.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-308-0050 Financial Limits of In-Home Support

(Amended 12/28/2013)

(1) In any plan year, support must be limited to the amount of support determined to be necessary by a functional needs assessment and specified in a child's ISP or Annual Plan. For a child who is not Medicaid eligible, the amount of support specified in the child's Annual Plan may not exceed the maximum allowable monthly plan amount published in the Department's rate guidelines in any month during the plan year.

(2) Payment rates used to establish the limits of financial assistance for specific service in the child's Annual Plan must be based on the Department's rate guidelines for costs of frequently-used services. Department rate guidelines notwithstanding, final costs may not exceed local usual and customary charges for these services as evidenced by the CDDP's own documentation.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-308-0060 Eligibility for In-Home Support

(Amended 12/28/2013)

(1) STANDARD ELIGIBILITY. In order to be eligible for in-home support, a child must:

- (a) Be under the age of 18;
- (b) Be receiving the full Medicaid benefit through the Oregon Health Plan;
- (c) Be determined eligible for developmental disability services by the CDDP of the child's county of residence as described in OAR 411-320-0080; and
- (d) After completion of an assessment, meet the level of care as defined in OAR 411-308-0020.

(2) CRISIS ELIGIBILITY. When the standard eligibility criteria described in section (1) of this rule are not met, the CDDP of a child's county of residence may find a child eligible for in-home support when the child --

- (a) Is experiencing a crisis as defined in OAR 411-308-0020 and may be safely served in the family home;
- (b) Has exhausted all appropriate alternative resources, including but not limited to natural supports and children's intensive in-home services as defined in OAR 411-308-0020;
- (c) Does not receive or may stop receiving other Department-paid in-home or community living services other than state Medicaid plan services, adoption assistance, or short-term assistance, including crisis services provided to prevent out-of-home placement; and
- (d) Is at risk of out-of-home placement and requires in-home support to be maintained in the family home; or
- (e) Resides in a Department-paid residential service and requires in-home support to return to the family home.

(3) CONCURRENT ELIGIBILITY. Children are not eligible for in-home support from more than one CDDP unless the concurrent service:

- (a) Is necessary to transition from one county to another with a change of residence;
- (b) Is part of a collaborative plan developed by both CDDPs; and
- (c) Does not duplicate services and expenditures.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-308-0070 In-Home Support Entry, Duration, and Exit
(Amended 12/28/2013)

(1) ENTRY. An eligible child may enter in-home support when in-home support needs are assessed through a functional needs assessment. In-home supports must be authorized on an annual basis, prior to the beginning of a new ISP or Annual Plan.

(2) DURATION OF SERVICES. Once a child has entered in-home support, the child and the child's family may continue receiving in-home supports from the CDDP until the child turns 18. The child must remain eligible for in-home support and in-home support funds must be available at the CDDP and authorized by the Department to continue services. The child's ISP or Annual Plan must be developed each year and kept current.

(3) CHANGE OF COUNTY OF RESIDENCE. If a child and the child's family move outside the CDDP's area of service, the originating CDDP must arrange for services purchased with in-home support funds to continue, to the extent possible, in the new county of residence. The originating CDDP must:

- (a) Provide information about the need to apply for services in the new CDDP and assist the family with application for services if necessary; and

- (b) Contact the new CDDP to negotiate the date on which the in-home support, including responsibility for payments, transfers to the new CDDP.

(4) EXIT. A child must leave a CDDP's in-home support --

(a) When the child no longer resides in the family home;

(b) At the written request of the child's parent or guardian to end the in-home supports;

(c) When the in-home supports are no longer necessary to prevent out-of-home placement due to either;

(A) The risk of out of home placement no longer exists due to changes in either the child's support needs or the family's ability to provide the support; or

(B) Appropriate alternative resources become available, including but not limited to supports through children's intensive in-home services as defined in OAR 411-308-0020.

(d) On the child's 18th birthday;

(e) When the child and the child's family moves to a county outside the CDDP's area of service, unless transition services have been previously arranged and authorized by the CDDP as required in section (3) of this rule; or

(f) No less than 30 days after the CDDP has served written notice, in the language used by the family, of intent to terminate services because:

(A) The child's family either cannot be located or has not responded to repeated attempts by CDDP staff to complete the child's ISP or Annual Plan development and monitoring activities and does not respond to the notice of intent to terminate; or

(B) The CDDP has sufficient evidence that the child's family has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's ISP or Annual Plan, refused to

cooperate with documenting expenses, or otherwise knowingly misused public funds associated with in-home support.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-308-0080 Written Plan Required

(Amended 12/28/2013)

(1) The CDDP must provide an annual planning process to assist families in establishing outcomes, determining needs, planning for supports, and reviewing and redesigning support strategies for all children eligible for in-home support. The planning process must occur in a manner that:

(a) Identifies and applies existing abilities, relationships, and resources while strengthening naturally occurring opportunities for support at home and in the community;

(b) Is consistent in both style and setting with the child's and the child's family's needs and preferences, including but not limited to informal interviews, informal observations in home and community settings, or formally structured meetings; and

(c) Includes completing a functional needs assessment using a person-centered planning approach.

(2) The CDDP, the child (as appropriate), and the child's family must develop a written ISP or Annual Plan for the child as a result of the planning process prior to purchasing supports with in-home support funds and annually thereafter. The child's ISP or Annual Plan must include but not be limited to:

(a) The eligible child's legal name and the name of the child's parent (if different than the child's last name) or the name of the child's guardian;

(b) A description of the supports required, including the reason the support is necessary. The description must be consistent with the needs identified in the functional needs assessment;

(c) Beginning and end dates of the plan year as well as when specific activities and supports are to begin and end;

(d) A list of personal, community, and public resources that are available to the child and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, general funds, or natural supports;

(e) Signatures of the child's services coordinator, the child's parent or guardian, and the child (as appropriate); and

(f) The schedule of the child's ISP or Annual Plan reviews.

(3) The ISP must also include the following:

(a) Projected costs with sufficient detail to support estimates;

(b) The manner in which services are delivered and the frequency of services;

(c) Service providers;

(d) The child's strengths and preferences;

(e) Individually identified goals and desired outcomes;

(f) The services and supports (paid and unpaid) to assist the child to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(g) The risk factors and the measures in place to minimize the risk factors, including back-up plans;

(h) The identity of the person responsible for case management and monitoring the ISP or Annual Plan; and

(i) A provision to prevent unnecessary or inappropriate care.

(4) The child's ISP or Annual Plan, or records supporting development of each child's ISP or Annual Plan, must include evidence that:

(a) When the child is not Medicaid eligible, in-home support funds are used only to purchase goods or services necessary to prevent the child from out-of-home placement, or to return the child from a community placement to the family home;

(b) The services coordinator has assessed the availability of other means for providing the supports before using in-home support funds, and other public, private, formal, and informal resources available to the child have been applied and new resources have been developed whenever possible;

(c) Basic health and safety needs and supports have been addressed, including but not limited to identification of risks, including risk of serious neglect, intimidation, and exploitation;

(d) Informed decisions by the child's parent or guardian regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(e) Education and support for the child and the child's family to recognize and report abuse.

(5) The services coordinator must obtain and attach a Nursing Care Plan to the child's written ISP or Annual Plan when in-home supports are used to purchase care and services requiring the education and training of a nurse.

(6) The services coordinator must obtain and attach a Behavior Support Plan to the child's written ISP or Annual Plan when the Behavior Support Plan is implemented by the child's family or providers during the plan year.

(7) In-home supports may only be provided after the child's ISP or Annual Plan is developed as described in this rule, authorized by the CDDP, and signed by the child's parent or guardian.

(8) The services coordinator must review and reconcile receipts and records of purchased supports authorized by the child's ISP or Annual Plan

and subsequent ISP or Annual Plan documents, at least quarterly during the plan year.

(9) At least annually, the services coordinator must conduct and document reviews of the child's ISP or Annual Plan and resources with the child's family as follows:

(a) Evaluate progress toward achieving the purposes of the child's ISP or Annual Plan;

(b) Record actual in-home support fund costs;

(c) Note effectiveness of purchases based on services coordinator observation as well as family satisfaction;

(d) Determine whether changing needs or availability of other resources have altered the need for specific supports or continued use of in-home supports; and

(e) For children who meet the crisis eligibility under OAR 411-308-0060(2), a review of the child's continued risk for out-of-home placement and the availability of alternate resources, including eligibility for children's intensive in-home services as defined in OAR 411-308-0020.

(10) When the eligible child and the child's family moves to a county outside the area of service, the originating CDDP must assist in-home support recipients by:

(a) Continuing in-home supports authorized by the child's ISP or Annual Plan which is current at the time of the move, if the support is available, until the transfer date agreed upon according to OAR 411-308-0070; and

(b) Transferring the unexpended portion of the child's in-home supports to the new CDDP of residence.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-308-0090 Managing and Accessing In-Home Support Funds
(Amended 12/28/2013)

(1) Funds contracted to a CDDP by the Department to serve a specifically-named child must only be used to support that specified child. Services must be provided according to each child's approved ISP or Annual Plan. The funds may only be used to purchase supports described in OAR 411-308-0120. Continuing need for services must be regularly reviewed according to the Department's procedures described in these rules.

(2) No child receiving in-home support may concurrently receive services through:

(a) Children's intensive in home services as defined in OAR 411-308-0020;

(b) Direct assistance or immediate access funds under family support; or

(c) In-home support from another CDDP unless short-term concurrent services are necessary when a child moves from one CDDP to another and the concurrent supports are arranged in accordance with OAR 411-308-0060(3).

(3) Children receiving in-home support may receive short-term crisis diversion services provided through the CDDP or region. Children receiving in-home support may utilize family support information and referral services, other than direct assistance or immediate access funds, while receiving in-home support. The CDDP must clearly document the services and demonstrate that the services are arranged in a manner that does not allow duplication of funding.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-308-0100 Conditions for In-Home Support Purchases

(Amended 12/28/2013)

(1) A CDDP must only use in-home support funds to assist families to purchase supports for the purpose defined in OAR 411-308-0010 and in accordance with the child's ISP or Annual Plan that meets the requirements for development and content in OAR 411-308-0080.

(2) The CDDP must arrange for supports purchased with in-home support funds to be provided:

(a) In settings and under purchasing arrangements and conditions that enable the family to receive supports and services from another qualified provider;

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the child or others;

(B) Is likely to continue and become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the family home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks; and

(f) In accordance with OAR 411-308-0130 governing provider qualifications.

(3) When in-home support funds are used to purchase services, training, supervision, or other personal assistance for children, the CDDP must require and document that providers are informed of:

(a) Mandatory reporter responsibility to report suspected child abuse;

(b) Responsibility to immediately notify the child's parent or guardian, or any other person specified by the child's parent or guardian, of any injury, illness, accident, or unusual circumstance involving the child that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) In-home support fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the family or any other source.

(B) The provider must bill all third party resources before using in-home support funds.

(d) The provisions of section (6) of this rule regarding sanctions that may be imposed on providers;

(e) The requirement to maintain a drug-free workplace; and

(f) The payment process, including payroll or contractor payment schedules or timelines.

(4) The method and schedule of payment must be specified in written agreements between the CDDP and the child's parent or guardian.

(a) Support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and timekeeping for staff working with more than one eligible child.

(b) The CDDP is specifically prohibited from reimbursement of families for expenses or advancing funds to families to obtain services. The CDDP must issue payment, or arrange through fiscal intermediary services to issue payment, directly to the qualified provider on behalf of the family after approved services described in the child's ISP or Annual Plan have been satisfactorily delivered.

(5) The CDDP must inform families in writing of records and procedures required in OAR 411-308-0030 regarding expenditure of in-home support funds. During development of a child's ISP or Annual Plan, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must delineate responsibility for maintenance of records in written service agreements.

(6) SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS, AND GENERAL BUSINESS PROVIDERS.

(a) A sanction may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with in-home support funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Surrendered his or her professional license or certificate, or had his or her professional license or certificate suspended, revoked, or otherwise limited;

(D) Failed to safely and adequately provide the authorized in-home support services, or other similar services in a Department program;

(E) Had a founded report of child abuse or substantiated abuse;

(F) Failed to cooperate with any Department or CDDP investigation or grant access to, or furnish, records or documentation, as requested;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Failed to comply with the provisions of section (4) of this rule and OAR 411-308-0130; or

(K) Been suspended or terminated as a provider by the Department or Oregon Health Authority.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with in-home support funds; or

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the CDDP or the Department, as applicable.

(c) If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction.

(d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(A) A provider may appeal a sanction by requesting an administrative review by the Department's director.

(B) For an appeal regarding provision of Medicaid services, written notice of the appeal must be received by the Department within 30 days of the date the sanction notice was mailed to the provider.

(e) A provider may be immediately suspended by the CDDP as a protective service action or in the case of alleged criminal activity that may pose a danger to the child. The suspension may continue until the issues are resolved.

(f) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or Oregon Health Authority may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-308-0110 Using In-Home Support Funds for Certain Purchases is Prohibited

(Amended 12/28/2013)

(1) Effective July 28, 2009, in-home support funds may not be used to support, in whole or in part, a provider in any capacity having contact with a recipient of in-home supports who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to employees of a parent, employees of a general business provider, or employees of a provider organization who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(3) In-home support funds may not be used for:

(a) Services that:

(A) Duplicate benefits and services otherwise available to citizens regardless of disability;

(B) Replace normal parental responsibilities for the child's care, education, recreation, and general supervision;

(C) Provide financial assistance with food, clothing, shelter, and laundry needs common to children with or without disabilities;

(D) Replace other governmental or community services available to the child or the child's family; or

(E) Exceed the actual cost or level of supports that must be provided for the child to be supported in the family home.

(b) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized child and consumer safety agencies;

(c) Services or activities that are carried out in a manner that constitutes abuse;

(d) Notwithstanding abuse as defined in OAR 411-308-0020, services from a person who engages in verbal mistreatment and subjects a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(e) Notwithstanding abuse as defined in OAR 411-308-0020, services that restrict a child's freedom of movement by seclusion in a locked room under any condition;

(f) Purchase of family vehicles;

(g) Purchase of service animals or costs associated with the care of service animals;

(h) Health and medical costs that the general public normally must pay, including but not limited to:

(A) Medical or therapeutic treatments;

(B) Health insurance co-payments and deductibles;

- (C) Prescribed or over-the-counter medications;
- (D) Mental health treatments and counseling;
- (E) Dental treatments and appliances;
- (F) Dietary supplements and vitamins; or
- (G) Special diet or treatment supplies not related to incontinence or infection control.

(i) Ambulance services;

(j) Legal fees, including but not limited to the costs of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(k) Vacation costs or any costs associated with the vacation;

(l) Services, training, support, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(m) Employee wages or contractor payments for time or services when the child is not present or available to receive services, including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(n) Services, activities, materials, or equipment that are not necessary, cost effective, or do not meet the definition of support;

(o) Education and services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(p) Services, activities, materials, or equipment that the CDDP determines may be obtained by the family through other available means, such as private or public insurance, philanthropic organizations, or other governmental or public services;

(q) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or

(r) Purchase of services when there is sufficient evidence to believe that the child's parent or guardian, or the service provider chosen by the child's family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's ISP or Annual Plan, refused to cooperate with record keeping required to document use of in-home support funds, or otherwise knowingly misused public funds associated with in-home support.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-308-0120 Supports Purchased with In-Home Support Funds
(Amended 12/28/2013)

(1) For an initial or annual ISP, when conditions of purchase are met and provided purchases are not prohibited under OAR 411-308-0110, in-home support funds may be used to purchase a combination of the following supports based upon the needs of the child consistent with the child's functional needs assessment, ISP, and available funding:

(a) Community First Choice state plan services:

(A) Specialized consultation including behavior consultation as described in section (2) of this rule;

(B) Community nursing services as described in section (3) of this rule;

(C) Environmental accessibility adaptations as described in section (4) of this rule;

(D) Attendant care as described in section (5) of this rule;

(E) Relief care as described in section (6) of this rule;

(F) Specialized equipment and supplies as described in section (7) of this rule;

(G) Chore services as described in section (8) of this rule; and

(H) Community transportation as described in section (9) of this rule.

(b) As a waiver service, family training as described in section (10) of this rule.

(2) SPECIALIZED CONSULTATION - BEHAVIOR CONSULTATION.

Behavior consultation is only authorized to support a child's primary caregiver in their caregiving role. Behavior consultation is only authorized, as needed, to respond to specific problems identified by a primary caregiver or a services coordinator. Behavior consultants must:

(a) Work with the child's primary caregiver to identify:

(A) Areas of a child's family home life that are of most concern for the child and the child's parent;

(B) The formal or informal responses the child's family or the provider has used in those areas; and

(C) The unique characteristics of the child's family that may influence the responses that may work with the child.

(b) Assess the child. The assessment must include:

(A) Specific identification of the behaviors or areas of concern;

(B) Identification of the settings or events likely to be associated with, or to trigger, the behavior;

(C) Identification of early warning signs of the behavior;

(D) Identification of the probable reasons that are causing the behavior and the needs of the child that are being met by the behavior, including the possibility that the behavior is:

- (i) An effort to communicate;
- (ii) The result of a medical condition;
- (iii) The result of an environmental cause; or
- (iv) The symptom of an emotional or psychiatric disorder.

(E) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, deafness, etc.) that impact the development of strategies and affect the child and the area of concern; and

(F) An assessment of current communication strategies.

(c) Develop a variety of positive strategies that assist the child's primary caregiver and the provider to help the child use acceptable, alternative actions to meet the child's needs in the most cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by a primary caregiver and a provider to the early warning signs.

(A) Interventions must be done in accordance with positive behavioral theory and practice as defined in OAR 411-300-0110.

(B) The least intrusive intervention possible must be used.

(C) Abusive or demeaning interventions must never be used.

(D) The strategies must be adapted to the specific disabilities of the child and the style or culture of the child's family.

(d) Develop emergency and crisis procedures to be used to keep the child and the child's primary caregiver and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to the Oregon Intervention System must be utilized;

(e) Develop a written Behavior Support Plan using clear, concrete language that is understandable to the child's primary caregiver and the provider that describes the assessment, strategies, and procedures to be used;

(f) Teach the child's primary caregiver and the provider the strategies and procedures to be used; and

(g) Monitor and revise the Behavior Support Plan as needed.

(3) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Evaluation, including medication reviews, and identification of supports that minimize health risks while promoting a child's autonomy and self-management of healthcare;

(B) Collateral contact with a services coordinator regarding a child's community health status to assist in monitoring safety and well-being and to address needed changes to the child's ISP; and

(C) Delegation and training of nursing tasks to a child's primary caregiver and a provider so the caregivers may safely perform health related tasks.

(b) Community nursing services exclude direct nursing care.

(c) Community nursing services are not covered by other Medicaid spending authorities.

(4) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS. Environmental accessibility adaptations are physical adaptations to a child's family home that are necessary to ensure the health, welfare, and safety of the child in the family home due to the child's intellectual or developmental disability or that are necessary to enable the child to function with greater independence around the family home and in family activities.

(a) Environmental accessibility adaptations include but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation to ensure the health, welfare, and safety of the child;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Sound and visual monitoring systems;

(H) Fencing;

(I) Installation of ramps, grab-bars, and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for a child whose temperature sensitivity issues create behaviors or medical conditions that put the child or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the child;

(R) Modifications for the primary vehicle used by the child that are necessary to meet the unique needs of the child and ensure the health, welfare, and safety of the child, such as lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, or other unique modifications to keep the child safe in the vehicle; and

(S) Adaptations to control lights, heat, stove, etc.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the child's family home that are of general utility and are not for the direct safety, remedial, or long term benefit to the child;

(B) Adaptations that add to the total square footage of the child's family home; and

(C) General repair or maintenance and upkeep required for the child's family home or motor vehicle, including repair of damage caused by the child.

(c) Environmental accessibility adaptations are limited to \$5,000 per modification. A services coordinator may request approval for additional expenditures through the Department prior to expenditure. Approval is based on the child's service needs and goals and the Department's determination of appropriateness and cost-effectiveness.

(d) Environmental accessibility adaptations must be tied to supporting ADL, IADL, and health-related tasks as identified in the child's ISP.

(e) Environmental accessibility adaptations over \$500 must be completed by a state licensed contractor. Any modification requiring a permit must be inspected by a local inspector and certified as in

compliance with local codes. Certification of compliance must be filed in the provider's file prior to payment.

(f) Environmental accessibility adaptations must be made within the existing square footage of the child's family home, except for external ramps, and may not add to the square footage of the building.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) Environmental accessibility adaptations that are provided in a rental structure must be authorized in writing by the owner of the structure prior to initiation of the work. This does not preclude any reasonable accommodations required under the Americans with Disabilities Act.

(5) ATTENDANT CARE. Attendant care services include the purchase of direct provider support provided to a child in the child's family home or community by qualified individual providers and agencies. Provider assistance provided through attendant care must support the child to live as independently as appropriate for the child's age, support the child's family in their primary caregiver role, and be based on the identified needs of the child. A child's primary caregiver is expected to be present or available during the provision of attendant care.

(a) Attendant care services provided by qualified providers or agencies include:

(A) Basic personal hygiene - Assistance with bathing and grooming;

(B) Toileting, bowel, and bladder care - Assistance in the bathroom, diapering, external cleansing of perineal area, and care of catheters;

(C) Mobility - Transfers, comfort, positioning, and assistance with range of motion exercises;

(D) Nutrition - Feeding and monitoring intake and output;

(E) Skin care - Dressing changes;

(F) Physical healthcare, including delegated nursing tasks;

(G) Supervision - Providing an environment that is safe and meaningful for the child and interacting with the child to prevent danger to the child and others and maintain skills and behaviors required to live in the child's family home and community;

(H) Assisting the child with appropriate leisure activities to enhance development in the child's family home and community and provide training and support in personal environmental skills;

(I) Communication - Assisting the child in communicating using any means used by the child;

(J) Neurological - Monitoring of seizures, administering medication, and observing status; and

(K) Accompanying the child and the child's family to health related appointments.

(b) Attendant care services must:

(A) Be previously authorized by the services coordinator before services begin;

(B) Be delivered through the most cost effective method as determined by the services coordinator; and

(C) Only be provided when the child is present to receive services.

(c) Attendant care services exclude:

(A) Hours that supplant parental responsibilities, other natural supports, and services available from the child's family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow a child's primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to support the child;

(D) Support generally provided at the child's age by the child's parent or other family members;

(E) Educational and supportive services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(F) Services provided by the child's family; and

(G) Home schooling.

(d) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(6) RELIEF CARE. Relief care services are provided to a child on a periodic or intermittent basis furnished because of the temporary absence of, or need for relief of, the child's primary caregiver.

(a) Relief care may include both day and overnight services that may be provided in:

(A) The child's family home;

(B) A licensed, certified, or otherwise regulated setting;

(C) A qualified provider's home. If overnight relief care is provided in a qualified provider's home, the services coordinator and the child's parent must document that the home is a safe setting for the child;

(D) A disability-related or therapeutic recreational camp; or

(E) The community, during the provision of ADL, IADL, health related tasks, and other supports identified in the child's ISP.

(b) Relief care services are not authorized for the following:

(A) Solely to allow a child's primary caregiver to attend school or work;

(B) For ongoing services that occur on more than a periodic schedule, such as eight hours a day, five days a week;

(C) For more than 14 consecutive overnight stays in a calendar month;

(D) For more than 10 days per individual plan year when provided at a specialized camp;

(E) For vacation, travel, and lodging expenses; or

(F) To pay for room and board if provided at a licensed site or specialized camp.

(7) SPECIALIZED EQUIPMENT AND SUPPLIES. Specialized equipment and supplies include the purchase of devices, aids, controls, supplies, or appliances that are necessary to enable a child to increase the child's abilities to perform and support ADLs and IADLs or to perceive, control, or communicate with the environment in which the child lives. Specialized equipment and supplies must meet applicable standards of manufacture, design, and installation.

(a) Specialized equipment and supplies include:

(A) Electronic devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices. Expenditures for electronic devices are limited to \$500 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(B) Assistive technology to provide additional security and replace the need for direct interventions to enable self direction

of care and maximize independence, such as motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems.

(i) Expenditures for assistive technology are limited to \$5,000 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(ii) Any single device or assistance costing more than \$500 must be approved by the Department prior to expenditure.

(C) Assistive devices not covered by other Medicaid programs to assist and enhance a child's independence in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, electrical appliances, or information technology devices.

(i) Expenditures for assistive devices are limited to \$5,000 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(ii) Any single device or assistance costing more than \$500 must be approved by the Department prior to expenditure.

(b) Specialized equipment and supplies may include the cost of a professional consultation, if required to assess, identify, adapt, or fit specialized equipment. The cost of professional consultation may be included in the purchase price of the equipment.

(c) To be authorized by a services coordinator, specialized equipment and supplies must be --

(A) In addition to any medical equipment and supplies furnished under OHP and private insurance;

(B) Determined necessary to the daily functions of the child;
and

(C) Directly related to a child's disability.

(d) Specialized equipment and supplies exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child;

(B) Specialized equipment and supplies intended to supplant similar items furnished under OHP or private insurance;

(C) Items available through a child's family, community, or other governmental resources;

(D) Items that are considered unsafe for a child;

(E) Toys or outdoor play equipment; and

(F) Equipment and furnishings of general household use.

(e) Funding for specialized equipment and supplies with an expected life of more than one year is one time funding that is not continued in subsequent plan years. Specialized equipment and supplies may only be included in a child's ISP when all other public and private resources have been exhausted.

(f) The services coordinator must secure use of specialized equipment or supplies costing more than \$500 through a written agreement between the Department and the child's parent that specifies the time period the item is to be available to the child and the responsibilities of all parties if the item is lost, damaged, or sold within that time period. The Department may immediately recover any specialized equipment or supplies purchased with in-home support funds that are not used according to the child's ISP or according to the written agreement between the Department and the parent.

(8) CHORE SERVICES. Chore services may be provided only in situations where no one else in a child's family home is able of either performing or

paying for the services and no other relative, caregiver, landlord, community, volunteer agency, or third-party payer is capable of, or responsible for, providing these services.

(a) Chore services include heavy household chores such as --

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of a child's family home is safe for the child to traverse and enter and exit the home.

(9) COMMUNITY TRANSPORTATION. Community transportation is provided in order to enable a child to gain access to community services, activities, and resources as specified in the child's ISP. Community transportation excludes:

(a) Transportation provided by a child's family members;

(b) Transportation used for behavioral intervention or calming;

(c) Transportation normally provided by schools;

(d) Transportation normally provided by the child's primary caregiver for a child of similar age without disabilities;

(e) Purchase of any family vehicle;

(f) Vehicle maintenance and repair;

(g) Reimbursement for out-of-state travel expenses;

(h) Ambulance services or medical transportation; or

(i) Transportation services that may be obtained through other means, such as OHP or other public or private resources available to the child.

(10) FAMILY TRAINING. Family training services include the purchase of training, coaching, counseling, and support that increase the abilities of a child's family to care for and maintain the child in the child's family home. Family training services include:

(a) Instruction about treatment regimens and use of equipment specified in the child's ISP;

(b) Counseling services that assist the child's family with the stresses of having a child with an intellectual or developmental disability.

(A) To be authorized, the counseling services must:

(i) Be provided by licensed providers, including but not limited to psychologists licensed under ORS 675.030, professionals licensed to practice medicine under ORS 677.100, social workers licensed under ORS 675.530, or counselors licensed under ORS 675.715;

(ii) Directly relate to the child's intellectual or developmental disability and the ability of the child's family to care for the child; and

(iii) Be short-term.

(B) Counseling services exclude:

(i) Therapy that may be obtained through OHP or other payment mechanisms;

(ii) General marriage counseling;

(iii) Therapy to address the psychopathology of the child's family members;

- (iv) Counseling that addresses stressors not directly attributed to the child;
- (v) Legal consultation;
- (vi) Vocational training for the child's family members; and
- (vii) Training for families to carry out educational activities in lieu of school.

(c) Registration fees for organized conferences, workshops, and group trainings that offer information, education, training, and materials about the child's intellectual or developmental disability, medical, or health conditions.

(A) Conferences, workshops, or group trainings must be prior authorized by the services coordinator, directly relate to the child's intellectual or developmental disability, and increase the knowledge and skills of the child's family to care for and maintain the child in the child's family home.

(B) Conference, workshop, or group training costs exclude:

- (i) Registration fees in excess of \$500 per family for an individual event;
- (ii) Travel, food, and lodging expenses;
- (iii) Services otherwise provided under OHP or available through other resources; or
- (iv) Costs for individual family members who are employed to care for the child.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-308-0130 Standards for Providers Paid with In-Home Support Funds

(Amended 12/28/2013)

Independent providers, provider organizations, and general business providers paid with in-home support funds must be qualified. At the discretion of the Department, providers who have previously been terminated or suspended by the Department or Oregon Health Authority may not be authorized as providers of service. Providers must meet the following qualifications:

(1) Each independent provider paid as a contractor, a self-employed person, or an employee of a child's parent or guardian to provide the services listed in OAR 411-308-0120 must:

(a) Be at least 18 years of age;

(b) Have approval to work based on a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0210. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes;

(c) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(d) Be legally eligible to work in the United States;

(e) Not be a parent, adoptive parent, stepparent, foster parent, or other person legally responsible for the child receiving supports;

(f) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the child's ISP or Annual Plan, with such demonstration confirmed in writing by the child's parent or guardian, including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the child; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child being cared for;

(g) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(h) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

(i) Not be on the Office of Inspector General's list of excluded or debarred providers (<http://exclusions.oig.hhs.gov/>); and

(j) If transporting the child, have a valid driver's license and proof of insurance, as well as any other license or certification that may be required under state and local law, depending on the nature and scope of the transportation.

(2) Section (1)(c) of this rule does not apply to employees of a parent, employees of a general business provider, or employees of a provider organization who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or the Department's designee within 24 hours.

(4) Nursing consultants must have a current Oregon nursing license and submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law.

(5) Behavior consultants may include but are not limited to autism specialists, licensed psychologists, or other behavioral specialists who:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention System and have a current certificate; and

(c) Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years experience with individuals who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(6) Provider organizations must hold any current license or certification required by Oregon law to provide services to children. In addition, all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with in-home support funds must meet the standards for qualification of independent providers described in section (1) of this rule.

(7) General business providers must hold any current license appropriate to function required by Oregon or federal law or regulation. Services purchased with in-home support funds must be limited to those within the scope of the general business provider's license. Such licenses include but are not limited to:

(a) For a home health agency, a license under ORS 443.015;

(b) For an in-home care agency, a license under ORS 443.315;

(c) For providers of environmental accessibility adaptations involving building modifications or new construction, a current license and bond as a building contractor as required by either OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractors Board), as applicable;

(d) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of a child, and developing cost effective plans to make homes safe and accessible;

(e) For vendors and medical supply companies providing specialized equipment and supplies, a current retail business license, including enrollment as Medicaid providers through the Division of Medical Assistance Programs if vending medical equipment; and

(f) A current business license for providers of personal emergency response systems.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-308-0140 Quality Assurance

(Amended 12/28/2013)

The CDDP must participate in statewide quality assurance, service evaluation, and regulation activities as directed by the Department in OAR 411-320-0045.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-308-0150 Variances

(Amended 12/28/2013)

(1) Variances may be granted to a CDDP if the CDDP:

(a) Lacks the resources needed to implement the standards required in these rules;

(b) If implementation of the proposed alternative services, methods, concepts, or procedures shall result in services or systems that meet or exceed the standards in these rules; or

(c) If there are other extenuating circumstances.

(2) Variances are not granted for OAR 411-308-0110 and OAR 411-308-0130.

(3) The CDDP requesting a variance must submit a written application to the Department that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The proposed alternative practice, service, method, concept, or procedure;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) If the variance applies to a child's service, evidence that the variance is consistent with the child's current ISP or Annual Plan.

(4) The Department may approve or deny the variance request.

(5) The Department's decision shall be sent to the CDDP and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(6) The CDDP may appeal the denial of a variance request by sending a written request for review to the Department's director, whose decision is final.

(7) The Department shall determine the duration of the variance.

(8) The CDDP may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670