

**DEPARTMENT OF HUMAN SERVICES  
SENIORS AND PEOPLE WITH DISABILITIES DIVISION  
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411**

**DIVISION 305  
FAMILY SUPPORT SERVICES FOR CHILDREN WITH  
DEVELOPMENTAL DISABILITIES**

**EFFECTIVE DECEMBER 28, 2003**

**411-305-0010 Statement of Purpose, Principles, and Statutory  
Authority**

*(Effective 12/28/2003)*

(1) Purpose. These rules prescribe standards, responsibilities, and procedures for providing family support services to children with developmental disabilities and their families.

(2) Principles. Family Support services are built on the principles of family support and self-determination. The principles of family support, as outlined in ORS 417.342, are based on the belief that all people, regardless of disability, chronic illness, or special need have the right to a permanent and stable family and that supporting families in caring for children at home is in the best interest of the children, families, and communities. The principles of self-determination are based on the belief that the surest, most cost-effective ways to foster and preserve family and community membership can be constructed and managed by the people receiving services. Family Support services foster and strengthen flexible networks of community-based, private, public, formal and informal, family-centered and family-directed supports designed to increase families' abilities to care for children with developmental disabilities and to support the integration and inclusion of children with developmental disabilities into all aspects of community life.

(3) Statutory authority. These rules are authorized by ORS 409.050, 410.070 and 417.346, and carry out the provisions of ORS 430.610-430.670, 427.005-427.007, and 417.340-417.350.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340  
- 417.350

### **411-305-0020 Definitions**

*(Effective 12/28/2003)*

As used in OAR 411-305-0010 - 411-305-0180:

(1) "Abuse" of a child is defined in ORS 419B.005 and includes, but is not limited to, physical abuse, neglect, threat of harm, mental injury, abandonment, and child selling.

(2) "Activities of Daily Living" or "ADL's" means the following activities that must be accomplished by or for an individual in the course of a normal day to ensure the individual's continued well-being:

- (a) Acquiring adequate nutrition;
- (b) Dressing and grooming;
- (c) Bathing and personal hygiene;
- (d) Toileting (including bowel and bladder care);
- (e) Personal mobility; and
- (f) Management of any prescribed medications and treatments.

(3) "Administrator" means the Assistant Director, Department of Human Services, and Administrator for Seniors and People with Disabilities or that person's designee.

(4) "Case Management" means an organized service to assist individuals to select, obtain and utilize resources and monitor services.

(5) "Case Manager" means an employee of the Department, a community developmental disability program or other agency which contracts with the County or Division, who is selected to plan, procure, coordinate and

monitor Child and Family Support Plan services and acts as a proponent for children with developmental disabilities and their families.

(6) "Child" means an individual who is less than 18 years of age.

(7) "Child and Family-Centered Planning" means a process, either formal or informal, for gathering and organizing information that:

(a) Facilitates the full participation, choice and control by families of children with developmental disabilities in decisions relating to the supports that will meet the priorities of the family;

(b) Responds to the needs of the entire family in a timely and appropriate manner;

(c) Is easily accessible to and usable by families of children with disabilities;

(d) Helps a child and family to determine and describe choices about the child's life and goals and to design strategies for supporting the child and family in pursuit of these goals;

(e) Helps the child, the family, and others chosen by the child or family to identify and use existing abilities, relationships and resources, strengthening naturally occurring opportunities for support at home and in the community; and

(f) Is conducted in manner and settings consistent with the child's and family's needs and preferences, including but not limited to simple interviews with the child and family, informal observations in home and community settings, or formally structured meetings.

(8) "Child and Family Support Plan" or "CFSP" means the written details of the supports, activities, costs, and resources required for a child to be supported by the family in the family home. The child's family or other legal representative develops the CFSP with the assistance of the child's Case Manager. The CFSP articulates decisions and agreements made through a child- and family-centered process of planning and information-gathering conducted or arranged for by the child's Case Manager and which involves the child to the extent normal and appropriate for his or her age and other

persons who have been identified and invited to participate by the child's family or other legal representative. The CFSP is the only plan of care and services required by the Department for a child receiving Family Support services.

(9) "Community Developmental Disability Program" or "CDDP" means an entity responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(10) "Department" means the Oregon Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(11) "Developmental Disability":

(a) Is always provisional for children five years and younger and means the condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and be expected to last indefinitely;  
AND

(A) There is a standardized test demonstrating significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning: self care, receptive and expressive language, learning, mobility, and self-direction; OR

(B) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that will likely cause significant adaptive impairment in at least two of the areas listed in (11)(a)(A) of this rule.

(b) Is always provisional for children six years and older and means:

(A) There is a diagnosis of mental retardation; OR

(B) There is a diagnosis of developmental disability; AND

(i) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas: self care, receptive and expressive language, learning, mobility, self-directions; AND

(ii) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; AND

(iii) The individual is expected to need multiple, specialized supports indefinitely.

(12) "Direct Assistance Funds" means two categories of Family Support funds managed by CDDP's to assist families with purchase of supports for children with developmental disabilities according to each child's CFSP. Unique financial limitations and order of service apply to each Direct Assistance Fund:

(a) The General Assistance Fund is limited to CDDP-defined Plan Year costs for each child and, with some exceptions, is available on a first-come, first-served basis; and

(b) Department-Designated Funds are available only to children for whom the Department designates funds to the CDDP by written contracts which specify the children by name.

(13) "Employer-related supports" means activities that assist a family with directing and supervising provision of services described in a child's CFSP. Supports to a family assuming the role of employer include, but are not limited to: education about employer responsibilities; orientation to basic wage and hour issues; use of common employer-related tools such as job descriptions; and fiscal intermediary services.

(14) "Entry" means admission to a Department-funded service provider.

(15) "Exit" means either termination from a Department-funded program or transfer from one Department-funded program to another. Exit does not mean transfer within a service provider's program.

(16) "Family," for determining a child's eligibility for Family Support services as a resident in the family home, for identifying persons who may apply, plan, and arrange for a child's supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one child with developmental disabilities where the primary caregiver(s) is(are):

(a) Related to the child with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a child in the household with disabilities who is related to one of the partners by blood, marriage, or legal adoption.

(17) "Family Satisfaction" means the extent to which a service or support meets a need, solves a problem, or adds value for a family, as determined by the family receiving the service or support.

(18) "Family Support" means individualized planning and service coordination, arranging for services to be provided in accordance with Child and Family Support Plans, and purchase of supports as social benefits required for a child to live in the family home. Supports, resources, and other assistance are designed to:

(a) Support families in their efforts to raise their children with disabilities in the family home;

(b) Strengthen the role of the family as the primary caregiver;

(c) Support families in determining their needs and in making decisions concerning necessary, desirable, and appropriate services;

(d) Promote the use of existing formal and informal supports and social networks, strengthening natural sources of support, and helping build connections to existing community resources and services;

(e) Involve youth with disabilities in decision-making about their own lives, consistent with their unique strengths, resources, priorities, concerns, abilities and capabilities;

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

(g) Whenever possible, reunite families with children with disabilities who have been placed out of the home.

(19) "Family Support Funds" means public funds contracted by the Department to the CDDP to assist families with purchase or development of supports for children with developmental disabilities.

(20) "Family Support Policy Oversight Group" or "Policy Oversight Group" means a group appointed by the CDDP to provide consumer-based leadership and advice regarding Family Support issues such as development of policy, evaluation of services, and use of resources. The Family Support Policy Oversight Group may be a subgroup of an advisory body that has a broader scope or it may be a separate body with a specific focus on Family Support.

(21) "Family Support Principles" means principles outlined in ORS 417.342 and indicating that Family Support services:

(a) May use private and volunteer resources, publicly funded services and other flexible dollars to provide a family with the services needed to care for the family member with a disability or chronic illness.

(b) Must be sensitive to the unique needs, strengths and multicultural values of an individual and the family rather than fitting the individual and family into existing services.

(c) Must be built on a relationship of respect and trust that recognizes that families are better able to determine their own needs than have their needs determined by the state or a public agency.

(d) Must be provided in a manner that develops comprehensive, responsive and flexible support to families in their role as primary caregivers for family members with disabilities or chronic illnesses.

(e) Must focus on the entire family and be responsive to the needs of the individual and the family.

(f) May be needed throughout the lifespan of the individual family member living at home who has a disability or chronic illness.

(g) Should be available to families before they are in crisis.

(h) May be a service option offered to families, but not imposed on them.

(i) Should encourage maximum use of existing social networks and natural sources of support and should encourage community integration.

(j) Should not be confined to a single program or set of services but should be a philosophy that permeates all program and services.

(22) "Fiscal Intermediary" means a person or agency that receives and distributes Family Support funds on behalf of the family of an eligible child according to the child's CFSP. The fiscal intermediary responsibilities include payments to vendors as well as activities and records related to payroll and payment of employer-related taxes and fees as an agent of families who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.



(23) "General business provider" means an organization or entity selected by the parent or other legal representative of an eligible child, and paid with Family Support funds that:

- (a) Is primarily in business to provide the service chosen by the parent or other legal representative 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 persons who actually provide support for the child.

(24) "Guardian" means a parent for children less than 18 years of age or a person or agency appointed by the courts who is authorized by the court to make decisions about services for the child.

(25) "Home" means a child's primary residence which is not licensed or certified by, and under contract with, the Department of Human Services to provide care to the child as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

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

(27) "Independence" means the extent to which persons with mental retardation or developmental disabilities with or without staff assistance exert control and choice over their own lives.

(28) "Independent Provider" means a person who is selected by a child's parent or other legal representative and paid with Family Support funds and who personally provides services to the child.

(29) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(30) "Integration" means the use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons in the community and participation in the same community activities in which persons without a disability

participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes, which are in proximity to community resources and foster contact with persons in their community.

(31) "Legal Representative" means the parent of a child, unless the court appoints another person or agency to act as guardian.

(32) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(33) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the child and how those needs will be met. It includes which tasks will be taught, assigned or delegated to the qualified provider or family.

(34) "Plan Year" means twelve (12) consecutive months used to calculate what Family Support funds may be made available annually to support an eligible child. The initial Plan Year begins on the date the child's first CFSP after entry into Family Support services is signed by the child's parent or other legal representative and Case Manager. Subsequent Plan Years begin on the anniversary date of the approval of this initial plan.

(35) "Positive Behavioral Theory and Practice" means a proactive approach to individual 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.

(36) "Provider Organization" means an entity selected by a child's parent or other legal representative and paid with Family Support funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

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

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

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

(38) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom: The ability for an individual with a developmental disability together with freely-chosen family and friends to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority: The ability for a person with a developmental disability (with the help of a social support network if needed) to control a certain sum of resources in order to purchase support services;

(c) Autonomy: The arranging of resources and personnel -- both formal and informal: that will assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility: The acceptance of a valued role in a person's community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for persons with developmental disabilities.

(39) "Social Benefit" or "Social Service" means a service provided to a family solely to assist a child with developmental disabilities to function in and around the home and to participate in activities comparable to that of a child of similar age who does not have such disability. Such a benefit or service is pre-authorized by and provided according to the description and financial limits written in an eligible child's current CFSP and does not:

- (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 child or the child's family; or
- (e) Exceed the actual cost of supports that must be provided for the child to be supported in the family home.

(40) "Support" means assistance eligible children and their families require -- solely because of the effects of developmental disability on the child -- to maintain or increase the child's age-appropriate independence, to achieve a child's age-appropriate community presence and participation, and to maintain the child in the family home. This assistance is flexible and subject to change with time and circumstances.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.350

**411-305-0030 Eligibility for Family Support Services**  
(Effective 12/28/2003)

(1) Non-discrimination. Families of children determined eligible according to OAR 411-305-0030(2) must not be denied Family Support services or otherwise discriminated against on the basis of age or diagnostic or

disability category. Access to service must also not be restricted due to race, color, creed, national origin, citizenship, income or duration of Oregon residence.

(2) Eligibility. The CDDP of a child's county of residence may find a child eligible for the CDDP's Family Support services when the child has been determined eligible for Developmental Disability Services by the CDDP and either:

(a) Lives in the family home and does not receive other Department-paid in-home, community living, or family support services other than State Medicaid Plan services, adoption assistance, or short-term assistance provided to prevent out-of-home placement; or

(b) The child resides in Department-paid residential services and the Department has designated funds specifically to provide supports required for the child to return to the family home in the county served by the CDDP.

(3) Concurrent eligibility. Children must not be eligible for Family Support services from more than one CDDP unless the concurrent eligibility is necessary to effect transition from one county to another with a change of residence and is part of a plan developed by both CDDPs in which services and expenditures authorized by one CDDP are not duplicated by the other.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.350

#### **411-305-0040 Family Support Service Information and Entry** *(Effective 12/28/2003)*

(1) Providing information about Family Support. The CDDP must develop and implement a process for informing families of eligible children about Family Support services. The process must include:

(a) Recording the date and time the child's parent or other legal representative is informed of, and requests, Family Support services;

(b) Providing accurate, up-to-date information about the CDDP's Family Support services to families who request Family Support services. This information must include but not be limited to:

- (A) A declaration of Family Support services philosophy;
- (B) Criteria for entry and for determining how much assistance with purchasing supports will be available;
- (C) Common processes encountered in using Family Support services, including child and family-centered planning, evaluation, and how to raise and resolve concerns about Family Support services;
- (D) Clarification of CDDP employee responsibilities as mandatory reporters of child abuse;
- (E) A brief description of family responsibilities in regard to use of public funds;
- (F) An explanation of family rights to select and direct the providers of services authorized through the eligible child's CFSP and purchased with Family Support funds from among those qualified according to OAR 411-305-0140 to provide supports; and
- (G) An assurance that additional information about Family Support services will be made available at the family's request. Additional information may include, but is not limited to:
  - (i) A description of the CDDP's organizational structure;
  - (ii) A description of any contractual relationships the CDDP has in place or can establish to accomplish the Family Support service functions required by this rule; and
  - (iii) If applicable, a description of the relationship between the CDDP and its Family Support Policy Oversight Group.

(c) The CDDP must make information required in OAR 411-305-0040(1)(b)(A)-(G) available using language, format, and presentation methods appropriate for effective communication according to each family's needs and abilities.

(2) Entry into Family Support services.

(a) An eligible child may enter Family Support services:

(A) When the CDDP determines that the eligible child is the next child to be served according to the priorities and order of service described in OAR 411-305-0040(2)(b) and that sufficient resources are available to initiate service; or

(B) At any time that Department-designated funds are made available through a Department contract with the CDDP specifically to provide supports required to prevent out-of-home placement of the eligible child.

(b) Order of service. Except as provided in OAR 411-305-0040(2)(c), eligible children may enter Family Support services as follows:

(A) For assistance with purchase of support through the General Assistance Fund, the CDDP may assign order of entry either according to when, according to the CDDP's records, the child's parent or other legal representative was informed of and requested Family Support services or the date of the child's placement on a wait list for services previously provided by the CDDP under OAR 411, division 330, Comprehensive In-Home Support for Adults with Developmental Disabilities, whichever is earliest.

(i) If no order for service can be determined according to OAR 411-305-0040(2)(b)(A) at the time services for children transition from Comprehensive In-Home Support provided under OAR 411, division 330, to Family Support services provided under OAR 411, division 305, then the names of all children whose families are known to have requested either Comprehensive In-Home Support or Family Support services and who are not eligible to enter

Family Support services directly from Comprehensive In-Home Support services according to OAR 411-305-0040(2)(c) must be pooled and drawn at random to determine order of entry to Family Support services.

(ii) If more than one child's parent or other legal representative requests services at the same time, then the CDDP must assign order among those children according to random selection.

(B) For assistance with purchase of support through Department-Designated Funds, the child may enter Family Support services on a date agreed upon by the Department and the CDDP when funds to support the eligible child have been specifically contracted to the CDDP.

(c) Exception to order of service. To the extent that Family Support funds are available in the CDDP of each child's county of residence and to avoid disruption of services, children with In-Home Support Plans formulated according to OAR 411, division 330 and current as of the Department-designated date of transition to Family Support services may directly enter Family Support services on that date.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.350

### **411-305-0050 Family Support Service Duration and Exit**

*(Effective 12/28/2003)*

(1) Duration of Services. Once a child has entered a CDDP's Family Support services, the child and family may continue receiving services from that CDDP through the last day of the month during which the child turns 18, as long as the child remains eligible for Family Support, annual CFSP's are developed and kept current, the need for service remains, and funds are available at the CDDP to continue services, except in the following cases:



(a) Short-term assistance. Families and children receiving assistance according to provisions of or OAR 411-305-0090(1)(c) will be short-term recipients of services. Services must not extend beyond the end date of the contract between the Department and the CDDP current at the time the CDDP offers such short-term assistance. Using this assistance must not affect a child's order of service for longer-term Family Support services without written approval of the child's parent or other legal representative.

(b) Changing county of residence. If a child and family move from the CDDP's area of service, the CDDP must arrange for services purchased with Family Support funds to continue, to the extent possible, in the new county of residence through the end date of the child's CFSP when the CFSP conforms to OAR 411-305-0080 and is current at the date of the move.

(2) Exit from Family Support services. A child must leave a CDDP's Family Support services:

(a) At the end of a service period agreed upon by all parties and specified in the CFSP;

(b) At the written request of the child's family or other legal representative to end the service relationship;

(c) At the end of the last day of the month during which the child turns 18;

(d) When the child and family moves to a county outside the CDDP's area of service, unless transition services have been previously arranged and authorized by the CDDP; or

(e) No less than thirty (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 plan development and monitoring activities and, further, does not respond to the notice of intent to terminate;

(B) Funds are no longer available for Family Support services in the family's county of residence; or

(C) The CDDP has sufficient evidence to believe that the family has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the CFSP, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with these services.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.350

#### **411-305-0060 Family Support Services Waiting List** (Effective 12/28/2003)

The CDDP must maintain an up-to-date written list of eligible children and their families who have been assigned an order for service according to OAR 411-305-0040(2)(b), but have not yet received the services for which they are eligible.

(1) The list must include name and date of birth of each eligible child, name of parent or legal representative, assigned place in the order of service, dates services were requested (if known), and date of qualification for additional services based on exceptional need. Information from this list must be provided to the Department upon request.

(2) Re-assignment of order of service with change of county of residence. Despite assignment of order of service by one CDDP, when a child and family move outside the area of service of that CDDP, the child must be assigned placement in the order of Family Support services by the CDDP of the new county of residence according to the provisions of OAR 411-305-0040(2). If Family Support services are not immediately available, the child must be placed on the wait list for services from the new CDDP according to the new assignment in the order of service.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340

- 417.350

### **411-305-0070 Required Family Support Services**

*(Effective 12/28/2003)*

Each CDDP must provide or arrange for the following services as required to support a child receiving Family Support services in the family home:

- (1) Assistance for families to determine needs, plan supports in response to needs, and develop individualized budgets based on available resources;
- (2) Assistance for families to find and arrange the resources to provide planned supports;
- (3) Assistance with development and expansion of community resources required to meet the support needs of children and families;
- (4) Information, education, and technical assistance for families, and children as appropriate to age, to use to make informed decisions about support needs and to direct support providers;
- (5) Fiscal intermediary activities in the receipt and accounting of Family Support funds on behalf of families in addition to making payment with the authorization of families;
- (6) Employer-related supports, assisting families to fulfill roles and obligations as employers of support staff when a child's support needs require such arrangements; and
- (7) Assistance for families, and children as appropriate for age, to effectively put CFSP's into practice, including help to monitor and improve the quality of personal supports and to assess and revise plan goals.
- (8) Services must be provided according to Family Support principles defined in OAR 411-305-0020(21).

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340

**411-305-0080 Family Support Services Child and Family Support Plan**  
(Effective 12/28/2003)

(1) The CDDP must provide or arrange for a child- and family-centered planning process to assist families to establish outcomes, determine needs, plan for supports, and review and redesign support strategies. The CDDP, the child, as appropriate for age, and family must develop a written CFSP for each child as a result of this process within the first 90 days of entry in Family Support services and annually thereafter if services are to continue. The CFSP must include, but must not be limited to:

- (a) The eligible child's first and last name and the name of the family if different than the child's name or the name of the child's legal representative;
- (b) A description of the supports that are required, including the reason the support is necessary;
- (c) Beginning and end dates of the Plan Year as well as when specific activities and supports are to begin and end;
- (d) Projected Family Support fund costs, if any, with sufficient detail to support estimates;
- (e) The types of supports to be purchased with Family Support funds, including the type of provider;
- (f) The proposed schedule of plan reviews;
- (g) Signatures of the child's Case Manager, the child's parent or other legal representative, and the child, as appropriate for age.

(2) The CFSP or records supporting development of each CFSP must include evidence that:

- (a) Family members, the child (as appropriate for age), and others of the family's choosing have participated in the planning process;

(b) Family Support funds are used only to purchase goods or services necessary for a child to be supported in the family home;

(c) The Case Manager has assessed the availability of other means for providing the supports before using Family 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.

(3) Additional requirements for plans involving Department-Designated Funds. Plans and records supporting plan development for children receiving services purchased through Department-Designated Funds must indicate that basic health and safety needs and supports have been addressed, including, but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

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

(c) Education and support for child and family to recognize and report abuse.

(4) Implementing plans developed by someone other than the child's Case Manager. The CDDP may not use Family Support funds to implement any plan proposed and written as a result of assistance with planning provided by someone other than the child's Case Manager until the child's Case Manager determines that the new plan meets the applicable requirements of OAR 411-305-0080(1)-(3). In such cases, the Case Manager's signature on the plan will indicate acceptance of the plan as the child's CFSP.

(5) Option for abbreviated plan and process for services purchased from the General Assistance Fund. When the CDDP determines a child may receive services that include purchases through the General Assistance Fund, the parent or legal representative of the child may choose to develop the CFSP through an abbreviated planning process consisting of an

interview with the child's Case Manager and a statement of assurances that the conditions of OAR 411-305-0080(2) have been met.

(a) The CFSP resulting from this process must be written on forms provided by the Department.

(b) Services purchased through this plan option are limited to one or more of the following services:

(A) Behavior Consultation services as described in OAR 411-305-0120(1)(a)-(b) and provided at Department-approved rates;

(B) Community Inclusion services as described in OAR 411-305-0120(2)(a)-(b);

(C) Environmental Accessibility Adaptations as described in OAR 411-305-0120(3)(a)-(d);

(D) Family Caregiver Supports as described in OAR 411-305-0120(4)(a)-(b);

(E) Family Training as described in OAR 411-305-0120(5)(a)-(b);

(F) In-Home Support as described in OAR 411-305-0120(6)(a)-(b);

(G) Respite Care services as described in OAR 411-305-0120(9)(a)-(b);

(H) Specialized Equipment and Supplies as described in OAR 411-305-0120(11)(a)-(b), except that purchases must be limited to incontinence supplies; or

(I) Transportation Services as described in OAR 411-305-0120(13)(a)-(b) and provided at Department-approved rates.

(6) The Case Manager must obtain and attach a Nursing Care Plan to the written CFSP when Family Support funds are used to purchase care and

services requiring the education and training of a licensed professional nurse.

(7) Review of plan and resources. The Case Manager must conduct and document reviews of plans and resources with families as follows:

(a) At least quarterly, review and reconcile receipts and records of purchased supports authorized by the CFSP;

(b) At least annually, and as major activities or purchases are completed:

(A) Evaluate progress toward achieving the purposes of the plan;

(B) Record final Family Support funds costs;

(C) Note effectiveness of purchases based on Case Manager observation as well as family satisfaction; and

(D) Determine whether changing needs or availability of other resources has altered the need for continued use of Family Support funds to purchase supports.

(8) Transition to another county of residence. The CDDP must assist Family Support service recipients when the family and eligible child move to a county outside its area of service by:

(a) Continuing Family Support fund payments authorized by the CFSP which is current at the time of the move, if the support is available, through the end date of the CFSP; and

(b) Arranging orientation for the child and family to Family Support services provided by the CDDP of the new county of residence, including discussion of the process for assigning placement on the new CDDP's wait list if Family Support services are not immediately available.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340

**411-305-0090 Managing and Accessing Family Support Funds**  
(Effective 12/28/2003)

(1) The CDDP must allocate 100% of funds contracted by the Department for Family Support, but not for Department-designated funds for specifically-named children, to the General Assistance Fund. This fund must only be used to purchase one or more of the supports described in OAR 411-305-0120 for children according to each child's CFSP.

(a) The CDDP must develop and implement a written plan for managing access to assistance with purchasing supports through the General Assistance Fund which is available for Department review and which includes, but is not limited to:

(A) The number of children anticipated to receive service each year;

(B) The amount of General Assistance Funds funds available per Plan Year for each child; and

(C) How unusual purchases and extraordinary costs are defined and the administrative process for review and approval of such purchases and costs based on cost-effectiveness and the necessity of the support for maintaining the child in the family home.

(b) Purchase of supports through the General Assistance Fund must be offered to children and families in an order of service established according to OAR 411-305-0040(2)(b) as long as funds are available.

(c) The CDDP must review General Assistance Fund purchases and obligations at least every 90 days and must provide opportunities for time-limited, short-term access to Family Support services to children and families waiting for services when additional long-term obligations cannot be supported by the funds available.



(2) Department-Designated Funds. Funds contracted to a CDDP by the Department to serve specifically-named children to avoid out-of-home placement may be used only to support those children. Services must be provided according to each child's Department-approved CFSP. This fund may only be used to purchase supports described in OAR 411-305-0120; however, when Department-Designated funds to support a child exceed \$20,000 per Plan Year, additional restrictions, specified in OAR 411-305-0120 for each service, will also apply. Continuing need for services must be regularly reviewed according to Department procedures.

(3) No child's supports may be purchased using more than one Direct Assistance Fund concurrently.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.350

#### **411-305-0100 Financial Limits of Family Support Services**

*(Effective 12/28/2003)*

(1) In any Plan Year, as defined in OAR 411-305-0020(34), Family Support funds used to purchase supports for a child must be limited to the amount of Family Support funds specified in the child's CFSP.

(2) Amounts specified in a child's CFSP for expenditure from the General Assistance Fund may not exceed limits established by the CDDP.

(3) Estimates used to establish the limits of financial assistance in the CFSP must be based on written guidelines for costs of frequently-used services published and updated periodically by the Department whenever available and applicable.

(a) Department guidelines notwithstanding, final costs must not exceed local usual and customary charges for these services as evidenced by the CDDP's own documented review.

(b) The CDDP must establish a process for review and approval of all purchases that exceed published guidelines and must monitor the CFSPs involved for continued cost effectiveness.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340  
- 417.350

### **411-305-0110 Conditions for Family Support Direct Assistance Fund Purchases**

*(Effective 12/28/2003)*

(1) Plan required. A CDDP must only use Family Support funds to assist families to purchase supports in accordance with Child and Family Support Plans that meet requirements for development and content in OAR 411-305-0080.

(2) Assistance is a social benefit. Goods and services purchased with Family Support funds to support specific individual children and families must be provided only as social benefits as defined in OAR 411-305-0020(39).

(3) The CDDP must arrange for supports purchased with Family Support funds to be provided:

(a) In settings and under purchasing arrangements and conditions that allow the family to freely redirect Family Support funds to purchase supports and services from another qualified provider.

(A) The CDDP must provide written instruction about the limits and conditions of group services to families who choose to combine Family Support funds to purchase such services;

(B) Each child's support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements and timekeeping for staff working with more than one child; and

(C) The CDDP must evaluate combined arrangements that result in creation of provider organizations or general business providers to determine whether license or certification is

required under Oregon law for the organization to provide services for children.

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 411-305-0020(35) 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 to 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 care, training, and supervision;

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

(e) According to Oregon Board of Nursing OAR 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks; and

(f) According to OAR 411-305-0140 governing provider qualifications.

(4) Independent Provider, Provider Organization, General Business Provider agreements and responsibilities. When Family Support funds are used to purchase care, training, supervision or other personal assistance for children, the CDDP must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse as defined in OAR 411-305-0020(1);

(b) Responsibility to immediately notify the child's legal representative, or any other person specified by the child's legal

representative, of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual care, training, or supervision and which may have a serious effect on the health, safety, physical or emotional well-being, or level of services required; and

(c) Limits of payment:

(A) Family Support fund payments for the agreed-upon services will be considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program;

(B) The provider must bill all third party resources before using Family Support funds unless another arrangement is agreed upon by the CDDP and described in the CFSP.

(d) The provisions of OAR 411-305-0110(7) regarding sanctions that may be imposed on providers.

(5) Amount, method and schedule of payment. The CDDP may disburse Family Support funds to or on behalf of families up to the amount agreed upon in a CFSP that has been signed by the Case Manager and the child's parent or other legal representative.

(a) The method and schedule of payment must be specified in written agreements between the CDDP and the individual's legal representative; and

(b) In the case of children whose Plan Year costs in Department-Designated Funds exceed \$20,000, the CDDP is specifically prohibited from reimbursement of families for expenses or advancing funds to families to obtain services. In such cases, the CDDP must pay, or arrange through fiscal intermediary services to pay, qualified providers after approved services described in Child and Family Support Plans have been satisfactorily delivered.

(6) Documentation required. The CDDP must inform families in writing of records and procedures required in OAR 411-305-0160 regarding expenditure of Family Support funds for direct assistance. During development of the CFSP, the Case Manager 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.

(7) Sanctions for Independent Providers, Provider Organizations, and General Business Providers.

(a) Sanction(s) 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 Family Support funds, the provider has:

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

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

(C) Had his/her professional license suspended, revoked, or otherwise limited, or surrendered his/her license;

(D) Failed to safely and adequately provide the services authorized;

(E) Had an allegation of abuse or neglect substantiated against him or her;

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

(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) Not adhered to the provisions of OAR 411-305-0110(4) and 411-305-0130; or

(K) Been suspended or terminated as a provider by another Department of Human Services office or program.

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

(A) The provider may no longer be paid with Family Support funds;

(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 of Human Services, as applicable;

(C) The CDDP may withhold payments to the provider.

(c) If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction. The provider may appeal this action within 30 days of the date of the notice. The provider must appeal this action separately from any appeal of audit findings and overpayments.

(d) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Administrator of the Department or designee.

(e) For an appeal regarding provision of Medicaid services to be valid, 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.

(f) At the discretion of the Department, providers who have previously been terminated or suspended by any Department of Human

Services office or program may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.350

**411-305-0120 Supports Purchased with Direct Assistance Funds**  
(Effective 12/28/2003)

When conditions of purchase in OAR 411-305-0110 are met, and provided purchases are not prohibited under 411-305-0130, Direct Assistance Funds may be used to purchase:

(1) Behavior Consultation. Behavior consultation consists of: assessment of the child, the needs of the provider or family and the environment; development of a positive behavior support plan; implementation of the positive behavior support plan with the provider or family; and revision and monitoring of the plan as needed. Services may include training, modeling, and mentoring the family or provider, development of visual communication systems as behavior support strategies, and communicating as authorized by the family with school, medical or other professionals about the strategies and outcomes of the behavior support plan.

(a) Providers 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;

(B) Have received at least two days of training in the Oregon Intervention Services behavior intervention system, and have a current certificate; and

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

(i) 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 people with developmental disabilities who present difficult or dangerous behaviors; or

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

(b) Behavior consultation does not include: mental health therapy or counseling; health or mental health plan coverage; educational services, including, but not limited to, consultation and training for classroom staff, adaptations to meet needs of the child at school, assessment in the school setting, or any service identified by the school as required to carry out the child's Individual Education Plan.

(2) Community Inclusion. Community inclusion services assist a child to acquire, retain or improve skills that enhance independence and integration. Community Inclusion Supports include assistance to participate in generic community services, facilities, businesses, recreation and leisure. These supports are provided for a child to participate in activities to facilitate independence and promote community inclusion in settings chosen by the child and the child's parent(s) or other legal representative(s).

(a) Community inclusion services available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples include, but are not limited to: personal assistance with eating, toileting, mobility during recreational activities; the cost of individualized support provided to the child in specialized camps (but not general, administrative or room and board fees); the cost of daily support in after-school activities when a child of the same age (twelve and over) without disabilities would not require such support.

(b) Community inclusion services available to children other than those children specified in OAR 411-305-0120(2)(a) include, but are not limited to, the services indicated in 411-305-0120(2)(a) as well as



fees and supplies required for the child and provider to participate in individualized services; peer coaching or mentoring to participate in community activities; specialized camps, and adaptive recreational programs.

(c) Community Inclusion services do not: replace normal parental roles and responsibilities in a child's acquisition and retention of communication, socialization, recreation, and self-help skills; replace normal parental responsibility for child care while the parents work or go to school; or include education and other instruction and support available according to the Individuals with Disabilities Education Act. Examples of activities that are not provided as Community Inclusion services include, but are not limited to: substitute care for child under 12 years of age while parents work or go to school; education services; tuition to private schools; payment of programs or services in lieu of school; legal fees such as those for setting up trusts, guardianships, providing representation at hearings regarding educational services; incentive payments to employers to hire youth with disabilities.

(3) Environmental Accessibility Adaptations. Environmental accessibility adaptations are physical adaptations to a child's home or family vehicle which are necessary to ensure the health, welfare, and safety of the child in the home, or which enable the child to function with greater independence around the home and in family activities.

(a) Environmental Accessibility Adaptations available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples of these services include, but are not limited to: environmental modification consultation to determine the appropriate type of adaptation; installation of shatter-proof windows; hardening of walls or doors; specialized, hardened, waterproof or padded flooring; an alarm system for doors or windows; protective covering for smoke detectors, light fixtures, and appliances; sound and visual monitoring systems; fencing; installation of ramps and grab-bars; installation of electric door openers; adaptation of kitchen cabinets/sinks; widening of doorways; handrails; modification of bathroom facilities; individual room air conditioners for children whose temperature sensitivity issues create behaviors or medical conditions that put themselves or

others at risk; installation of non-skid surfaces; overhead track systems to assist with lifting or transferring; specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies which are necessary for the welfare of the child.

(b) Environmental Accessibility Adaptations available to children other than those children specified in OAR 411-305-0120(3)(a) include adaptations listed in 411-305-0120(3)(a) as well as modifications to a vehicle to meet the unique needs of the child (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle). Adaptations may also include modifications to a second site, such as the home of a non-custodial parent or a neighbor providing frequent respite services, when those modifications are required for the child to be supported in the family home and are not a provider's responsibility as a reasonable accommodation under the Americans with Disabilities Act.

(c) Examples of what environmental accessibility supports do not provide include, but are not limited to: adaptations or improvements to the home which are not cost effective, are of general utility to the household, or are not of direct medical or remedial benefit to the child, such as carpeting, roof repair, central air conditioning; adaptations that add to the total livable, heated square footage of the home; generic fire safety equipment; general household maintenance and repair.

(d) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual and developing cost-effective plans to make homes safe and accessible.

(e) Environmental accessibility adaptation providers must be building contractors licensed under OAR 812, Construction Contractor's Board, and OAR 808, Landscape Contractors Board.

(4) Family Caregiver Supports. Family caregiver services assist families with unusual responsibilities of planning and managing provider services for their children.

(a) Family Caregiver Supports available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to:

(A) Child and family-centered planning facilitation and follow-up;

(B) Fiscal intermediary services to pay vendors and to carry out payroll and reporting functions when providers are domestic employees of the family; and

(C) Assistance with development of tools such as job descriptions, contracts, and employment agreements.

(b) Family Caregiver Supports available to children other than those children specified in OAR 411-303-0120(4)(a) include services listed in 411-305-0120(4)(a) as well as:

(A) Assistance with family costs associated with recruiting, hiring, and directing providers, including advertising and translation services;

(B) Cost of additional homeowner's insurance, but not Workers Compensation Insurance, required to cover domestic employees providing in-home care and supervision; and

(C) Workplace materials and supplies that may be required for paid caregivers in the family home.

(5) Family Training. Family training services are training, coaching, and support provided to the family of a child with developmental disabilities to increase capabilities to care for, support and maintain the child in the home.

(a) Family Training services available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples include, but are not limited to: instruction about treatment regimens and use of equipment specified in the CFSP; or information, education and training about the child's disability, medical, and behavioral conditions. Family

training services may be provided in various settings by various means, including but not limited to: psychologists licensed under ORS 675.030; professionals licensed to practice medicine under 677.100; social workers licensed under 675.530; counselors licensed under 675.715; organized conferences and workshops, prior-authorized by the CDDP, that are specifically related to the child's disability, identified support needs, or specialized medical or behavioral support needs.

(b) Family Training services available to children other than those children specified in OAR 411-305-0120(5)(a) include services listed in 411-305-0120(5)(a) as well as materials such as computer programs, books, and audio/video media; organized conferences and workshops, prior-authorized by the CDDP, offering training and information about disabilities and disability resources in general; parent-to-parent information-sharing and mentoring; and support for the family to relieve the stress associated with caring for child with disabilities.

(c) Examples of what family training services do not provide include, but are not limited to: mental health counseling, treatment, or therapy; more than \$500 per family in registration fees, lodging, and travel costs for any single training event; training for paid caregivers; legal consultation fees; training for families to carry out educational activities in lieu of school; or vocational training for family members.

(6) In-home Support. In-home support services are care, training, and supervision provided based on the needs of the child that must be met for the child to live in the family home. These services support the child to live as independently as appropriate for the child's age.

(a) In-Home Support services available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples include, but are not limited to providers who come into the family home and assist the child with: activities of daily living; medical and physical health care -- including delegation of nursing tasks; behavior management; maintenance of skills and behaviors required for the child to live in the community; and training and support in personal environmental skills such as planning and preparing meals, budgeting, laundry, and

housecleaning to the extent that a child without disabilities would normally be acquiring such skills.

(b) In-Home Support services available to children other than those children specified in OAR 411-305-0120(6)(a) include services listed in 411-305-0120(6)(a) as well as: maintenance of expressive and receptive skills in verbal and non-verbal language to the extent required to function in the home; functional application of acquired reading and writing skills; assistance with extraordinary household costs incurred only because of a child's disability such as space for paid overnight caregivers to sleep, or payment of water or sewage bill above normal use due to child's use of water to self-calm.

(c) Examples of what In-Home Support services do not provide include, but are not limited to: support generally provided at the child's age by parents or other family members; 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; services provided by the parent, stepparent, foster parent, or other legal representative of the child; behavior management supports that are not based on positive behavioral theory and practice; health insurance; legal consultation fees for establishing domestic employment arrangements; clothing; mortgage or rent payments; home schooling; telephone, television, or internet services.

(d) In-Home Support services available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 may not be provided on a 24-hour shift-staffing basis. The child's parent(s) or other legal representative(s) may be expected to provide at least eight (8) hours of care and supervision for the child each day with the exception of respite; In-Home Support services may only be provided when the child is home and available for service during the remainder of the 24-hour period.

(7) Occupational Therapy. Occupational therapy services are the services of a professional licensed under ORS 675.240 that are defined and approved for purchase under the approved State Medicaid Plan. These services are available to maintain a child's skills or physical condition when

prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Occupational therapy services include assessment, family and provider training, consultation, feeding adaptations, and direct therapy provided by an appropriately licensed or certified occupational therapist.

(b) Occupational therapy services do not include experimental treatments and therapies or services identified by the school as required to carry out the child's Individual Education Plan.

(8) Physical Therapy. Physical therapy services are services provided by a professional licensed under ORS 688.020 that are defined and approved for purchase under the approved State Medicaid Plan. These services are available to maintain a child's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Physical therapy services include assessment, family and provider training, consultation, adaptations, and direct therapy provided by an appropriately licensed or certified physical therapist.

(b) Physical therapy services do not include experimental treatments and therapies or services identified by the school as required to carry out the child's Individual Education Plan.

(9) Respite Care. Respite care services are short-term care and supervision provided on an intermittent basis because of the absence, or need for relief of, persons normally providing the care to a child with developmental disabilities.

(a) Respite care services available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples include temporary or overnight respite services provided in a variety of settings, including, but not limited to: the home of the child; a licensed group home or foster home; a licensed day care center; or a community care facility or respite program that is not a private residence.

(b) Respite care services available to children other than those children specified in OAR 411-305-0120(9)(a) include services listed in 411-305-0120(9)(a) as well as services provided in the home of the respite provider and services provided in a specialized camp.

(c) Respite services do not include: ongoing services which occur on a regular schedule such as 8-hours-a-day, 5-days-a-week or are provided to allow the child's parents to attend school or work; vacation travel and lodging expenses; or cost of the child's meals unless part of a short-term stay in a licensed group home or foster home.

(10) Special Diets. This service is not available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000. For other children receiving Family Support Services, special diets are specially prepared food supplements or particular types of food supplements needed to sustain the child in the family home, ordered by a physician, and monitored at least every six months by a dietitian licensed according to ORS 691.415-691.465. These supplements may include, but are not limited to, high caloric supplements, gluten-free supplements, or metabolic supplements. Special diet services are not intended to meet an individual's complete daily nutritional requirements and do not provide or replace the nutritional equivalent of meals and snacks normally required regardless of disability. Special diets do not include experimental nutritional supplements or regimens, such as combinations of vitamins and minerals purported to cure or alleviate symptoms of autism, Downs' Syndrome, or other developmental disabilities and which have not achieved general professional acceptance as essential to management of these conditions.

(11) Specialized Equipment and Supplies. Specialized equipment and supplies are devices, aids, controls, supplies, or appliances specified in the CFSP that enable children to increase their abilities to participate in or perform activities of daily living or to perceive, control, or communicate with the environment in which they live. This service includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment.

(a) Specialized Equipment and Supplies available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples of specialized

equipment and supplies include, but are not limited to: mobility, communication, incontinence, and positioning devices; age-appropriate hospital beds; apnea monitors; generators for technology-dependent individuals; equipment required to obtain urgent medical assistance; a manual wheelchair to use while power chair is being repaired; a second wheelchair that can fit into interior doors while larger power chair remains outside; latex gloves and similar supplies used in personal care; or adaptive communication devices and supplies; customized equipment such as plates, bowls, utensils, glasses, trays that allow a child to eat independently or with minimum assistance.

(b) Specialized Equipment and Supplies services available to children other than those children specified in OAR 411-305-0120(11)(a) include services listed in 411-305-0120(11)(a) as well as: equipment, furnishings, or supplies which are not commercially manufactured specifically to serve a medical or remedial function, but which have or may be easily modified to have important characteristics that safely and cost-effectively provide necessary supports; extra-heavy bed to help prevent injuries and property destruction; water table, swing, other sensory devices or equipment used by child with autism to self-calm; extra cost of shoes or other clothing due to required modifications or frequency of replacement caused by extraordinary wear; used equipment that has been certified by an appropriate professional as safe for mobility or positioning; or adaptive switches.

(c) Examples of items that are not Specialized Equipment and Supplies include, but are not limited to: equipment or supplies which are not of direct medical or remedial benefit to the child; equipment or supplies that may be purchased through other means such as the Medicaid State plan or other public or private means available to the child; standard items of clothing in amounts normally required by children of the same age; cost equivalent of toys and activities typically purchased by parents of children of the same age; equipment and furnishings of general household use; items required solely to allow a child to participate in school; fees for maintaining telephone services; trampolines other than small "jogger" type; or beds which restrict a child's freedom of movement when the bed is used to control behavior and when the child has passed the age



when cribs and similar arrangements are normally used to protect a child from falling out of bed.

(12) Speech, Hearing, and Language Services. Speech, hearing and language services are the services of a professional licensed under ORS 681.250 that are defined and approved for purchase under the approved State Medicaid Plan. These services are available to maintain a child's skills after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Speech, hearing, and language services include assessment, family and provider training, consultation, adaptations, and direct therapy provided by an appropriately licensed or certified physical therapist.

(b) Speech, hearing, and language services do not include experimental treatments and therapies or services identified by the school as required to carry out the child's Individual Education Plan.

(13) Transportation Services. Transportation services allow children to gain access to community services, activities, and resources.

(a) Transportation services available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. These services are provided to meet non-medical transportation needs that are beyond the scope of normal parental responsibility for transporting a child for leisure, recreation, and other non-medical community pursuits. Examples of such transportation services include, but are not limited to: transportation provided by common carriers, taxicab or bus in accordance with standards established for these entities;; assistance with purchase of a pass for public transportation required to accommodate wheelchair or other equipment and supervision needs; and reimbursement of operational expenses of agency/staff vehicles used for transporting children, not to exceed established rates.

(b) Transportation services available to children other than those children specified in OAR 411-305-0120(13)(a) include services listed in 411-305-0120(13)(a) as well as payment per mile for extraordinary

mileage required to transport a child to urban medical centers from distant rural communities.

(c) Transportation services do not include: transportation normally provided by schools and by parents for children of similar age without disabilities; purchase of any family vehicle; vehicle maintenance and repair; reimbursement for out-of-state travel expenses; ambulance services; or transportation services that may be obtained through other means such as the State Medicaid Plan or other public or private resources available to the child.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.350

### **411-305-0130 Using Family Support Funds for Certain Purchases is Prohibited**

*(Effective 12/28/2003)*

Family Support funds must not be used for:

- (1) Services, materials, or activities that are illegal;
- (2) Services or activities that are carried out in a manner that constitutes abuse of a child as defined in OAR 411-305-0020(1);
- (3) Services from persons who engage in verbal mistreatment and subject an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation by threatening injury or withholding of services or supports;
- (4) Services that restrict a child's freedom of movement by seclusion in a locked room under any condition;
- (5) Materials or equipment that have been determined unsafe for the general public by recognized child and consumer safety agencies;
- (6) Family vehicles;

(7) Health and medical costs that the general public normally must pay, including, but not limited to: medications; health insurance co-payments; mental health treatments; dental treatments and appliances; medical treatments; dietary supplements; or treatment supplies not related to nutrition, incontinence, or infection control;

(8) Ambulance services;

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

(10) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of disability, and are not strictly required by the child's disability-created need for personal assistance in all home and community settings;

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

(12) Employee wages or contractor payments for services when the child is not present or available to receive services, e.g. employee paid time off, hourly "no show" charge, contractor preparation hours, etc.;

(13) Services, activities, materials, or equipment that are not necessary or cost-effective, do not meet the definition of supports as defined in OAR 411-305-0020(40), or do not meet the definition of social benefits in 411-305-0020(39);

(14) Educational services, including professional instruction, formal training and tutoring in communication, socialization, and academic skills;

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

(16) Services or activities for which the Legislative or Executive Branch of Oregon government has prohibited use of public funds; or

(17) Purchase of services when there is sufficient evidence to believe that the child's parent or legal representative, 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 CFSP, refused to cooperate with record keeping required to document use of Family Support funds, or otherwise knowingly misused public funds associated with Family Support services.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.350

### **411-305-0140 Standards for Providers Paid with Direct Assistance Funds**

*(Effective 12/28/2003)*

Independent providers, provider organizations, and general business providers paid with Family Support Direct Assistance Funds must be qualified as follows:

(1) Each independent provider paid as a contractor, a self-employed person, or an employee of a child's parent or other legal representative to provide the services listed in OAR 411-305-0120 must:

- (a) Be at least 18 years of age;
- (b) Have approval to work based on current Department of Human Services policy and procedures for review of criminal history;
- (c) Be legally eligible to work in the United States;
- (d) Not be a parent, stepparent, foster parent or other person legally responsible for the child receiving supports;
- (e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the CFSP, with such demonstration confirmed in writing by the child's parent or other legal representative and 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 individual;

(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;

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

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

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers; and

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

(j) Nursing consultants must in addition 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, including at least one year of experience with people with developmental disabilities.

(2) Provider organizations must hold any current license or certification required by Oregon law to provide services to children. In addition, all individuals directed by the provider organization as employees, contractors, or volunteers to provide services paid for with Family Support funds must meet standards for qualification of independent providers outlined in OAR 411-305-0140(1).

(3) Services provided by general business providers must hold any current license appropriate to function required by the State of Oregon or federal law or regulation and services purchased with Family 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) A license under ORS 443.015 for a home health agency;
- (b) A license under ORS 443.315 for an in-home care agency;
- (c) Current license and bond as a building contractor under OAR 812, Construction Contractor's Board, and OAR 808, Landscape Contractors Board, for a provider of environmental accessibility adaptations involving home renovation or new construction;
- (d) Public transportation providers must be regulated according to established standards and private transportation providers must have business licenses and drivers licensed to drive in Oregon;
- (e) Current retail business license for vendors and medical supply companies providing specialized medical equipment and supplies, including enrollment as Medicaid providers through the Oregon Office of Medical Assistance Program if vending medical equipment;
- (f) A current business license for providers of personal emergency response systems; and
- (g) Retail business licenses for vendors and supply companies providing specialized diets.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.350

**411-305-0150 Family Support Services Administration and Operation**  
(Effective 12/28/2003)

(1) Family leadership. The CDDP may appoint a Family Support Policy Oversight Group to advise and assist the CDDP in matters related to

Family Support services such as evaluating the effectiveness of Family Support services, evaluating family satisfaction with Family Support services, improving availability of resources to meet children's support needs, and developing the plan for management of the General Assistance Fund required by OAR 411-305-0090(1)(a). When the CDDP elects to appoint such a group, the CDDP must develop and have available for review brief written descriptions of the group's purpose and scope, how membership is determined, and what process will be used to resolve concerns or disagreements between the CDDP and its Family Support Policy Oversight Group about the provision of Family Support services.

(2) Case Manager training. The CDDP must provide or arrange for Case Managers to receive Department-approved training needed to provide Family Support services, including, but not limited to, child and family-centered planning processes, employer-related supports, and individualized budgeting for supports.

(3) Fiscal Intermediary requirements. Providers of fiscal intermediary services purchased by the CDDP with Family Support Direct Assistance Funds according to Child and Family Support Plans must:

- (a) Demonstrate a practical understanding of laws, rules and conditions that accompany the use of public resources;
- (b) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;
- (c) Establish and meet the time lines for payments;
- (d) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;
- (e) Generate service, management, and statistical information and reports required by the CDDP to effectively manage Family Support services and by families to effectively manage supports;
- (f) Maintain flexibility to adapt to changing circumstances of children and families; and

(g) Provide training and technical assistance to families as required and specified in Child and Family Support Plans.

(4) General record requirements. The CDDP must maintain records in compliance with this rule, applicable state and federal law, other state rules regarding audits and clinical records, and the most current edition of the Mental Health and Developmental Disability Services Division Handbook on Confidentiality.

(a) Disclosure and confidentiality. For the purpose of disclosure from individual medical records under these rules, CDDPs under these rules will be considered "providers" as defined in ORS 179.505(1), and 179.505 will be applicable. Access to records by the Department does not require authorization by the family. For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records 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) Individual records. Records for children who receive Family Support services must be kept up-to-date and must include:

(A) Assigned placement in order of service, with information used to determine placement;

(B) An easily-accessed summary of basic information, including child's name, parents' names, legal representative if other than parents, conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, and child's financial benefit information.

(C) Records related to receipt and disbursement of Family Support funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-305-0140 and documentation of family acceptance or delegation of record keeping responsibilities outlined in this rule;

(D) Incident reports involving CDDP staff;



(E) Assessments used to determine supports required, preferences, and resources;

(F) Child and Family Support Plan and reviews;

(G) Case Manager 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 accurately reflecting all Family Support services revenue by source, all expenses by object of expense, and all assets, liabilities, and equities, consistent with generally accepted accounting principles.

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department of Human Services administrative rule pertaining to fraud and embezzlement.

(d) Records retention. Records must be retained in accordance with OAR 166, Secretary of State, Archives Division. Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for a minimum of three years after the close of the contract period, or until audited. Individual records must be kept for a minimum of seven years.

(5) Complaints, Grievances, Appeals. The CDDP must:

(a) Provide for review of complaints, grievances, and appeals by or on behalf of children related to Family Support services as set forth in rules for Community Developmental Disability Programs (OAR 411-320-0170(2)(c)).

(b) Each time the CDDP takes an action to deny, terminate, suspend, or reduce a child's access to services covered under Medicaid:

(A) The CDDP must notify the child and the child's parent(s) or other legal representative(s) of the right to a hearing and the method to obtain a hearing. The CDDP must mail the notice, or personally serve it to the child's parent(s) or other legal representative(s) ten (10) days or more prior to the effective date of an action.

(i) The CDDP must use the Division of Medical Assistance Programs (DMAP) form 3030, Notice of Hearing Rights, or comparable Department-approved form for such notification.

(ii) This notification requirement will not apply if an action is part of, or fully consistent with, the CFSP and the child's parent(s) or other legal representative(s) have agreed with the action by signature to the plan.

(B) The child's parent(s) or other legal representative(s) may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the CDDP. At the time the CDDP denies a written request for additional or different services, it must notify the appealing party, in writing, of the information specified in section (2)(c) of this rule.

(C) A notice required by paragraph (5)(a) or (5)(b) of this rule must be served upon the appealing party personally or by certified mail. The notice must state:

(i) What action the CDDP intends to take;

(ii) The reasons for the intended action;

(iii) The specific regulations that support, or the change in Federal or State law that requires, the action;

(iv) The appealing party's right to a contested case hearing in accordance with OAR 137, Oregon Attorney General's Model Rules, and 42 CFR Part 431, Subpart E;

(v) That the CDDPs files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of making a prima facie case;

(vi) That the actions specified in the notice will take effect by default if the Department representative does not receive a request for a hearing from the party within 45 days from the date that the CDDP mails the notice of action;

(vii) In circumstances of an action based upon a change in law, the circumstances under which a hearing will be granted; and

(viii) An explanation of the circumstances under which CDDP services will be continued if a hearing is requested.

(D) If the child's parent(s) or other legal representative(s) disagree with a decision or proposed action by the CDDP, the party may request a contested case hearing. The Department representative must receive the signed form within 45 days after the CDDP mailed the notice of action.

(E) The child's parent(s) or other legal representative(s) may request an expedited hearing if he or she feels that there is immediate, serious threat to the individual's life or health should he or she follow the normal timing of the hearing process.

(F) If the child's parent(s) or other legal representative(s) request an administrative hearing before the effective date of the proposed actions and requests that the existing services be continued, the Department must continue the services. The Department will continue the services until whichever of the following occurs first, but in no event must services be continued in excess of ninety days from the date of the child's parents' or other legal representatives' request for an administrative hearing:

(i) The current authorization expires;

(ii) The hearings officer issues a proposed order and the Department renders a final order about the complaint; or

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

(iv) The Department must notify the child's parent(s) or other legal representative(s) that it is continuing the service. The notice must inform the child's parent(s) or other legal representative(s) that, if the hearing is resolved against him or her, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(G) The Department must reinstate services if:

(i) The Department takes an action without providing the required notice and the child's parent(s) or other legal representative(s) requests a hearing;

(ii) The Department does not provide the notice in the time required in this rule and the child's parent(s) or other legal representative(s) requests a hearing within ten days of the mailing of the notice of action; or

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

(iv) 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(s) or other legal representative(s) may have an informal conference, without the presence of the hearings officer, to discuss any of

the matters listed in OAR 137-003-0575, Prehearing Conferences. The informal conference may also be used to:

(i) Provide an opportunity for the Department and the child's parent(s) or other legal representative(s) to settle the matter;

(ii) Ensure the child's parent(s) or other legal representative(s) understands the reason for the action that is the subject of the hearing request;

(iii) Give the child's parent(s) or other legal representative(s) an opportunity to review the information that is the basis for that action;

(iv) Inform the child's parent(s) or other legal representative(s) of the rules that serve as the basis for the contested action;

(v) Give the child's parent(s) or other legal representative(s) and the Department the chance to correct any misunderstanding of the facts;

(vi) Determine if the child's parent(s) or other legal representative(s) wishes to have any witness subpoenas issued; and

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

(I) The child's parent(s) or other legal representative(s) may, at any time prior to the hearing date, request an additional conference with the Department representative. At his or her discretion, the Department representative may grant such a conference if it will facilitate the hearing process.

(J) The Department may provide to the child's parent(s) or other legal representative(s) the relief sought at any time before the final order is served.

(K) Withdrawals. A child's parent(s) or other legal representative(s) may withdraw a hearing request at any time. The withdrawal will be effective on the date the Department or the hearings officer receives it. The Department must send a final order confirming the withdrawal to the last known address of the child's parent(s) or other legal representative(s). The child's parent(s) or other legal representative(s) may cancel the withdrawal up to the tenth workday following the date such an order is issued.

(L) Proposed and final orders.

(i) In a contested case, the hearings officer must serve a proposed order on the child, the child's parent(s) or other legal representative(s) and the Department.

(ii) If the hearings officer issues a proposed order that is adverse to the child, the child's parent(s) or other legal representative(s) may file exceptions to the proposed order to be considered by the Department. The exceptions must be in writing and must reach the Department not later than ten days after service of the proposed order. The child's parent(s) or other legal representative(s) may not submit additional evidence after this period unless the Department prior-approves. 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.

(6) Other operating policies and practices. 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 agency to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340

- 417.350

**411-305-0160 Special Record Requirements for Direct Assistance Fund Purchases**

*(Effective 12/28/2003)*

The CDDP must develop and implement written policies and procedures concerning use of Family Support funds to purchase goods and services required for support of children and described in Child and Family Support Plans. These policies and procedures must include, but are not limited to:

(1) Minimum acceptable records of expenditures:

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

(b) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

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

(d) Written professional support plans, assessments, and reviews to document acceptable provision of behavior support, physical therapy, occupational therapy, speech and language, nursing, and other professional training and consultation services; and

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

(2) Procedures for confirming the receipt, and securing the use of, specialized equipment and environmental accessibility adaptations:

(a) The CDDP must record the purpose, final cost, and date of receipt of any specialized equipment purchased for a child;

(b) The CDDP must secure use of equipment or furnishings costing more than \$500 through a written agreement between the CDDP and the child's family or other legal representative which specifies the

time period the item is to be available to the child and the responsibilities of all parties should the item be lost, damaged, or sold within that time period;

(c) The CDDP must ensure that projects for environmental accessibility adaptations involving building renovation or new construction in or around a child's home costing \$5000 or more per single instance or cumulatively over several modifications are approved by the Department before work begins and before final payment is made, are completed or supervised by a contractor licensed and bonded in the State of Oregon, and that steps are taken as prescribed by the Department for protection of Department's interest through liens or other legally available means. Further, the CDDP must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure.

(3) Return of advanced funds and purchased goods.

(a) Any funds advanced to a family that are not spent according to the child's CFSP, as indicated by acceptable records, must be returned to the local CDDP when the current CFSP expires or immediately if requested at any time by the CDDP.

(b) Any goods purchased with Family Support funds that are not used according to the child's CFSP or according to an agreement securing the State's use may be immediately recovered.

(4) Failure to furnish written documentation upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit or Centers for Medicare and Medicaid Services or their authorized representatives immediately or within timeframes specified in the written request may be deemed reason to recover payments or deny further assistance.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340  
- 417.350



## **411-305-0170 Quality Assurance**

*(Effective 12/28/2003)*

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

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.350

## **411-305-0180 Variances**

*(Effective 12/28/2003)*

(1) Criteria for a variance. Variances may be granted to a CDDP if the CDDP lacks the resources needed to implement the standards required in OAR 411, division 305, Family Support Services for Children with Developmental Disabilities, if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules, or if there are other extenuating circumstances. OAR 411-305-0120 and 411-305-0130 are specifically excluded from variance.

(2) Variance application. 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 alternative practice, service, method, concept or procedure proposed; and
- (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 CFSP.

(3) Department review. The Department Administrator or designee may approve or deny the request for a variance.

(4) Notification. The Department must notify the CDDP of the decision. This notice must be sent within 30 calendar days of the receipt of the request at the Department with a copy to all relevant Department programs or offices.

(5) Appeal. Appeal of the denial of a variance request must be made in writing to the Department Administrator or designee, whose decision is final.

(6) Duration of variance. The Department will determine the duration of the variance.

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

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340  
- 417.350