DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 355

MEDICALLY INVOLVED CHILDREN'S PROGRAM

Table of Contents

411-355-0000 Statement of Purpose 1

411-355-0010 Definitions 1

411-355-0020 Eligibility 5

411-355-0030 Service Planning 9

411-355-0040 Scope of MICP Services and Limitations 13

411-355-0045 Standards for Employers 40

411-355-0050 Standards for Providers Paid with MICP Funds 45

411-355-0075 Provider Enrollment Inactivation and Termination 51

411-355-0080 MICP Documentation Needs 54

411-355-0090 Payment for MICP Services 56

411-355-0100 Rights, Complaints, Notification of Planned Action, and Hearings 60

DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 355

MEDICALLY INVOLVED CHILDREN'S PROGRAM

411-355-0000 Statement of Purpose
(Amended 12/28/2015)

(1) The rules in OAR chapter 411, division 355 establish the policy of, and prescribe the standards and procedures for, the provision of services for children enrolled in the Medically Involved Children's Program.

(2) MICP services are exclusively intended to enable a child who meets the nursing facility level of care to return to the family home, or remain at the family home, with specialized supports and services. MICP services specifically preserve the capacity of a parent to care for their child, assure the health and safety of the child within the family home, and enable a child who has been separated from their family due to their health and medical care needs to return to the family home to prevent out of home placement. MICP services complement and supplement the services that are available through the State Medicaid Plan and other federal, state, and local programs as well as the natural supports that families and communities provide.

Stat. Auth.: ORS 409.050, 417.345
Stats. Implemented: ORS 417.345, 427.007, 430.215

411-355-0010 Definitions
(Temporary Effective 01/01/2016 to 06/28/2016)

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 355:

(1) "ADL" means "activities of daily living".

(2) "Aide" means a non-licensed caregiver who may, or may not, be a certified nursing assistant.

(3) "Billing Form" means the document generated by the Department that acts as a prior authorization, contract, and payment mechanism for services.

(4) "CDDP" means "Community Developmental Disability Program".

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

(6) "Director" means the Director of the Department of Human Services, Office of Developmental Disabilities Services, or the designee of the Director.

(7) "Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for MICP funds. The Department incorporates the Expenditure Guidelines into these rules by this reference. The Expenditure Guidelines are maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/cm/. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(8) "Family":

(a) Means a unit of two or more people that includes at least one child where the primary caregiver is:

(A) Related to the child by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

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

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

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

(A) Determining the eligibility of a child for MICP services as a resident in the family home;

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

(C) Determining who may receive family training.

(9) "Family Home" means the primary residence for a child that is not under contract with the Department to provide services as a certified foster home or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential setting. A family home is not considered a provider owned, controlled, or operated residential setting.

(10) "Functional Needs Assessment":

(a) Means the comprehensive assessment or reassessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for a child enrolled in MICP services is known as the Child Needs Assessment (CNA). The Department incorporates Version C of the CNA into these rules by this reference. The CNA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/cm/. A printed copy of a blank CNA may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(11) "IADL" means "instrumental activities of daily living".

(12) "ISP" means "Individual Support Plan".

(13) "Level of Care" means a child meets the institutional level of care for a nursing facility:

(a) The child has a documented medical condition and demonstrates the need for active treatment as assessed by the medically involved criteria; and

(b) The medical condition requires the care and treatment of services normally provided in a nursing facility.

(14) "Medically Involved Criteria" means the criteria used by the Department to evaluate the intensity of the challenges presented by a child eligible for MICP services.

(15) "MICP" means "Medically Involved Children's Program". MICP is the waiver granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on a child living in the family home who otherwise would have to be served in a nursing facility if the waiver program was not available.

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

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

(18) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(19) "OIS" means the "Oregon Intervention System".

(20) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for children who meet the eligibility criteria described in OAR chapter 461.

(21) "Service Level" means the amount of attendant care, hourly relief care, or skills training services determined necessary by a functional needs assessment and medically involved criteria and made available to meet the identified support needs of a child.

(22) "Services Coordinator" means an employee of the Department, CDDP, or other agency that contracts with the county or Department who ensures the eligibility of a child for services and provides case management services including, but not limited to, planning, procuring, coordinating, and

monitoring services. The services coordinator acts as the proponent for children enrolled in the MICP and their families and is the person-centered plan coordinator for the child as defined in the Community First Choice state plan amendment.

(23) "These Rules" mean the rules in OAR chapter 411, division 355.

Stat. Auth.: ORS 409.050, 417.345
Stats. Implemented: ORS 417.345, 427.007, 430.215

411-355-0020 Eligibility
(Amended 12/28/2015)

(1) ELIGIBILITY. In order to be eligible for the MICP, a child must:

(a) Be under the age of 18;

(b) Be an Oregon resident who meets the citizenship and alien status requirements of OAR 461-120-0110;

(c) Be receiving Medicaid Title XIX benefits under OSIPM;

(d) For a child with excess income, contribute to the cost of services pursuant to OAR 461-160-0610 and OAR 461-160-0620;

(e) Meet the level of care as defined in OAR 411-355-0010;

(f) Be accepted by the Department by scoring 100 or greater on the medically involved criteria and maintain an eligibility score of 100 or greater as determined by a reassessment annually;

(g) Require services offered under the MICP;

(h) Reside in the family home; and

(i) Be safely served in the family home. This includes, but is not limited to, a qualified primary caregiver demonstrating the willingness, skills, and ability to provide direct care as outlined in an ISP in a cost effective manner, as determined by a services coordinator within the limitations of OAR 411-355-0040, and participate in planning, monitoring, and evaluation of the MICP services provided.

(2) TRANSFER OF ASSETS.

(a) As of October 1, 2014, a child receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the child was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(A) An annuity evaluated according to OAR 461-145-0022;

(B) A transfer of property when a child retains a life estate evaluated according to OAR 461-145-0310;

(C) A loan evaluated according to OAR 461-145-0330; or

(D) An irrevocable trust evaluated according to OAR 461-145-0540.

(b) When a child is considered ineligible for MICP services due to a disqualifying transfer of assets, the parent or guardian and child must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the child was requesting services under OSIPM.

(3) ENROLLMENT. If a child meets the criteria of section (1) of this rule and space is available in the MICP, the priority of the child for enrollment is in accordance with ORS 417.345, Medically Involved Model Waiver requirements. The date the initial application is complete is the date that the Department receives all of the required demographic and referral information on the child.

(4) INELIGIBILITY. A child is not eligible for the MICP if the child:

(a) Has primary residence in a medical hospital, psychiatric hospital, school, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, foster home, or other 24-hour residential setting;

(b) Does not require waiver services or Community First Choice state plan services;

(c) Receives sufficient family, government, or community resources available to provide for his or her care; or

(d) Cannot be safely served in the family home as described in section (1)(i) of this rule.

(5) REDETERMINATION. The Department redetermines the eligibility of a child for the MICP using the medically involved criteria at least every 12 months, or as the status of the child changes.

(6) TRANSITION. A child whose reassessment score on the medically involved criteria is less than 100 is transitioned out of the MICP within 30 days. The child must exit from the MICP at the end of the 30 day transition period.

(7) DISENROLLMENT.

(a) A child is disenrolled from the MICP:

(A) At the oral or written request of a parent or guardian to end the service relationship; or

(B) In any of the following circumstances:

(i) The child no longer meets the eligibility criteria in section (1) of this rule;

(ii) The child does not require waiver services or Community First Choice state plan services;

(iii) There are sufficient family, government, community, or alternative resources available to provide for the care of the child;

(iv) The child may not be safely served in the family home as described in section (1)(i) of this rule;

(v) The parent or guardian either cannot be located or has not responded after 30 days of repeated attempts by a services coordinator to complete ISP development and

monitoring activities and does not respond to a notice of intent to terminate;

(vi) The services coordinator has sufficient evidence that the parent or guardian has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with documenting expenses of MICP funds, or otherwise knowingly misused public funds associated with the MICP;

(vii) The child is incarcerated or admitted to a medical hospital, psychiatric hospital, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, foster home, or other 24-hour residential setting and it is determined that the child is not returning to the family home or is not returning to the family home after 90 consecutive days; or

(viii) The child does not reside in Oregon.

(b) In the event a child is disenrolled from the MICP, a written Notification of Planned Action must be provided as described in OAR chapter 411, division 318.

(8) WAIT LIST. If the maximum number of children allowed on the Medically Involved Model Waiver are enrolled and being served, the Department may place a child eligible for the MICP on a wait list. A child on the wait list may access other Medicaid-funded services or General Fund services for which the child is determined eligible.

(a) The date of the initial completed application for the MICP determines the order on the wait list. A child, who previously received children's intensive in-home services that currently meets the criteria for eligibility as described in section (1) of this rule, is put on the wait list as of the date the original application for MICP services was complete.

(b) The date the application for the MICP is complete is the date that the Department has the required demographic data and referral information for the child.

(c) Children on the wait list are prioritized for entry if they are currently residing in a nursing facility for long term care and whose family wishes them to return home, enrolled in another waiver meeting the medically involved criteria, are residing in the community and at imminent risk of placement in a nursing facility, and as space on the Medically Involved Model Waiver allows. An evaluation is completed prior to entry to determine current eligibility.

(9) ASSESSMENT. Anyone may request an assessment for a child for MICP services.

Stat. Auth.: ORS 409.050, 417.345
Stats. Implemented: ORS 417.345, 427.007, 430.215

411-355-0030 Service Planning
(Temporary Effective 01/01/2016 to 06/28/2016)

(1) FUNCTIONAL NEEDS ASSESSMENT. A services coordinator must complete a functional needs assessment using a person-centered planning approach and assess the service needs of the child.

(a) The functional needs assessment must be conducted face-to-face with the child and the services coordinator must interview the parent or guardian, other caregivers, and when appropriate, any other person at the request of the parent or guardian.

(b) The functional needs assessment must be completed:

(A) Within 30 days of entry in to the MICP;

(B) Within 60 days prior to the annual renewal of an ISP; and

(C) Within 45 days from the date the parent or guardian requests a functional needs assessment.

(c) The parent or guardian must participate in the functional needs assessment and provide information necessary to complete the functional needs assessment and reassessment within the time frame required by the Department.

(A) Failure to participate in the functional needs assessment or provide information necessary to complete the functional needs

assessment or reassessment within the applicable time frame results in the denial of a service eligibility. In the event service eligibility is denied, a written Notification of Planned Action must be provided as described in OAR 411-318-0020.

(B) The Department may allow additional time if circumstances beyond the control of the parent or guardian prevent timely participation in the functional needs assessment or reassessment or timely submission of information necessary to complete the functional needs assessment or reassessment.

(d) No fewer than 14 days prior to conducting a functional needs assessment, the services coordinator must mail a notice of the assessment process to the parent or guardian. The notice must include a description and explanation of the assessment process and an explanation of the process for appealing the results of the assessment.

(2) INDIVIDUAL SUPPORT PLAN.

(a) A child who is accessing waiver or Community First Choice state plan services must have an authorized ISP.

(A) The services coordinator must facilitate and develop an ISP through a person-centered service planning process.

(B) The ISP must be authorized by the services coordinator --

(i) No more than 90 days from the date of eligibility determination made by the CDDP according to OAR 411-320-0080; or

(ii) No later than the end of the month following the month in which the level of care determination was made; and

(iii) Annually thereafter.

(b) The services coordinator must develop, with the input of the child (as appropriate), parent or guardian, and any other person at the request of the parent or guardian, a written ISP prior to purchasing supports with MICP funds and annually thereafter that identifies --

(A) The service needs of the child;

(B) The most cost effective services for safely and appropriately meeting the service needs of the child; and

(C) The methods, resources, and strategies that address the service needs of the child.

(c) The ISP must include, but not be limited to, the following:

(A) The legal name of the child and the name of the parent or guardian of the child;

(B) The projected dates of when specific supports are to begin and end;

(C) Home and community-based service and setting options --

(i) Based on the needs of the child and preferences of the child and the parent or guardian;

(ii) Chosen by the parent or guardian; and

(iii) Integrated in and support full access to the greater community.

(D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as children not receiving home and community-based services;

(E) The strengths and preferences of the child;

(F) The service and support needs of the child;

(G) The goals and desired outcomes of the child;

(H) The providers of services and supports, including unpaid supports provided voluntarily;

(I) Risk factors and measures in place to minimize risk;

(J) Individualized backup plans and strategies, when needed;

(K) People important in supporting the child;

(L) The person responsible for monitoring the ISP;

(M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the child receiving services and the people important in supporting the child;

(N) The written informed consent of the parent or guardian;

(O) Signatures of the child (as appropriate), parent or guardian, participants in the ISP planning process, and all people and providers with whom the ISP was shared in its entirety, or as described below in subsection (d) of this section;

(P) Self-directed supports; and

(Q) Provisions to prevent unnecessary or inappropriate services and supports.

(d) The child (as appropriate) and the parent or guardian decides on the level of information in the ISP that is shared with providers. To effectively provide services, providers must have access to the necessary information from the ISP that the provider is responsible for implementing. A provider identified to deliver a service or support included in an ISP must acknowledge through a signature on a written agreement receipt of the necessary information.

(e) An ISP must be reviewed with the child (as appropriate) and parent or guardian prior to implementation. The ISP is distributed to the parent or guardian and other people involved in the ISP as described above in subsection (d).

(f) Changes in services authorized in the ISP must be consistent with needs identified in a functional needs assessment and medically involved criteria and documented in an amendment to the ISP that is signed by the parent or guardian and the services coordinator.

(g) An ISP must be reviewed and revised --

(A) At the request of the child or parent or guardian;

(B) When the circumstances or needs of the child change; or

(C) Upon reassessment of functional needs as required every 12 months.

(h) Each new plan year begins on the anniversary date of the initial or previous ISP.

Stat. Auth.: ORS 409.050, 417.345
Stats. Implemented: ORS 417.345, 427.007, 430.215

411-355-0040 Scope of MICP Services and Limitations
(Temporary Effective 01/01/2016 to 06/28/2016)

(1) MICP services are intended to support, not supplant, the naturally occurring services provided by a legally responsible primary caregiver and enable the primary caregiver to meet the needs of caring for a child on the MICP. MICP services are not meant to replace other available governmental or community services and supports. All services funded by the Department must be provided in accordance with the Expenditure Guidelines and based on the actual and customary costs related to best practice standards of care for children with similar disabilities.

(2) When multiple children in the same family home or setting qualify for MICP services, the same provider may provide services to all qualified children if services may be safely delivered by a single provider, as determined by the services coordinator.

(3) The use of MICP funds to purchase supports is limited to:

(a) The service level for a child as determined by a functional needs assessment. The functional needs assessment determines the total number of hours needed to meet the identified needs of the child. The total number of assessed hours may not be exceeded without prior approval from the Department. The types of services that contribute to the total number of hours used include attendant care, skills training, and state plan personal care service hours as described in OAR chapter 411, division 034; and

(b) Other services and supports determined by a services coordinator to be necessary to meet the support needs identified through a person-centered planning process and consistent with the Expenditure Guidelines.

(4) To be authorized and eligible for payment by the Department, all MICP services and supports must be:

(a) Directly related to the disability of a child;

(b) Required to maintain the health and safety of a child;

(c) Cost effective;

(d) Considered not typical for a parent or guardian to provide to a child of the same age;

(e) Required to help the parent or guardian to continue to meet the needs of caring for the child;

(f) Included in an approved ISP;

(g) Provided in accordance with the Expenditure Guidelines;

(h) Based on the actual and customary costs related to best practice standards of care for children with similar disabilities; and

(i) After September 1, 2018, delivered in a home and community-based setting that meets the qualities described in OAR 411-004-0020.

(5) When conditions of purchases are met and provided purchases are not prohibited, MICP funds may be used to purchase a combination of the following supports based upon the needs of a child as determined by a services coordinator and consistent with a functional needs assessment, initial or annual ISP, and the OSIPM or OHP Plus benefits the child qualifies for:

(a) Community First Choice state plan services:

(A) Behavior support services as described in section (6) of this rule;

(B) Community nursing services as described in section (7) of this rule;

(C) Environmental modifications as described in section (8) of this rule;

(D) Attendant care as described in section (9) of this rule;

(E) Skills training as described in section (10) of this rule;

(F) Relief care as described in section (11) of this rule;

(G) Assistive devices as described in section (12) of this rule;

(H) Assistive technology as described in section (13) of this rule;

(I) Chore services as described in section (14) of this rule;

(J) Community transportation as described in section (15) of this rule; and

(K) Transition costs as described in section (16) of this rule.

(b) Home and community-based waiver services:

(A) Case management;

(B) Family training as described in section (17) of this rule;

(C) Environmental safety modifications as described in section (18) of this rule;

(D) Vehicle modifications as described in section (19) of this rule;

(E) Specialized medical supplies as described in section (20) of this rule;

(F) Special diet as described in section (21) of this rule; and

(G) Individual-directed goods and services as described in section (22) of this rule.

(c) State Plan personal care services as described in OAR chapter 411, division 034.

(6) BEHAVIOR SUPPORT SERVICES. Behavior support services may be authorized to support a primary caregiver in their caregiving role and to respond to specific problems identified by a child, primary caregiver, or a services coordinator. Positive behavior support services are used to enable a child to develop, maintain, or enhance skills to accomplish ADLs, IADLs, and health-related tasks.

(a) A behavior consultant must:

(A) Work with the child and primary caregiver to identify:

(i) Areas of the family home life that are of most concern for the child and the parent or guardian;

(ii) The formal or informal responses the family or the provider has used in those areas; and

(iii) The unique characteristics of the child and family that may influence the responses that may work with the child.

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

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

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

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

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

(I) An effort to communicate;

(II) The result of a medical condition;

(III) The result of an environmental cause; or

(IV) The symptom of an emotional or psychiatric disorder.

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

(vi) An assessment of current communication strategies.

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

(i) When interventions in behavior are necessary, the interventions must be performed in accordance with positive behavioral theory and practice.

(ii) The least intrusive intervention possible to keep the child and others safe must be used.

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

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

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

(E) Develop emergency and crisis procedures to be used to keep the child, primary caregiver, and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to OIS must be utilized. The use of protective physical intervention must be part of the Behavior Support Plan for the child. When protective physical intervention is required, the protective physical intervention must only be used as a last resort and the provider must be appropriately trained in OIS;

(F) Teach the primary caregiver and the provider the strategies and procedures to be used; and

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

(b) Behavior support services may include:

(A) Training the primary caregiver or provider of a child;

(B) Developing a visual communication system as a strategy for behavior support; and

(C) Communicating, as authorized by a parent or guardian through a release of information, with other professionals about the strategies and outcomes of the Behavior Support Plan as written in the Behavior Support Plan within authorized consultation hours only.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services including, but not limited to, consultation and training for classroom staff;

(D) Adaptations to meet the needs of a child at school;

(E) An assessment in a school setting;

(F) Attendant care;

(G) Relief care; or

(H) Communication or activities not directly related to the development, implementation, or revision of the Behavior Support Plan.

(7) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

(E) Delegation and training of nursing tasks to a provider and primary caregiver;

(F) Teaching and education of a primary caregiver and provider and identifying supports that minimize health risks while promoting the autonomy of a child and self-management of healthcare; and

(G) Collateral contact with a services coordinator regarding the community health status of a child to assist in monitoring safety and well-being and to address needed changes to the ISP for the child.

(b) Community nursing services exclude private duty nursing care.

(c) A Nursing Service Plan must be present when MICP funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.

(d) After an initial nursing assessment, a nursing reassessment must be completed every six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(8) ENVIRONMENTAL MODIFICATIONS.

(a) Environmental modifications include, but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

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

(E) An alarm system for doors or windows;

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

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

(H) Adaptation of kitchen cabinets and sinks;

(I) Widening of doorways;

(J) Handrails;

(K) Modification of bathroom facilities;

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

(M) Installation of non-skid surfaces;

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

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

(P) Adaptations to control lights, heat, stove.

(b) Environmental modifications exclude:

(A) Adaptations or improvements to the family home that are of general utility, such as carpeting, roof repair, and central air conditioning, unless directly related to the health and safety needs of the child and identified in the ISP for the child;

(B) Adaptations that add to the total square footage of the family home except for ramps that attach to the home for the purpose of entry or exit;

(C) Adaptations outside of the family home, excluding external ramps; and

(D) General repair or maintenance and upkeep required for the family home.

(c) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks as identified in the ISP for the child.

(d) Environmental modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and the determination by the Department of appropriateness and cost effectiveness. In addition, separate environmental modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review,

(e) Environmental modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(f) Environmental modifications must be made within the existing square footage of the family home, except for external ramps, and may not add to the square footage of the family home.

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

(h) A scope of work must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(i) A services coordinator must follow the processes outlined in the Expenditure Guidelines for contractor bids and the awarding of work.

(j) All dwellings must be in good repair and have the appearance of sound structure.

(k) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(l) Environmental modifications must only be completed to the family home.

(m) Upgrades in materials that are not directly related to the health and safety needs of the child are not paid for or permitted.

(n) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(o) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(9) ATTENDANT CARE. Attendant care services include direct support provided to a child in the family home or community by a qualified personal support worker or provider organization. ADL and IADL services provided through attendant care must support the child to live as independently as appropriate for the age of the child, support the family in their primary caregiver role, and be based on the identified goals, preferences, and needs of the child. The primary caregiver is expected to be present or available during the provision of attendant care.

(a) Assistance with ADLs, IADLs, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete IADL tasks.

(A) "Cueing" means giving verbal, audio, or visual cues during an activity to help a child complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because a child is unable to do so.

(C) "Monitoring" means a provider observes a child to determine if assistance is needed.

(D) "Reassurance" means to offer a child encouragement and support.

(E) "Redirection" means to divert a child to another more appropriate activity.

(F) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that a child may perform an activity.

(G) "Stand-by" means a provider is at the side of a child ready to step in and take over the task if the child is unable to complete the task independently.

(b) Attendant care services must:

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

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

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

(c) Attendant care services exclude:

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

(B) Hours solely to allow the primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to support the child based on the functional needs assessment and medically involved criteria;

(D) Support generally provided for a child of similar age without disabilities by the parent or guardian or other family members;

(E) Supports and services in the family home that are funded by Child Welfare;

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

(G) Services provided by the family; and

(H) Home schooling.

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

(10) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for a child to acquire, maintain, or enhance independence.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcome are measured and the measurements are evaluated by a services coordinator no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved within the timeframe outline in the ISP, the services coordinator must reassess or redefine the use of skills training with the child for that particular goal.

(d) Skills training does not replace the responsibilities of the school system.

(11) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow the primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential, but may not exceed seven consecutive days without permission from the Department. No more than 14 days of relief care in a plan year are allowed without approval from the Department.

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

(A) The family home;

(B) A licensed or certified setting;

(C) The home of a qualified provider chosen by the parent or guardian as a safe setting for the child; or

(D) The community during the provision of ADL, IADL, health-related tasks, and other supports identified in the ISP for the child.

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

(A) Solely to allow the primary caregiver of the child to attend school or work;

(B) For more than seven consecutive overnight stays without permission from the Department;

(C) For more than 10 days per individual plan year when provided at a camp that meets provider qualifications;

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

(E) To pay for room and board.

(12) ASSISTIVE DEVICES. Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of an assistive device must be limited to the types of equipment that are not excluded under OAR 410-122-0080.

(a) Assistive devices may be purchased with MICP funds when the disability of a child otherwise prevents or limits the independence of the child to assist in areas identified in a functional needs assessment.

(b) Assistive devices that may be purchased for the purpose described in subsection (a) of this section must be of direct benefit to the child and may include:

(A) Devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices.

(B) Assistive devices not provided by any other funding source to assist and enhance the independence of a child in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(c) Expenditures for assistive devices are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(d) Devices must be limited to the least costly option necessary to meet the assessed need of a child.

(e) To be authorized by a services coordinator, assistive devices must be:

(A) In addition to any assistive devices, medical equipment, or supplies furnished under OHP, private insurance, or alternative resources;

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

(C) Directly related to the disability of a child.

(f) Assistive devices exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child or do not address the underlying need for the device;

(B) Items intended to supplant similar items furnished under OHP, private insurance, or alternative resources;

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

(D) Toys or outdoor play equipment; and

(E) Equipment and furnishings of general household use.

(13) ASSISTIVE TECHNOLOGY. Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, and maximize independence. Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinence and fall sensors, or other electronic backup systems.

(a) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(b) Payment for ongoing electronic back-up systems or assistive technology costs must be paid to providers each month after services are received.

(A) Ongoing costs do not include electricity or batteries.

(B) Ongoing costs may include minimally necessary data plans and the services of a company to monitor emergency response systems.

(14) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

(a) Chore services include heavy household chores, such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

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

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

(15) COMMUNITY TRANSPORTATION.

(a) Community transportation includes, but is not limited to:

(A) Community transportation provided by a common carrier or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting a child; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation may only be authorized when natural supports or volunteer services are not available and one of the following is identified in the ISP for the child:

(A) The child has an assessed need for ADL, IADL, or a health-related task during transportation; or

(B) The child has either an assessed need for ADL, IADL, or a health-related task at the destination or a need for waiver funded services at the destination.

(c) Community transportation must be provided in the most cost-effective manner which meets the needs identified in the ISP for the child.

(d) Community transportation expenses exceeding $500 per month must be approved by the Department.

(e) Community transportation must be prior authorized by a services coordinator and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the services coordinator and documented in the ISP. Personal support workers who use their own personal vehicles for community transportation are reimbursed as described in OAR chapter 411, division 375.

(f) Community transportation excludes:

(A) Medical transportation;

(B) Purchase or lease of a vehicle;

(C) Routine vehicle maintenance and repair, insurance, and fuel;

(D) Ambulance services;

(E) Costs for transporting a person other than the child;

(F) Transportation for a provider to travel to and from the workplace of the provider;

(G) Transportation that is not for the sole benefit of the child;

(H) Transportation to vacation destinations or trips for relaxation purposes;

(I) Transportation provided by family members;

(J) Transportation normally provided by schools;

(K) Transportation used for behavioral intervention or calming;

(L) Transportation normally provided by a primary caregiver for a child of similar age without disabilities;

(M) Reimbursement for out-of-state travel expenses; and

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

(16) TRANSITION COSTS.

(a) Transition costs are limited to a child transitioning to the family home from a nursing facility or intermediate care facility for individuals with intellectual or developmental disabilities.

(b) Transition costs are based on the assessed need of a child determined during the person-centered service planning process and must support the desires and goals of the child receiving services and

supports. Final approval for transition costs must be through the Department prior to expenditure. The approval of the Department is based on the need of the child and the determination by the Department of appropriateness and cost-effectiveness.

(c) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the child from receiving utility services and basic household furnishings such as a bed; and

(C) Other items necessary to re-establish a home.

(d) Transition costs are provided no more than twice annually.

(e) Transitions costs for basic household furnishings and other items are limited to one time per year.

(f) Transition costs may not supplant the legal responsibility of the parent or guardian. In this context, the term parent or guardian does not include a designated representative.

(17) FAMILY TRAINING. Family training services are provided to the family of a child to increase the abilities of the family to care for, support, and maintain the child in the family home.

(a) Family training services include:

(A) Instruction about treatment regimens and use of equipment specified in an ISP;

(B) Information, education, and training about the disability, medical, and behavioral conditions of a child; and

(C) Registration fees for organized conferences and workshops specifically related to the disability of the child or the identified, specialized, medical, or behavioral support needs of the child.

(i) Conferences and workshops must be prior authorized by a services coordinator, directly relate to the disability or medical condition of a child, and increase the knowledge and skills of the family to care for and maintain the child in the family home.

(ii) Conference and workshop, costs exclude:

(I) Travel, food, and lodging expenses;

(II) Services otherwise provided under OHP or available through other resources; or

(III) Costs for a family member who is a paid provider.

(b) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for a paid provider;

(C) Legal fees;

(D) Training for a family to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of a child.

(18) ENVIRONMENTAL SAFETY MODIFICATIONS.

(a) Environmental safety modifications must be made from materials of the most cost effective type and may not include decorative additions.

(b) Fencing may not exceed 200 linear feet without approval from the Department.

(c) Environmental safety modifications exclude:

(A) Large gates such as automobile gates;

(B) Costs for paint and stain;

(C) Adaptations or improvements to the family home that are of general utility and are not for the direct medical or remedial benefit to the child or do not address the underlying environmental need for the modification; and

(D) Adaptations that add to the total square footage of the family home.

(d) Environmental safety modifications must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP for the child.

(e) Environmental safety modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(f) In addition, separate environmental safety modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(g) Environmental safety modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(h) Environmental safety modifications must be made within the existing square footage of the family home and may not add to the square footage of the family home.

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

(j) A scope of work must be completed for each identified environmental safety modification project. All contractors submitting bids must be given the same scope of work.

(k) A services coordinator must follow the processes outlined in the Expenditure Guidelines for contractor bids and the awarding of work.

(l) All dwellings must be in good repair and have the appearance of sound structure.

(m) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(n) Environmental safety modifications must only be completed to the family home.

(o) Upgrades in materials that are not directly related to the health and safety needs of the child are not paid for or permitted.

(p) Environmental safety modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(q) RENTAL PROPERTY.

(A) Environmental safety modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental safety modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(19) VEHICLE MODIFICATIONS.

(a) Vehicle modifications may only be made to the vehicle primarily used by a child to meet the unique needs of the child. Vehicle modifications may include a lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, other unique modifications to keep the child safe in the vehicle, and the upkeep and maintenance of a modification made to the vehicle.

(b) Vehicle modifications exclude:

(A) Adaptations or improvements to a vehicle that are of general utility and are not of direct medical benefit to a child or do not address the underlying need for the modification;

(B) The purchase or lease of a vehicle; or

(C) Routine vehicle maintenance and repair.

(c) Vehicle modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate vehicle modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(d) Vehicle modifications must meet applicable standards of manufacture, design, and installation.

(20) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to a child under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. 701-796l as amended, or the Individuals with Disabilities Education Act, 20 U.S.C. 1400 as amended. Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through a waiver, OHP, or Medicaid state plan services.

(21) SPECIAL DIET.

(a) A special diet is a supplement and is not intended to meet the complete, daily nutritional requirements for a child.

(b) A special diet must be ordered at least annually by a physician licensed by the Oregon Board of Medical Examiners and periodically monitored by a dietician or physician.

(c) The maximum monthly purchase for special diet supplies may not exceed $100 per month.

(d) Special diet supplies must be in support of an evidence-based treatment regimen.

(e) A special diet excludes restaurant and prepared foods and vitamins.

(22) INDIVIDUAL-DIRECTED GOODS AND SERVICES.

(a) Individual-directed goods and services provide equipment and supplies that are not otherwise available through another source, such as waiver services, OHP, or Medicaid State Plan services.

(b) Individual-directed goods and services are therapeutic in nature and must be recommended in writing by at least one licensed health professional or by a behavior consultant.

(c) Individual-directed goods and services must directly address an identified disability related need of a child in the ISP.

(d) Individual-directed goods and services must:

(A) Decrease the need for other Medicaid services;

(B) Promote inclusion of a child in the community; or

(C) Increase the safety of a child in the family home.

(e) Individual-directed goods and services may not be:

(A) Otherwise available through another source, such as waiver services or state plan services;

(B) Experimental or prohibited treatment;

(C) Goods or services that are normally purchased by a family for a typically developing child of the same age; or

(D) Purchased solely due to the inability of the parent or guardian to pay for an item or service.

(f) Individual-directed goods and services purchased must be the most cost effective option available to meet the needs of the child.

(23) The assessed supports as authorized by the Department in the ISP, dated from the initial ISP to the anniversary date, must not be exceeded. Supports may increase or decrease in direct relationship to the functional needs assessment.

(24) All MICP services authorized by the Department must be included in a written ISP in order to be eligible for payment. The ISP must use the most cost effective services for safely and appropriately meeting the assessed needs of a child as determined by a services coordinator. Any goods purchased with MICP funds that are not used according to an ISP may be immediately recovered by the Department.

(25) All requests for General Fund expenditures and expenditures exceeding limitations in the Expenditure Guidelines must be authorized by the Department. The approval of the Department is limited to 90 days unless re-authorized. A request for a General Fund expenditure or an expenditure exceeding limitations in the Expenditure Guidelines is only authorized in the following circumstances:

(a) The child is not safely served in the family home without the expenditure;

(b) The expenditure provides supports for emerging or changing service needs or behaviors of the child;

(c) A significant medical condition or event, as documented by a primary caregiver, prevents or seriously impedes the primary caregiver from providing services; or

(d) The services coordinator, and if appropriate a behavior consultant, determines that the child needs two staff present at one time to ensure the safety of the child and others. Prior to approval, the services coordinator must determine that the caregiver, including the

parent or guardian, and where indicated, has been trained in behavior management and that all other feasible recommendations from the behavior consultant and the services coordinator have been implemented.

(26) Payment for MICP services is made in accordance with the Expenditure Guidelines.

(27) MICP funds may not be used for --

(a) After September 1, 2018, services delivered in a home and community-based setting that is not in compliance with the qualities of a home and community-based setting described in OAR 411-004-0020;

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

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

(d) Services from a person who engages in verbal mistreatment and subjects a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(e) Services that restrict the freedom of movement of a child by seclusion in a locked room under any condition;

(f) Purchase or lease of a vehicle;

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

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

(A) Medical or therapeutic treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements including, but not limited to, vitamins and experimental herbal and dietary treatments; or

(G) Treatment supplies not related to nutrition, incontinence, or infection control;

(i) Ambulance service;

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

(k) Vacation costs for transportation, food, shelter, and entertainment that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the need of the child for personal assistance in a home and community-based setting;

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

(m) Any purchase that is not generally accepted by the relevant mainstream professional or academic community as an effective means to address an identified support need;

(n) Unless under certain conditions and limits specified in Department guidelines, employee wages or contractor charges for time or services when a child is not present or available to receive services including, but not limited to, employee paid time off, hourly "no show" charge, or contractor travel and preparation hours;

(o) Services, activities, materials, or equipment that are not necessary, not in accordance with the Expenditure Guidelines, not cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-317-0000;

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

(q) Services provided in a nursing facility, correctional institution, residential setting, or hospital;

(r) Services, activities, materials, or equipment that the Department determines may be reasonably obtained by a family through alternative resources or natural supports;

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

(t) Services when there is sufficient evidence to believe that a parent or guardian, or a provider chosen by a family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in an ISP, refused to accept or delegate record keeping required to document use of MICP funds, or otherwise knowingly misused public funds associated with MICP; or

(u) Notwithstanding abuse as defined in ORS 419B.005, services that, in the opinion of a services coordinator, are characterized by failure to act or neglect that leads to, or is in imminent danger of causing, physical injury through negligent omission, treatment, or maltreatment of a child. Examples include, but are not limited to, the failure to provide a child with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of a child by any other person. However, no child may be considered neglected for the sole reason that a family relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050, 417.345
Stats. Implemented: ORS 417.345, 427.007, 430.215

411-355-0045 Standards for Employers
(Adopted 12/28/2015)

(1) EMPLOYER OF RECORD. An employer of record is required when a personal support worker who is not an independent contractor is selected by a parent or guardian to provide supports. The Department may not act as the employer of record.

(2) SERVICE AGREEMENT. The employer must create and maintain a service agreement for a personal support worker that is in coordination with the services authorized in the ISP.

(3) BENEFITS. Only personal support workers qualify for benefits. The benefits provided to personal support workers are described in OAR chapter 411, division 375.

(4) INTERVENTION. For the purpose of this rule, "intervention" means the action the Department or the designee of the Department requires when an employer fails to meet the employer responsibilities described in this rule. Intervention includes, but is not limited to:

(a) A documented review of the employer responsibilities described in section (5) of this rule;

(b) Training related to employer responsibilities;

(c) Corrective action taken as a result of a personal support worker filing a complaint with the Department, the designee of the Department, or other agency who may receive labor related complaints;

(d) Identifying an employer representative if a person is not able to meet the employer responsibilities described in section (5) of this rule; or

(e) Identifying another representative if the current employer representative is not able to meet the employer responsibilities described in section (5) of this rule.

(5) EMPLOYER RESPONSIBILITIES.

(a) For a child to be eligible for MICP services provided by an employed personal support worker, an employer must demonstrate the ability to:

(A) Locate, screen, and hire a qualified personal support worker;

(B) Supervise and train the personal support worker;

(C) Schedule work, leave, and coverage;

(D) Track the hours worked and verify the authorized hours completed by the personal support worker;

(E) Recognize, discuss, and attempt to correct any performance deficiencies with the personal support worker and provide appropriate, progressive, disciplinary action as needed; and

(F) Discharge an unsatisfactory personal support worker.

(b) Indicators that an employer may not be meeting the employer responsibilities described in subsection (a) of this section include, but are not limited to:

(A) Personal support worker complaints;

(B) Multiple complaints from a personal support worker requiring intervention from the Department as defined in section (4) of this rule;

(C) Frequent errors on timesheets, mileage logs, or other required documents submitted for payment that results in repeated coaching from the Department;

(D) Complaints to Medicaid Fraud involving the employer; or

(E) Documented observation by the Department of services not being delivered as identified in an ISP.

(c) The Department may require intervention as defined in section (4) of this rule when an employer has demonstrated difficulty meeting the employer responsibilities described in subsection (a) of this section.

(d) A child may not receive MICP services provided by a personal support worker if, after appropriate intervention and assistance, an employer is not able to meet the employer responsibilities described in subsection (a) of this section. The child may receive MICP services provided by a provider organization or general business provider, when available.

(6) DESIGNATION OF EMPLOYER RESPONSIBLITIES.

(a) A parent or guardian not able to meet all of the employer responsibilities described in section (5)(a) of this rule must:

(A) Designate an employer representative in order for the child to receive or continue to receive MICP services provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide MICP services.

(b) A parent or guardian able to demonstrate the ability to meet some of the employer responsibilities described in section (5)(a) of this rule must:

(A) Designate an employer representative to fulfill the responsibilities the parent or guardian is not able to meet in order for the child to receive or continue to receive MICP services provided by a personal support worker; and

(B) On a Department approved form, document the specific employer responsibilities to be performed by the parent or guardian and the employer responsibilities to be performed by the employer representative.

(c) When an employer representative is not able to meet the employer responsibilities described in section (5)(a) or the qualifications in section (7)(c) of this rule, the parent or guardian must:

(A) Designate a different employer representative in order for the child to receive or continue to receive MICP services provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide MICP services.

(7) EMPLOYER REPRESENTATIVE.

(a) A parent or guardian may designate an employer representative to act on behalf of the parent or guardian to meet the employer responsibilities described in section (5)(a) of this rule.

(b) If a personal support worker is selected by the parent or guardian to act as the employer, the parent or guardian must seek an alternate employer for purposes of the employment of the personal support worker. The alternate employer must:

(A) Track the hours worked and verify the authorized hours completed by the personal support worker; and

(B) Document the specific employer responsibilities performed by the employer on a Department-approved form.

(c) The Department may suspend, terminate, or deny a request for an employer representative if the requested employer representative has:

(A) A founded report of child abuse or substantiated adult abuse;

(B) Participated in billing excessive or fraudulent charges; or

(C) Failed to meet the employer responsibilities in section (5)(a) or (7)(b) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (5)(a) or (7)(b) of this rule.

(d) If the Department suspends, terminates, or denies a request for an employer representative for the reasons described in subsection (c) of this section, the parent or guardian may select another employer representative.

(8) NOTICE.

(a) The Department shall mail a notice to the parent or guardian when:

(A) The Department denies, suspends, or terminates an employer from performing the employer responsibilities described in sections (5)(a) or (7)(b) of this rule; and

(B) The Department denies, suspends, or terminates an employer representative from performing the employer responsibilities described in section (5)(a) or (7)(b) of this rule because the employer representative does not meet the qualifications in section (7)(c) of this rule.

(b) If the parent or guardian does not agree with the action taken by the Department, the parent or guardian may request an administrator review.

(A) The request for an administrator review must be made in writing and received by the Department within 45 days from the date of the notice.

(B) The determination of the Director is issued in writing within 30 days from the date the written request for an administrator review was received by the Department.

(C) The determination of the Director is the final response from the Department.

(c) When a denial, suspension, or termination of an employer results in the Department denying, suspending, or terminating a child from MFC services, the hearing rights in OAR chapter 411, division 318 apply.

Stat. Auth.: ORS 409.050, 417.345
Stats. Implemented: ORS 417.345, 427.007, 430.215

411-355-0050 Standards for Providers Paid with MICP Funds
(Temporary Effective 01/01/2016 to 06/28/2016)

(1) PERSONAL SUPPORT WORKERS. A personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(2) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS.

(a) An independent provider who is not a personal support worker who is paid as a contractor or a self-employed person and selected to provide MICP services must:

(A) Be at least 18 years of age;

(B) Have approval to work based on Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role. The Background Check Request form must be completed by the subject individual to show intent to work statewide;

(i) Prior background check approval for another Department provider type is inadequate to meet background check requirements for independent provider enrollment.

(ii) Background check approval is effective for two years from the date an independent provider is contracted with to provide in-home services, except in the following circumstances:

(I) Based on possible criminal activity or other allegations against the independent provider, a new fitness determination is conducted resulting in a change in approval status; or

(II) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the independent provider.

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

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

(E) Not be the primary caregiver, parent, adoptive parent, stepparent, spouse, or other person legally responsible for the child receiving MICP services;

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

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

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

(iii) Ability to communicate with the parent or guardian;

(iv) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child.

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

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

(I) Not be on the list of excluded or debarred providers maintained by the Office of Inspector General (http://exclusions.oig.hhs.gov/);

(J) If providing transportation, a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation; and

(K) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(b) Subsection (1)(a)(C) of this section does not apply to employees of a parent or guardian, employees of a general business provider, or employees of a provider organization, who were hired prior to July 28,

2009 and remain in the current position for which the employee was hired.

(c) If a provider is an independent contractor during the terms of a contract, the provider must maintain in force, at the expense of the provider, professional liability insurance with a combined single limit of not less than $1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(A) The provider must provide written evidence of insurance coverage to the Department prior to beginning work and at any time upon the request of the Department.

(B) There must be no cancellation of insurance coverage without 30 days prior written notice to the Department.

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

(4) A provider must immediately notify the parent or guardian and the services coordinator of injury, illness, accident, or any unusual circumstance that may have a serious effect on the health, safety, physical, emotional well-being, or level of service required by the child for whom MICP services are being provided.

(5) All providers are mandatory reporters and are required to report suspected child abuse to the local Department office or to the police in the manner described in ORS 419B.010.

(6) Independent providers, including personal support workers, are not employees of the state, CDDP, or Support Services Brokerage.

(7) BEHAVIOR CONSULTANTS. Behavior consultants are not personal support workers. Behavior consultants may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior support services as described in OAR 411-355-0040;

(b) Have current certification demonstrating completion of OIS training; and

(c) Submit a resume or the equivalent to the Department indicating at least one of the following:

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

(B) Three years of experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant as described in OAR 411-355-0040.

(d) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-355-0040.

(8) COMMUNITY NURSE. A nurse providing community nursing services must be an enrolled Medicaid provider and meet the qualifications in OAR 411-048-0210.

(9) DIETICIANS. Dieticians providing specialized diets must be licensed according to ORS 691.415 through 691.465.

(10) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION.

(a) A provider organization certified or applying for certification prior to January 1, 2016 according to OAR 411-340-0030, certified and endorsed as set forth in OAR chapter 411 division 323, licensed under OAR chapter 411, division 360 for an adult foster home, or certified under OAR chapter 411, division 346 for a child foster home, does not require additional certification as an organization to provide relief care, attendant care, skills training, community transportation, or behavior consultation.

(b) Current license, certification, or endorsement is considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide services according to an ISP; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(c) Provider organizations must assure that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with MICP funds meet the standards for independent providers described in this rule.

(11) GENERAL BUSINESS PROVIDERS. General business providers providing services to children paid with MICP funds must hold any current license appropriate to operate required by the State of Oregon or federal law or regulation. Services purchased with MICP funds must be limited to those within the scope of the license of the general business provider. Licenses for general business providers include, but are not limited to:

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

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

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

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

(e) For public transportation providers, a business license, vehicle insurance in compliance with the laws of the Department of Motor Vehicles, and operators with a valid license to drive;

(f) For vendors and medical supply companies providing assistive devices, a current retail business license and, if vending medical equipment, be enrolled as Medicaid providers through the Oregon Health Authority;

(g) For providers of personal emergency response systems, a current retail business license; and

(h) For vendors and supply companies providing specialized diets, a current retail business license.

Stat. Auth.: ORS 409.050, 417.345
Stats. Implemented: ORS 417.345, 427.007, 430.215

411-355-0060 Standards for Provider Organizations Paid by the Department
(Repealed 12/28/2015)

411-355-0070 Standards for General Business Providers paid by the Department
(Repealed 12/28/2015)

411-355-0075 Provider Enrollment Inactivation and Termination
(Adopted 12/28/2015)

(1) PERSONAL SUPPORT WORKERS. The provider enrollment for a personal support worker is inactivated or terminated as described in OAR chapter 411, division 375.

(2) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS.

(a) The provider enrollment for an independent provider who is not a personal support worker may be inactivated in the following circumstances:

(A) The provider has not provided any paid services to a child within the last previous 12 months;

(B) The provider informs the Department, CDDP, MICP, or Support Services Brokerage that the provider is no longer providing services in Oregon;

(C) The background check for the provider results in a closed case pursuant to OAR 407-007-0325;

(D) The actions of the provider are being investigated by adult or child protective services for suspected abuse that poses imminent danger to current or future children; or

(E) Payments to the provider, either whole or in part, for the provider have been suspended based on a credible allegation of fraud or has a conviction of fraud pursuant to federal law under 42 CFR 455.23.

(b) The enrollment for an independent provider, who is not a personal support worker, may be terminated when the Department determines after enrollment that the independent provider has:

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

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

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

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

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

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

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

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

(I) Falsified required documentation;

(J) Been suspended or terminated as a provider by the Department or Oregon Health Authority;

(K) Violated the requirement to maintain a drug-free work place;

(L) Failed to provide services as required;

(M) Failed to provide a tax identification number or social security number that matches the legal name of the independent provider, as verified by the Internal Revenue Service or Social Security Administration; or

(N) Been excluded or debarred by the Office of the Inspector General.

(c) If the Department makes a decision to terminate the provider enrollment of an independent provider who is not a personal support worker, the Department must issue a written notice. The written notice must include:

(A) An explanation of the reason for termination of the provider enrollment;

(B) The alleged violation as listed in subsection (A) or (B) of this section; and

(C) The appeal rights for the independent provider, including how to file an appeal.

(d) For terminations based on substantiated abuse allegations, the notice may only contain the limited information allowed by law. In accordance with ORS 124.075, 124.085, 124.090, and OAR 411-020-0030, complainants, witnesses, the name of the alleged victim, and protected health information may not be disclosed.

(e) The provider may appeal a termination within 30 days from the date the termination notice was mailed to the provider. The provider

must appeal a termination separately from any appeal of audit findings and overpayments.

(A) A provider of Medicaid services may appeal a termination by requesting an administrator review.

(B) 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 from the date the termination notice was mailed to the provider.

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

Stat. Auth.: ORS 409.050, 417.345
Stats. Implemented: ORS 417.345, 427.007, 430.215

411-355-0080 MICP Documentation Needs
(Amended 12/28/2015)

(1) Accurate timesheets of MICP services must be dated and signed by the provider and the parent or guardian of the child after the services are provided. Timesheets must be maintained and submitted to the Department with any request for payment for services.

(2) Requests for payment for MICP services must:

(a) Include the billing form indicating prior authorization for the services;

(b) Be signed by the provider acknowledging agreement with the terms and condition of the billing form and attesting that the hours were delivered as billed; and

(c) Be signed by the parent or guardian of the child after the services were delivered, verifying that the services were delivered as billed.

(3) Documentation of MICP services provided must be provided to the services coordinator upon request or as outlined in the ISP for the child and maintained in the family home or the place of business of the provider of

services. The Department does not pay for services that are not outlined in the ISP for the child or unrelated to the disability of the child.

(4) The Department retains billing forms and timesheets for at least five years from the date of service.

(5) Behavior consultants must submit the following to the Department written in clear, concrete language, understandable to the parent or guardian of the child and the provider:

(a) An evaluation of the child, the concerns of the parent or guardian, the environment of the child, current communication strategies used by the child and used by others with the child, and any other disability of the child that may impact the appropriateness of strategies to be used with the child; and

(b) Any behavior plan or instructions left with the parent or provider that describes the suggested strategies to be used with the child.

(6) A Nursing Service Plan must be developed within seven days of the initiation of MICP services and submitted to the Department for approval when services which require nursing delegation are provided.

(a) The Nursing Service Plan must be reviewed, updated, and resubmitted to the Department in the following instances:

(A) Every six months;

(B) Within seven working days of a change of the nurse who writes the Nursing Service Plan;

(C) With any request for authorization of an increase in hours of service; or

(D) After any significant change of condition, such as hospital admission or change in health status.

(b) The provider must share the Nursing Service Plan with the parent or guardian.

(7) The Department must be notified by the provider or the primary caregiver within one working day of the hospitalization or death of any eligible child.

(8) Providers must maintain documentation of provided services for at least seven years from the date of service. If a provider is a nurse, the nurse must either maintain documentation of provided services for at least five years or send the documentation to the Department.

(9) Providers must furnish requested documentation immediately upon the written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, Centers for Medicare and Medicaid Services, or their authorized representatives, and within the time frame specified in the written request. Failure to comply with the request may be considered by the Department as reason to deny or recover payments.

(10) Access to records by the Department, including, but not limited to, medical, nursing, behavior, psychiatric, or financial records, to include providers and vendors providing goods and services, does not require authorization or release by the child or the parent or guardian of the child.

Stat. Auth.: ORS 409.050, 417.345
Stats. Implemented: ORS 417.345, 427.007, 430.215

411-355-0090 Payment for MICP Services
(Amended 12/28/2015)

(1) Payment is made after MICP services are delivered as authorized.

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

(3) Section (2) of this rule does not apply to an employee of a parent or guardian or a provider who was hired prior to July 28, 2009 that remains in the current position for which the employee was hired.

(4) Payment for MICP services is made in accordance with the Expenditure Guidelines.

(5) Service levels are based on the individual needs of a child as identified by a functional needs assessment and medically involved criteria and authorized in the ISP for the child.

(6) Authorization must be obtained prior to the delivery of any MICP services for the services to be eligible for payment.

(7) A providers must request payment authorization for MICP services provided during an unforeseeable emergency on the first business day following the emergency service. A services coordinator must determine if the service is eligible for payment.

(8) The Department makes payment to the employee of a parent or guardian on behalf of the parent or guardian. The Department pays the employer's share of the Federal Insurance Contributions Act tax (FICA) and withholds FICA as a service to the parent or guardian, who is the employer.

(9) The delivery of authorized MICP services must occur so that any individual employee of the parent or guardian does not exceed 40 hours per work week. The Department does not authorize services that require the payment of overtime without prior written authorization by the supervisor of children's intensive in-home services.

(10) Holidays are paid at the same rate as non-holidays.

(11) Travel time to reach the job site is not reimbursable.

(12) Payment by the Department for MICP services is considered full payment for the services rendered under Medicaid. A provider may not demand or receive additional payment for MICP services from the parent, guardian, or any other source, under any circumstances.

(13) Medicaid funds are the payor of last resort. A provider must bill all third party resources until all third party resources are exhausted.

(14) The Department reserves the right to make a claim against any third party payer before or after making payment to the provider.

(15) The Department may void without cause prior authorizations that have been issued in the event of any of the following:

(a) Change in the status of the child, such as hospitalization, improvement in health status, or death of the child;

(b) Decision of the parent or guardian to change providers;

(c) Inadequate services, inadequate documentation, or failure to perform other expected duties;

(d) Documentation of a person who is subject to background checks on or after July 28, 2009, as required by administrative rule, has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275; or

(e) Any situation, as determined by the services coordinator that puts the health or safety of the child at risk.

(16) Section (15)(d) of this rule does not apply to employees of parents or guardians or billing providers who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(17) Upon submission of the billing form for payment, a provider must comply with:

(a) All rules in OAR chapter 407 and OAR chapter 411;

(b) 45 CFR Part 84 that implements Title V, Section 504 of the Rehabilitation Act of 1973 as amended;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(18) All billings must be for MICP services provided within the licensure and certification of the provider.

(19) The provider must submit true and accurate information on the billing form. Use of a provider organization does not replace the responsibility of the provider for the truth and accuracy of submitted information.

(20) A person may not submit the following to the Department:

(a) A false billing form for payment;

(b) A billing form for payment that has been, or is expected to be, paid by another source; or

(c) Any billing form for MICP services that have not been provided.

(21) The Department only makes payment to an enrolled provider who actually performs the MICP services or the enrolled provider organization. Federal regulations prohibit the Department from making payment to a collection agency.

(22) Payment is denied if any provisions of these rules are not complied with.

(23) The Department recoups all overpayments.

(a) The amount to be recovered:

(A) Is the entire amount determined or agreed to by the Department;

(B) Is not limited to the amount determined by criminal or civil proceedings; and

(C) Includes interest to be charged at allowable state rates.

(b) A request for repayment of the overpayment or notification of recoupment of future payments is delivered to the provider by registered or certified mail or in person.

(c) Payment schedules with interest may be negotiated at the discretion of the Department.

(d) If recoupment is sought from a parent or guardian, the parent or guardian has the right to request a hearing as provided in ORS chapter 183.

(24) The Department makes payment for MICP services after services are delivered as authorized in the ISP for the child and required documentation is received by the services coordinator.

(25) In order to be eligible for payment, requests for payments must be submitted to the Department within 12 months of the delivery of MICP services.

Stat. Auth.: ORS 409.050, 417.345
Stats. Implemented: ORS 417.345, 427.007, 430.215

411-355-0100 Rights, Complaints, Notification of Planned Action, and Hearings
(Amended 12/28/2015)

(1) RIGHTS OF A CHILD.

(a) The rights of a child are described in OAR 411-318-0010.

(b) Upon entry and request and annually thereafter, the individual rights described in OAR 411-318-0010 must be provided to the parent or guardian and the child.

(2) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) Upon entry and request and annually thereafter, the policy and procedures for complaints as described in OAR 411-318-0015 must be explained and provided to the parent or guardian of each child.

(3) NOTIFICATION OF PLANNED ACTION. In the event MICP services are denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(4) HEARINGS.

(a) Hearings must be addressed in accordance with ORS chapter 183 and OAR 411-318-0025.

(b) The parent or guardian may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025.

(c) Upon entry and request and annually thereafter, a notice of hearing rights and the policy and procedures for hearings as described in OAR chapter 411, division 318 must be explained and provided to the parent or guardian of each child.

Stat. Auth.: ORS 409.050, 417.345
Stats. Implemented: ORS 417.345, 427.007, 430.215

411-355-0110 Denial, Termination, Suspension, Reduction, or Eligibility for MICP Services for Individual Medicaid Recipients
(Repealed 12/28/2015)

411-355-0120 Sanctions for MICP Providers
(Repealed 12/28/2015)