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

CHAPTER 411
DIVISION 300

CHILDREN'S INTENSIVE IN-HOME SERVICES, BEHAVIOR PROGRAM

411-300-0100 Purpose
(Amended 8/1/2009)

The rules in OAR chapter 411, division 300 establish the policy of and prescribe the standards and procedures for the provision of children's intensive in-home services (CIIS) for children in the ICF/MR Behavioral Waiver. These rules are established to ensure that CIIS augment and support independence, empowerment, dignity, and development of children through the provision of flexible and efficient services to eligible families. CIIS are exclusively intended to allow children with a developmental disability and intense behaviors to have a permanent and stable familial relationship. CIIS are intended to support, not supplant, families' natural supports and services and provide the support necessary to enable families to meet the needs of caring for a child who meets the eligibility criteria for CIIS.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, ORS 427.007, and ORS 430.215

411-300-0110 Definitions
(Temporary Effective 1/1/2010 – 6/30/2010)

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

(2) "Activities of Daily Living (ADL)" means activities usually performed in the course of a normal day in a child's life such as eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior (play and social development).

(3) "Assistant Director" means the assistant director of the Department of Human Services, Seniors and People with Disabilities Division, or that individual's designee.

(4) "Behavior Consultant" means a contractor with specialized skills who develops a behavior support plan.

(5) "Behavior Criteria (Form DHS-0521)" means the assessment tool used by the Seniors and People with Disabilities Division to evaluate the intensity of the challenges and care needs presented by children applying for, or eligible for, children's intensive in-home services, and to determine the service budget for eligible children.

(6) "Billing Provider" means an organization that enrolls and contracts with the Seniors and People with Disabilities Division to provide services through its employees and bills the Seniors and People with Disabilities Division for the provider’s services.

(7) "Child" means an individual under the age of 18, eligible for developmental disability services, and accepted for children's intensive in-home services under the ICF/MR Behavioral Waiver.

(8) "CIIS" means children's intensive in-home services.

(9) "Cost Effective" means that in the opinion of the services coordinator, a specific service or item of equipment meets the child's needs and costs less than, or is comparable to, other service or equipment options considered.

(10) "Daily Activity Logs" mean the records of services provided to the child. The content and form of daily activity logs shall be agreed upon by both the child's parent and the services coordinator and documented in the Plan of Care.

(11) "Developmental Disability (DD)" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require

training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the conditions must be manifested before the age of 18;

(b) Originates in and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(12) "DHS" means the Department of Human Services.

(13) "Exit" means termination of a child from children's intensive in-home services.

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

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

(16) "ICF/MR Behavioral Waiver" means the waiver program granted by the federal Centers for Medicare and Medicaid Services that allows Medicaid funds to be spent on children living in the family home who otherwise would have to be served in an intermediate care facility for the mentally retarded if the waiver program was not available.

(17) "In-Home Daily Care (IHDC)" means Medicaid state plan funded essential supportive daily care delivered by a qualified provider that enables a child to remain in, or return to, the family home.

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

(19) "Plan of Care" means a written document developed and renewed annually for each eligible child by the services coordinator and the parent that describes the individual needs of the child, the needs and resources of the family that impact the child, and how those individual needs shall be met with family and public resources. The Plan of Care includes the Nursing Care Plan when one exists.

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

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

(b) Uses the least intervention possible;

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

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

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

(22) "Provider or Performing Provider" means the individual who is qualified to receive payment from the Seniors and People with Disabilities Division for in-home daily care that meets the requirements of OAR 411-300-0170. Providers work directly with children. Providers may be employees of billing providers, employees of the parent, or independent contractors.

(23) "Respite" means short-term care and supervision provided on a periodic or intermittent basis because of the temporary absence of, or need for relief of, the primary caregiver.

(24) "Service Budget" means the annual dollar amount allotted for the care of the child based on the behavior criteria level of care determination. The service budget consists of in-home daily care and waivered services. The monthly service budget is 1/12th of the annual amount if the Plan of Care is developed for less than a full year. The service budget is flexible and may be distributed as necessary to meet the needs of the child as outlined in the Plan of Care.

(25) "Services Coordinator" means an employee of the Seniors and People with Disabilities Division, who ensures a child's eligibility for children's intensive in-home services and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

(26) "Social Benefit" means a service or financial assistance provided to a family solely intended to assist a child to function in society on a level comparable to that of an individual who does not have a developmental disability. Social benefits are pre-authorized by, and provided according to, the description and financial limits written in an eligible child's Plan of Care. Social benefits may not:

(a) Duplicate benefits and services otherwise available to individuals regardless of developmental disability;

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

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

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

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

(27) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(28) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.

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

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

(31) "These Rules" means the rules in OAR chapter 411, division 300.

(32) "Waivered Services" means a menu of disability related services and supplies, exclusive of in-home daily care and the Oregon Health Plan, that are specifically identified by the Medicaid ICF/MR Behavioral Waiver.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, and 430.215

411-300-0120 Eligibility
(Amended 8/1/2009)

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

(a) Be under the age of 18;

(b) Be determined eligible for developmental disability services in accordance with OAR 411-320-0080;

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

(d) Be accepted by SPD by scoring greater than 200 on the behavior criteria within two months of starting services. To remain eligible, a

child must maintain a score above 150 as determined during an annual re-eligibility assessment;

(e) Be financially and otherwise eligible to receive Medicaid services;

(f) Reside in the family home; and

(g) Be capable of being safely served in the family home. This includes but is not limited to the parent demonstrating the willingness, skills, and ability to provide the direct care as outlined in the Plan of Care in a cost effective manner as determined by the services coordinator within the limitations of OAR 411-300-0150 and participate in planning, monitoring, and evaluation of the CIIS provided.

(2) INELIGIBILITY. A child is not eligible for CIIS if the child:

(a) Resides in a hospital, school, sub-acute facility, nursing facility, intermediate care facility for the mentally retarded, residential facility, foster home, or other institution.

(b) Does not require waivered services or has sufficient family, government, or community resources available to provide for his or her care.

(c) Is not safely served in the family home as described in section (1)(g) of this rule.

(3) TRANSITION. A child whose score on the behavior criteria remains at 150 or less shall be transitioned out of CIIS within 90 days and at the end of the 90 day transition period shall exit.

(a) When possible and agreed upon by the parent and services coordinator, CIIS shall be incrementally reduced during the 90 day transition period.

(b) A minimum of 30 days prior to exit, the services coordinator must coordinate and attend a transition planning meeting that includes the services coordinator, a representative of the community

developmental disability program, the parent, and any other individual at the parent's request.

(4) EXIT. A child shall exit from CIIS if the child no longer meets the eligibility criteria in section (1) of this rule or if the child has been transitioned out per section (3) of this rule.

(5) WAIT LIST. A child eligible for CIIS may be placed on a wait list if the maximum numbers of children on the ICF/MR Behavioral Waiver are already being served.

(a) The date the initial application for service is completed shall determine the order on the wait list. A child who was once served by CIIS, exited CIIS, reapplies, and currently meets all other criteria for eligibility, shall be put on the wait list as of the date the child's original application for services was complete.

(b) The date the application is complete is the date that SPD has the required demographic data on the child and a statement of developmental disability eligibility.

(c) Children on the wait list shall be served on a first come, first served basis as space on the ICF/MR Behavioral Waiver allows.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, ORS 427.007, and ORS 430.215

411-300-0130 Plan of Care
(Amended 8/1/2009)

(1) To develop the Plan of Care, the services coordinator must assess the individual service needs of the child in person and must interview the parent other caregivers, or when appropriate, other interested individuals. The assessment must:

(a) Take place in the child's family home with both the child and the primary caregiver present;

(b) Identify the services for which the child is currently eligible;

(c) Identify the services currently being provided; and

(d) Identify all available family, private health insurance, and government or community resources that meet any, some, or all of the child's needs.

(2) The services coordinator must prepare, with the input of the parent and any other individual at the parent's request, a written Plan of Care that identifies:

(a) The service needs of the child and the family;

(b) The most cost effective services for safely and appropriately meeting the child's service needs;

(c) The methods, resources, and strategies that address some or all of those needs;

(d) The number of hours of in-home daily care or behavior consultation authorized for the child; and

(e) Additional services authorized by SPD for the child.

(3) The Plan of Care must include:

(a) The maximum hours of authorized provider services;

(b)The annual and monthly service budget;

(c) The date of the next planned review that, at a minimum, must be completed within 365 days of the last Plan of Care; and

(d) The Nursing Care Plan, when one exists.

(4) The Plan of Care must be reviewed with the parent prior to implementation, signed by both the parent and the services coordinator, and a copy must be provided to the parent.

(5) The Plan of Care shall be translated, as necessary, upon request.

(6) Significant changes in the needs of the child must be reflected in the Plan of Care, as they occur, and a copy must be provided to the parent. Changes in service needs funded by SPD must be documented in a Plan of Care amendment signed by the parent and the services coordinator.

(7) The Plan of Care must be renewed at least every 365 days. Each new plan year begins on the anniversary date of the initial or previous plan date.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, ORS 427.007, and ORS 430.215

411-300-0140 Rights of the Child
(Amended 8/1/2009)

(1) When interventions in the behavior of the child are necessary, they must be done in accordance with positive behavioral theory and practice as defined in OAR 411-300-0110.

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

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

(4) When physical restraints are required, they must only be used as a last resort and providers must be appropriately trained as per the Behavior Support Plan.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, ORS 427.007, and ORS 430.215

411-300-0150 Scope and Limitations of Children's Intensive In-Home Services
(Amended 8/1/2009)

(1) CIIS are intended to support, not supplant, the natural supports supplied by the primary caregiver. CIIS are not available to replace services provided by the primary caregiver or to replace other governmental or community services. Regardless of other services available, the primary caregiver must provide a minimum of 40 hours per week of in-home daily care.

(2) CIIS shall only be authorized to enable the primary caregiver to meet the needs of caring for the child on the ICF/MR Behavioral Waiver. All services funded by SPD must be based on the actual and customary costs related to best practice standards of care for children with similar disabilities.

(3) CIIS may include a combination of the following waivered and other Medicaid services based upon the needs of the child as determined by the services coordinator and as consistent with the child's Plan of Care:

(a) Waivered services;

(b) Behavior consultations;

(c) Environmental accessibility adaptations;

(d) Motor vehicle adaptations;

(e) Goods, services, and supplies; or

(f) Other Medicaid services including in-home daily care.

(4) BEHAVIOR CONSULTATION. Behavior consultation shall only be authorized to support a primary caregiver in their caregiving role. Behavior consultation shall only be authorized, as needed, to respond to specific problems identified by the primary caregiver or services coordinator. Behavior consultants must:

(a) Work with the parent to identify:

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

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

(C) The unique characteristics of the family that could influence the responses that would work with the child.

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

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

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

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

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

(i) An effort to communicate;

(ii) The result of a medical condition;

(iii) The result of an environmental cause; or

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

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

(F) An assessment of current communication strategies.

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

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

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

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

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

(d) Develop emergency and crisis procedures to be used to keep the child, primary caregiver, and provider safe. Physical restraint must only be utilized in accordance with OAR 411-300-0140(4).

(e) Develop a written Behavior Support Plan that includes the following:

(A) Use of clear, concrete language that is understandable to the primary caregiver and provider; and

(B) Describes the assessment, strategies, and procedures to be used.

(f) Teach the provider and primary caregiver the strategies and procedures to be used.

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

(5) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

(a) SPD shall authorize environmental accessibility adaptations when:

(A) Necessary to ensure the health, welfare, and safety of the child in the family home or to enable the child to function with greater independence in the family home.

(B) Provided in accordance with applicable state or local building codes by licensed contractors. Any modification that impedes egress shall be approved only if a risk assessment demonstrates no safer solution and a safety plan is signed by the parent.

(C) Determined to be the most cost effective solution.

(b) Environmental accessibility adaptations exclude:

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

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

(c) For environmental accessibility adaptations that singly or together exceed $5,000, SPD may protect its interest for the entire amount of the adaptations through liens or other legally available means.

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

(6) MOTOR VEHICLE ADAPATIONS.

(a) SPD shall only authorize motor vehicle adaptations for the primary vehicle used by the child. The motor vehicle adaptations must be cost effective and directly relate to the child's disability.

(b) Motor vehicle adaptations do not include repair of damage caused by the child, general repair, maintenance, or upkeep required by a motor vehicle.

(7) GOODS, SERVICES, AND SUPPLIES. Goods, services, and supplies may include any combination of the following:

(a) Homemaker. Homemaker services consist of general household activities to allow the primary caregiver time to care for the child.

(b) Respite. Respite services are authorized on a limited basis for relief of, or due to the temporary absence of, the primary caregiver. Respite services are not available to allow primary caregivers to attend school or work.

(A) When respite is provided through an overnight camp, respite shall be limited to 10 days per individual plan year.

(B) SPD does not pay for room and board expenses in any situation.

(c) Non-medical transportation. Non-medical transportation is provided in order to enable a child to gain access to community services, activities, and resources as specified in the Plan of Care. Non-medical transportation excludes:

(A) Transportation provided by family members;

(B) Transportation used for behavioral intervention or calming;

(C) Transportation normally provided by schools and by the primary caregiver for children of similar age without disabilities;

(D) Purchase of any family vehicle;

(E) Vehicle maintenance and repair;

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

(G) Ambulance services; or

(H) Transportation services that may be obtained through other means such as the State Medicaid Plan or other public or private resources available to the child.

(d) Specialized medical equipment and supplies. Specialized medical equipment and supplies includes but is not limited to communication devices, adaptive clothing, adaptive eating equipment, or adaptive sensory or habilitation devices or supplies. Specialized medical equipment and supplies funded by the Oregon Health Plan are excluded. Increased utility costs caused by the unique needs of the child and the disability may only be approved as long as the parent continues to pay typical utility expenditures.

(e) Chore. Chore services are services needed to maintain the family home as a clean, sanitary, and safe environment. Chore services may be provided only in situations where no one else in the family home, or any other individual, is capable of performing or providing these services. Chore services include heavy household chores such as window washing or carpet cleaning.

(f) Family training. Family training services include services that increase the family's capacity to care for the child. Family training is only available to non-paid family members actively involved in the care of the child.

(A) Conference or workshop registrations.

(i) SPD shall authorize conference or workshop registrations that:

(I) Directly relate to the child's disability; and

(II) Increase the knowledge and skills of the primary caregiver.

(ii) Travel and lodging expenses are excluded.

(iii) Meals not included in the registration cost are excluded.

(B) Counseling services.

(i) To be authorized by SPD, the counseling services must:

(I) Be provided by licensed mental health providers;

(II) Directly relate to the child's disability, the ability of the parent to care for the child, and the related impact on the family or couple;

(III) Be short-term; and

(IV) Have treatment goals prior approved by the services coordinator.

(ii) Counseling services are excluded for:

(I) Therapy that could be obtained through the Oregon Health Plan or other payment mechanisms;

(II) General marriage counseling;

(III) Therapy to address parents or other family members psychopathology; or

(IV) Counseling that addresses stressors not directly attributed to the child.

(g) Specialized consultation. Specialized consultation services are services provided by a physical therapist, occupational therapist, speech and language pathologist, or other professional. Specialized consultation services must have exhausted the limits identified under the Oregon Health Plan.

(h) Specialized diet. The maximum monthly purchase for specialized diet supplies may not exceed $100 per month. Specialized diets do not constitute a full nutritional regime.

(A) In order to be authorized:

(i) The foods must be on the approved list developed by SPD;

(ii) The specialized diet must be ordered at least annually by a physician licensed by the Oregon Board of Medical Examiners;

(iii) The specialized diet must be periodically monitored by a dietician or physician; and

(iv) The specialized diet cannot be reimbursed through the Oregon Health Plan or any other source of public and private funding.

(B) Restaurant and prepared foods, vitamins, and supplements are specifically excluded from a specialized diet.

(i) Translation. If the primary caregiver or the child's primary language is not English, translation service is provided to allow the child or the primary caregiver to communicate with providers of CIIS.

(j) Other goods, services, and supplies. Other goods, services, and supplies are eligible for payment if they are:

(A) Directly related to the child's disability;

(B) Included in an approved Plan of Care;

(C) Needed to maintain the health and safety of the child;

(D) Cost effective;

(E) Not typical for a parent to provide a child of the same age; and

(F) Required to help the parent to continue to meet the needs of caring for the child.

(k) Goods, services, and supplies paid for by SPD must be documented by receipts or invoices. The receipts or invoices must be maintained by SPD for five years. If no receipt or invoice is available, the parent must submit to SPD in writing, a statement that the parent received the goods, services, or supplies, and the date on which they were received.

(l) SPD may protect its interest through any legally allowable means for any good, service, or supply as determined by SPD.

(m) SPD may expend its funds through contract, purchase order, use of credit card, payment directly to the vendor, or any other legal payment mechanism.

(8) IN-HOME DAILY CARE. In-home daily care services may include a combination of assistance with ADLs, nursing services, or other supportive services, as determined by the services coordinator, consistent with the child's Plan of Care. In-home daily care service hours are only authorized to support a parent in their primary caregiving role.

(a) In-home daily care services include:

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

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

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

(D) Nutrition - Special diets, monitoring intake and output, and adaptive feeding;

(E) Skin care - Dressing changes;

(F) Supervision - Providing an environment that is safe and meaningful for the child, interacting with the child to prevent danger to the child and others, and assisting the child with appropriate leisure activities;

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

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

(I) Other personal care tasks or services.

(b) When any of the services listed in section (8)(a) of this rule are essential to the health and welfare of the child, the provider may provide supportive services that also include:

(A) Housekeeping tasks related to maintaining a healthy and safe environment for the child;

(B) Arranging for necessary medical equipment, supplies, and medications;

(C) Arranging for necessary medical appointments;

(D) Accompanying the child to appointments, outings, and community-based activities; or

(E) Participating in activities with the child to enhance development or learning.

(c) In-home daily care service hours may be spread throughout the time authorized in the billing form or used in large blocks of time as the parent determines.

(d) In-home daily care services must:

(A) Be previously authorized by SPD before services begin;

(B) Be based on the assessed service needs of the child consistent with, and documented in, the Plan of Care as determined by the services coordinator;

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

(D) Include a physician's order when nursing services are to be provided. SPD determines whether payment of nursing services, or the hours of services as ordered by the physician, shall be authorized for payment according to these rules.

(e) SPD does not authorize in-home daily care service hours:

(A) That supplant the services available from family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives.

(B) Solely to allow a primary caregiver to work or attend school.

(C) For any services performed without the eligible child present unless specifically detailed in the Plan of Care.

(D) For any services provided not specified on a job description signed by both parent and provider.

(9) All CIIS authorized by SPD must be included in a written Plan of Care in order to be eligible for payment. The Plan of Care must use the most cost effective services for safely and appropriately meeting the child's service needs.

(10) Service budgets increase or decrease in direct relationship to the increasing or decreasing behavior criteria score.

(11) If the primary caregiver's primary language is not English, cost of interpretation or translation services related to CIIS shall not be considered part of the child's service budget.

(12) EXCEPTIONS. All exceptions must be authorized by the CIIS manager. Exceptions are limited to 90 days unless re-authorized. Ninety-day exceptions shall only be authorized in the following circumstances:

(a) The child is at immediate risk of loss of family home without the expenditure;

(b) The expenditure provides supports for the child’s emerging or changing care needs or behaviors;

(c) A significant medical condition or event occurs that prevents the primary caregiver from providing care or services as documented by a physician; or

(d) The services coordinator determines, with a behavior consultant, 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 all caregivers, including the child's parents, have been trained in behavior management and that all other feasible recommendations from the behavior consultant and services coordinator have been implemented.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, ORS 427.007, and ORS 430.215

411-300-0155 Using Children's Intensive In-Home Services Funds for Certain Purchases is Prohibited
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) CIIS funds may not be used to support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(a) Of a crime listed in Exhibit 300-1;

(b) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(c) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 300-1; or

(d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 300-1.

(2) CIIS funds may not be used for:

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

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

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

(d) Services that restrict a child’s freedom of movement by seclusion in a locked room under any condition;

(e) Purchase of family vehicles;

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

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

(A) Medical treatments;

(B) Health insurance co-payments and deductibles;

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

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements and vitamins; or

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

(h) Ambulance services;

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

(j) Vacation costs for transportation, food, shelter, and entertainment that are not strictly required by the child's disability-created need for

personal assistance in all home and community settings that would normally be incurred by anyone on vacation, regardless of disability;

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

(l) Unless under certain conditions and limits specified in the Plan of Care, employee wages or contractor payments for services when the child is not present or available to receive services including but not limited to employee paid time off, hourly “no show” charge, and contractor travel and preparation hours;

(m) Services, activities, materials, or equipment that are not necessary, cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-300-0110;

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

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

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

(q) Purchase of services when there is sufficient evidence to believe that the child’s parent or guardian, or the service provider chosen by the child’s family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the Plan of Care, refused to cooperate with record keeping required to document use of CIIS funds, or otherwise knowingly misused public funds associated with CIIS; or

(r) Notwithstanding abuse as defined in ORS 419B.005, services that, in the opinion of the child’s 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 an individual, including but not limited to the failure to provide an individual with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of an individual by any other person. However, no individual may be considered neglected for the sole reason that the individual relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, and 430.215

411-300-0160 Scope and Limitations of In-Home Daily Care Services
(Repealed 8/1/2009 - Rule text moved to OAR 411-300-0150)

411-300-0170 Standards for Providers and Behavior Consultants
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) PROVIDER QUALIFICATIONS.

(a) A provider must:

(A) Be at least 18 years of age;

(B) Maintain a drug-free work place;

(C) Provide evidence satisfactory to SPD, or its designee, that demonstrates, by background, education, references, skills, and abilities, the provider is capable of safely and adequately providing the services authorized;

(D) Consent to and pass a criminal records check by DHS as described in OAR 407-007-0200 to 407-007-0370, and be free of convictions or founded allegations of abuse by the appropriate agency, including but not limited to DHS. Criminal records rechecks must be performed biannually, or as needed if a report of criminal activity has been received by DHS. A person may not be authorized as a provider or meet qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(i) Of a crime listed in Exhibit 300-1;

(ii) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(iii) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 300-1; or

(iv) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 300-1.

(E) Not be on the current federal Centers for Medicare and Medicaid Services list of excluded or debarred providers (http://exclusions.oig.hhs.gov/);

(F) Not be a primary caregiver, parent, step parent, spouse, or legal guardian of the child;

(G) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any in-home daily care services; and

(H) Sign a job description prior to delivery of any in-home daily care services.

(b) A provider is not an employee of DHS or the state of Oregon and is not eligible for state benefits and immunities including but not limited to the Public Employees' Retirement System or other state benefit programs.

(c) If the provider or billing provider is an independent contractor during the terms of the contract, the provider or billing provider must maintain in force at the providers own expense 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 or billing provider must provide written evidence of insurance coverage to SPD prior to beginning work and at any time upon request by SPD.

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

(d) If the provider is an employee of the parent, the provider must submit to SPD, documentation of immigration status required by federal statute. SPD maintains documentation of immigration status required by federal statute, as a service to the parent who is the employer.

(e) If the provider is an employee of the parent, both the parent and provider must sign a job description. This job description must be provided to the services coordinator prior to the delivery of any services by the employee.

(f) A billing provider that wishes to enroll with SPD must maintain and submit evidence upon initial application and upon request by SPD of the following:

(A) Current criminal records checks on each employee who provides services in a family home that shows the employee has no disqualifying criminal convictions, including crimes as described in section (1)(a)(D) of this rule. Payment may not support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(i) Of a crime listed in Exhibit 300-1;

(ii) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;
(iii) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 300-1; or

(iv) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 300-1;

(B) Professional liability insurance that meets the requirements of section (1)(c) of this rule; and

(C) Any licensure required of the agency by the state of Oregon or federal law or regulation.

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

(h) Providers described in ORS chapter 418 are required to report suspected child abuse to their local DHS office or to the police in the manner described in ORS chapter 418.

(2) BEHAVIOR CONSULTANTS. Behavior consultants providing specialized consultations must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services as outlined in OAR 411-300-0150(4);

(b) Have current certification demonstrating completion of training in Oregon Intervention Systems; and

(c) Submit a resume or the equivalent to SPD 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 people with disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with people with disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant as outlined in OAR 411-300-0150(4).

(d) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-300-0150(4).

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, and 430.215

411-300-0180 Prior Authorization for In-Home Daily Care
(Repealed 8/1/2009 - Rule text moved to OAR 411-300-0150)

411-300-0190 Documentation Needs for Children's Intensive In-Home Services
(Amended 8/1/2009)

(1) Accurate time sheets of CIIS, dated and signed by the provider and the parent after the services are provided, must be maintained and submitted to SPD with any request for payment for services.

(2) Requests for payment of CIIS must:

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

(b) Be signed by the parent after the services were delivered, verifying that the services were delivered as billed; and

(c) Be signed by the provider or billing provider, acknowledging agreement upon request with the terms and condition of the billing form and attesting that the hours were delivered as billed.

(3) Documentation of CIIS provided, including but not limited to daily activity logs as prescribed by the services coordinator, must be provided to the services coordinator upon request or as outlined in the Plan of Care and maintained in the family home or the place of business of the provider of services. SPD shall not pay for services unrelated to the child's disability as outlined in the Plan of Care.

(4) Daily activity logs must be completed by the provider for each shift worked and the responsibility to complete daily activity logs must be listed in the provider’s job description.

(5) SPD shall retain billing forms and timesheets for at least five years from the date of CIIS.

(6) Behavior consultants must submit to SPD the following written in clear, concrete language, understandable to the parent and provider:

> (a) An evaluation of the child, the parent's concerns, 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 would 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.

(7) Billing providers must maintain documentation of provided CIIS for at least seven years from the date of service.

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

(9) Access to records by DHS including but not limited to medical, nursing, behavior, psychiatric, or financial records, and specifically including logs and records by individuals providing care and vendors providing goods and services, does not require authorization or release by the eligible child or parent.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, ORS 427.007, and ORS 430.215

411-300-0200 Payment for Children's Intensive In-Home Services
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) Payment shall be made after CIIS are delivered as authorized and required documentation received by the services coordinator.

(2) Payment may not support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(a) Of a crime listed in Exhibit 300-1;

(b) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(c) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 300-1; or

(d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 300-1.

(3) Service budgets shall be individually negotiated by SPD based on the individual needs of the child.

(4) Authorization must be obtained prior to the delivery of any CIIS for those services to be eligible for payment.

(5) Providers must request payment authorization for CIIS provided during an unforeseeable emergency on the first business day following the emergency service. The services coordinator must determine if the service is eligible for payment.

(6) SPD shall make payment to the employee of the parent on behalf of the parent. SPD shall pay the employer's share of the Federal Insurance Contributions Act tax (FICA) and withhold the employee's share of FICA as a service to the parent as the employer.

(7) The delivery of authorized CIIS must occur so that any individual employee of the parent does not exceed 40 hours per work week. SPD shall not authorize services that require the payment of overtime, without prior written authorization by the CIIS supervisor.

(8) SPD shall not authorize or pay for any hours of CIIS provided by an individual provider beyond 16 hours in any 24-hour period. Exceptions require written authorization by the CIIS supervisor.

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

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

(11) Requests for payments must be submitted to SPD within three months of the delivery of CIIS.

(12) Payment by SPD for CIIS is considered full payment for the services rendered under Medicaid. Under no circumstances, may the provider or billing provider demand or receive additional payment for these services from the parent or any other source.

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

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

(15) SPD may void without cause prior authorizations that have been issued.

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

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

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

(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.

(17) All billings must be for CIIS provided within the provider's licensure.

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

(19) No individual shall submit to SPD:

(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 CIIS that have not been provided.

(20) SPD shall only make payment to the enrolled provider who actually performs the CIIS or the provider's enrolled billing provider. Federal regulations prohibit SPD from making payment to collection agencies.

(21) Payments may be denied if any provisions of these rules are not complied with.

(22) SPD shall recoup all overpayments. The amount to be recovered:

(a) Is the entire amount determined or agreed to by SPD;

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

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

(23) SPD shall deliver to the provider by registered or certified mail, or in person, a request for repayment of the overpayment or notification of recoupment of future payments.

(24) Payment schedules with the interest may be negotiated at the discretion of SPD.

(25) If recoupment is sought from a parent whose child received CIIS, hearing rights in OAR 411-300-0210 apply.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, and 430.215

411-300-0205 Complaints
(Adopted 8/1/2009)

(1) COMPLAINTS. SPD shall address all complaints in accordance with DHS written policies, procedures, and rules. Copies of the procedures for resolving complaints shall be maintained on file at SPD. At a minimum, these policies and procedures shall address:

(a) Informal resolution. The parent of a child has an opportunity to informally discuss and resolve any complaint regarding action taken by SPD that is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude the parent from pursuing resolution through formal complaint processes.

(b) Receipt of complaints. SPD shall maintain a log of all complaints regarding the provision of CIIS received via phone calls, e-mails, or writing.

(A) At a minimum, the complaint log shall include:

(i) The date the complaint was received;

(ii) The name of the individual taking the complaint;

(iii) The nature of the complaint;

(iv) The name of the individual making the complaint, if known; and

(v) The disposition of the complaint.

(B) Child welfare and law enforcement reports of abuse or neglect shall be maintained separately from the central complaint and grievance log.

(c) Response to complaints. SPD staff response to the complaint must be provided within five working days following receipt of the complaint and must include:

(A) An investigation of the facts supporting or disproving the complaint; and

(B) Any agreement to resolve the complaint must be in writing and must be specifically approved by the complainant. SPD shall provide the complainant with a copy of the agreement.

(d) Review. A manager of SPD must review the complaint if the complaint involves SPD staff or services or if the complaint is not, or cannot, be resolved with SPD staff. SPD manager response to the complaint must be made in writing, within 30 days following receipt of the complaint and include a response to the complaint as described in section (1)(c) of this rule.

(e) Third-party review when complaints are not resolved by the SPD manager. Unless the grievant is a Medicaid recipient who has elected to initiate the hearing process according to OAR 411-300-0210, a complaint involving the provision of service or a service provider may be submitted to SPD for an administrative review.

(A) The complainant must submit to SPD a request for an administrative review within 15 days from the date of the decision by the SPD manager.

(B) Upon receipt of a request for an administrative review, the SPD Assistant Director shall appoint an Administrative Review Committee and name the chairperson. The Administrative Review Committee shall be comprised of two representatives of SPD. Committee representatives must not have any direct involvement in the provision of services to the complainant or have a conflict of interest in the specific case being reviewed.

(C) The Administrative Review Committee must review the complaint and the decision by the SPD Manager and make a recommendation to the SPD Assistant Director within 45 days of receipt of the complaint unless the complainant and the

Administrative Review Committee mutually agree to an extension.

(D) The SPD Assistant Director shall consider the report and recommendations of the Administrative Review Committee and make a final decision. The decision must be in writing and issued within 10 days of receipt of the recommendation by the Administrative Review Committee. The written decision must contain the rationale for the decision.

(E) The decision of the SPD Assistant Director is final. Any further review is pursuant to the provision of ORS 183.484 for judicial review.

(f) Documentation of complaint. Documentation of each complaint and its resolution must be filed or noted in the complainant's record.

(2) NOTIFICATION. Upon enrollment and annually thereafter, SPD must inform each child's parent orally and in writing, using language, format, and methods of communication appropriate to the parent's needs and abilities, of the following:

(a) SPD complaint policy and procedures, including the right to an administrative review and the method to obtain an administrative review; and

(b) The right of a Medicaid recipient to a hearing pursuant to OAR 411-300-0210 and the procedure to request a hearing.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, ORS 427.007, and ORS 430.215

411-300-0210 Denial, Termination, Suspension, Reduction, or Eligibility for Services for Individual Medicaid Recipients
(Amended 8/1/2009)

(1) HEARING RIGHTS. Each time SPD takes an action to deny, terminate, suspend, or reduce a child's access to services covered under Medicaid, SPD shall notify the child's parent of the right to a hearing and the method to request a hearing. SPD shall mail the notice by certified mail, or

personally serve it to the child's parent 10 days or more prior to the effective date of an action.

(a) SPD shall use, Notice of Hearing Rights, or a comparable SPD-approved form for such notification. This notification requirement does not apply if an action is part of, or fully consistent with, the Plan of Care, or the child's parent has agreed with the action by signature to the Plan of Care. The notice shall be given directly to the parent when the Plan of Care is signed.

(b) The parent may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the address on the notice to expedite the process.

(c) A notice required by section (1) of this rule must include:

(A) The action SPD intends to take;

(B) The reasons for the intended action;

(C) The specific Oregon administrative rules that supports, or the change in federal or state law that requires, the action;

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

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

(F) A statement that the actions specified in the notice shall take effect by default if the DHS representative does not receive a request for hearing from the party within 45 days from the date that SPD mails the notice of action;

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

(H) An explanation of the circumstances under which CIIS shall be continued if a hearing is requested.

(d) If the parent disagrees with the decision or proposed action of SPD to deny, terminate, suspend, or reduce a child's access to services covered under Medicaid, the parent may request a hearing as provided in ORS chapter 183. The request for a hearing must be in writing on form DHS 443 and signed by the parent. The signed form (DHS 443) must be received by DHS within 45 days from the date of SPD notice of denial.

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

(f) If the parent requests a hearing before the effective date of the proposed actions and requests that the existing services be continued, DHS shall continue the services.

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

(i) The current authorization expires;

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

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

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

(g) DHS may reinstate services if:

(A) DHS takes an action without providing the required notice and the parent requests a hearing;

(B) DHS fails to provide the notice in the time required in this rule and the parent requests a hearing within 10 days of the mailing of the notice of action; or

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

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

(i) The DHS representative and the parent may have an informal conference, without the presence of the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for DHS and the parent to settle the matter;

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

(C) Give the parent an opportunity to review the information that is the basis for that action;

(D) Inform the parent of the rules that serve as the basis for the contested action;

(E) Give the parent and DHS the chance to correct any misunderstanding of the facts;

(F) Determine if the parent wishes to have any witness subpoenas issued; and

(G) Give DHS an opportunity to review its action.

(j) The child’s parent may, at any time prior to the hearing date, request an additional conference with the DHS representative. At the

DHS representative's discretion, the DHS representative may grant an additional conference if it facilitates the hearing process.

(k) DHS may provide the parent the relief sought at any time before the final order is issued.

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

(2) PROPOSED AND FINAL ORDERS.

(a) In a contested case, the administrative law judge must serve a proposed order on the child and DHS.

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

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

(3) The performing or billing provider must submit relevant documentation to DHS within five working days at the request of DHS when a hearing has been requested.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, ORS 427.007, and ORS 430.215

411-300-0220 Provider Sanctions for Children's Intensive In-Home Services
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) Sanctions may be imposed on a provider when any of the following conditions is determined by SPD to have occurred:

(a) The provider has been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or issuance of a provider number, including crimes as described in OAR 411-300-0170(1)(a)(D);

(b) The provider has been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) The provider's license has been suspended, revoked, otherwise limited, or surrendered;

(d) The provider has failed to safely and adequately provide the CIIS authorized as determined by the parent or the services coordinator;

(e) The provider has had a founded report of child abuse or a substantiated abuse allegation;

(f) The provider has failed to cooperate with any investigation or grant access to or furnish, as requested, records or documentation;

(g) The provider has billed excessive or fraudulent charges or has been convicted of fraud;

(h) The provider has made a false statement concerning conviction of crime or substantiation of abuse;

(i) The provider has falsified required documentation;

(j) The provider has not adhered to the provisions of these rules; or

(k) The provider has been suspended or terminated as a provider by another division within DHS.

(2) SPD may impose the following sanctions on a provider:

(a) Termination from providing CIIS;

(b) Suspension from providing CIIS for a specified length of time or until specified conditions for reinstatement are met and approved by SPD; or

(c) Payments to the provider may be withheld.

(3) If SPD makes a decision to sanction a provider, the provider must be notified by mail of the intent to sanction.

(a) The provider may appeal a sanction by requesting an administrative review by the SPD Assistant Director.

(b) For an appeal to be valid, written notice of the appeal must be received by SPD within 45 days of the date the sanction notice was mailed to the provider.

(c) The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(4) At the discretion of SPD, providers who have previously been terminated or suspended by any division within DHS may not be re-enrolled as providers of Medicaid services.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, and 430.215

Exhibit 300-1

(Temporary Effective 1/1/2010 – 6/30/2010)

ORS 163.095 Aggravated murder
ORS 163.115 Murder
ORS 163.118 Manslaughter I
ORS 163.125 Manslaughter II
ORS 163.145 Criminally negligent homicide
ORS 163.149 Aggravated vehicular homicide
ORS 163.165 Assault III
ORS 163.175 Assault II
ORS 163.185 Assault I
ORS 163.187 Strangulation
ORS 163.200 Criminal mistreatment II
ORS 163.205 Criminal mistreatment I
ORS 163.225 Kidnapping II
ORS 163.235 Kidnapping I
ORS 163.263 Subjecting another person to involuntary servitude II
ORS 163.264 Subjecting another person to involuntary servitude I
ORS 163.266 Trafficking in persons
ORS 163.275 Coercion
ORS 163.355 Rape III
ORS 163.365 Rape II
ORS 163. 375 Rape I
ORS 163.385 Sodomy III
ORS 163.395 Sodomy II
ORS 163.405 Sodomy I
ORS 163.408 Unlawful sexual penetration II
ORS 163.411 Unlawful sexual penetration I
ORS 163.415 Sexual Abuse III
ORS 163.425 Sexual Abuse II
ORS 163.427 Sexual Abuse I
ORS 163.432 Online sexual corruption of a child II, if the offender reasonably believed the child to be more than five years younger than the offender
ORS 163.432 Online sexual corruption of a child I, if the offender reasonably believed the child to be more than five years younger than the offender
ORS 163.435 Contributing to the sexual delinquency of a minor
ORS 163.445 Sexual misconduct, if the offender is at least 18 years of age
ORS 163.465 Public Indecency
ORS 163.467 Private Indecency
ORS 163.525 Incest with a child victim
ORS 163.535 Abandonment of a child
ORS 163.537 Buying or selling a person under 18 years of age
ORS 163.670 Using a child in display of sexually explicit conduct
ORS 163.680 Paying for viewing a child's sexually explicit conduct
ORS 163.684 Encouraging child sexual abuse I
ORS 163.686 Encouraging child sexual abuse II
ORS 163.687 Encouraging child sexual abuse III
ORS 163.688 Possession of materials depicting sexually explicit conduct of a child I
ORS 163.689 Possession of materials depicting sexually explicit conduct of a child II
ORS 163.700 Invasion of personal privacy
ORS 164. 055 Theft I
ORS 164. 057 Aggravated Theft I
ORS 164.098 Organized retail theft
ORS 164.125 Theft of services, if charged as a felony
ORS 164.215 Burglary II
ORS 164.225 Burglary I
ORS 164.325 Arson I
ORS 164.377 Computer crime, if charged with a felony
ORS 164.405 Robbery II
ORS 164.415 Robbery I
ORS 165.022 Criminal possession of a forged instrument I
ORS 165.032 Criminal possession of a forgery device
ORS 165.800 Identity theft
ORS 165.803 Aggravated identity theft
ORS 167.012 Promoting prostitution
ORS 167.017 Compelling prostitution
ORS 167.054 Furnishing sexually explicit material to a child
ORS 167.057 Luring a minor
ORS 181.594 Sex crimes, including: Transporting child pornography into the state