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

CHAPTER 411
DIVISION 305

FAMILY SUPPORT SERVICES FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES

411-305-0010 Statement of Purpose, Principles, and Philosophy
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) PURPOSE. The rules in OAR chapter 411, division 305 prescribe standards, responsibilities, and procedures for providing family support services to children with developmental disabilities and their families within the principles and philosophy that are the foundation of all developmental disability services. Family support services are a social benefit provided to all children with developmental disabilities who are eligible to receive case management services through a community developmental disability program. Family support services and available funding are intended to reach as many children and families as possible and are individualized to each family. Family support services foster and strengthen flexible networks of community-based, private, public, formal, informal, family-centered, and family-directed supports designed to increase families' abilities to care for children with developmental disabilities and to support the integration and inclusion of children with developmental disabilities into all aspects of community life.

(2) PRINCIPLES AND PHILOSOPHY. Family support services are individualized and built on the principles of family support and self-determination. The principles of family support are based on the belief that all individuals, regardless of disability, chronic illness, or special need, have the right to a permanent and stable family and that supporting families in caring for their children at home is in the best interest of the children, families, and communities. The principles of self-determination are based on the belief that the surest, most cost effective ways to foster and preserve family and community membership may be constructed and managed by those receiving services.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0020 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)" mean 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) "Annual Plan" means the written details of the supports, activities, costs, and resources required for a child to be supported by the family in the family home. The child's Annual Plan articulates decisions and agreements made through a child and family-centered process of planning and information-gathering conducted or arranged for by the child's services coordinator that involves the child (to the extent normal and appropriate for the child's age) and other persons who have been identified and invited to participate by the child's parent or guardian. The child's Annual Plan is the only plan of care required by the Seniors and People with Disabilities Division for a child receiving family support services.

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

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

(6) "Child" means an individual under the age of 18 and eligible for family support services.

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

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

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

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

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

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

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

(8) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under contract with the Seniors and People with Disabilities Division or a local mental health authority.

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

(10) "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 condition must be manifested before the age of 18;

(b) Originates 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.

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

(12) "Direct Assistance Funds" mean public funds contracted by the Department of Human Services to the community developmental disability program to assist families with purchase of supports for children in family support services according to each child's assessed need and the child's Annual Plan.

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

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

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

(d) Fiscal intermediary services.

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

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

(b) In a domestic relationship where partners share:

(A) A permanent residence;

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

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

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

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

(17) "Family Support" means individualized planning and service coordination, assisting families to access information and supports required by the child for the child to live in the family home, and access to funding when available. Supports, resources, and other assistance are designed to:

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

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

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

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

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

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

(19) "Fiscal Intermediary" means a person or entity that receives and distributes direct assistance funds on behalf of the family of an eligible child who employs persons to provide services, supervision, or training in the home or community according to the child's Annual Plan.

(20) "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.

(21) "General Business Provider" means an organization or entity selected by the parent or guardian of an eligible child, and paid with direct assistance funds that:

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

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

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

(22) "Guardian" means a person or agency appointed by the courts that is authorized by the court to make decisions about services for the child.

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

(24) "Independence" means the extent to which individuals exert control and choice over their own lives.

(25) "Independent Provider" means a person selected by a child's parent or guardian and paid with direct assistance funds that personally provide services to the child.

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

(27) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources used by and available to other persons;

(b) Participation by individuals in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals reside in homes that are in proximity to community resources and foster contact with persons in their community.

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

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

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

(31) "Parent" means biological parent, adoptive parent, or stepparent.

(32) "Plan Year" The initial plan year begins on the start date specified on the child's first Annual Plan after entry into services are authorized by the child's parent or guardian and the services coordinator and ends in 365 days. A plan year may not exceed twelve consecutive months.

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

> (a) Emphasizes the development of functional alternative behavior and positive behavior intervention;
>
> (b) Uses the least intervention possible;
>
> (c) Ensures that abusive or demeaning interventions are never used; and
>
> (d) Evaluates the effectiveness of behavior interventions based on objective data.

(34) "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.

(35) "Provider Organization" means an entity selected by a child's parent or guardian, and paid with direct assistance funds that:

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

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

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

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

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

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

(b) Authority. The ability for an individual, with the help of a social support network if needed, to control a certain sum of resources in order to purchase support services;

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that shall assist an individual to live a life in the community rich in community affiliations; and

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

(38) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Seniors and People with Disabilities Division, who plans, procures, coordinates, and monitors the child's Annual Plan, and acts as a proponent for children with developmental disabilities and their families.

(39) "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 a person who does not have such a developmental disability. Social benefits are pre-authorized by and provided according to the description and financial limits written in an eligible child's Annual Plan. Social benefits may not:

(a) Duplicate benefits and services otherwise available to persons 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 persons 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.

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

(41) "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.

(42) "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.

(43) "These Rules" mean the rules in OAR chapter 411, division 305.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0023 Family Support Services Administration and Operation

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

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

(2) SERVICES COORDINATOR TRAINING. The CDDP must provide or arrange for services coordinators to receive SPD-approved training needed to provide family support services, including but not limited to:

(a) Accessing community resources, information, and referral services;

(b) Child and family-centered planning processes;

(c) Employer-related supports and

(d) Individualized budgeting for supports.

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

(4) GENERAL RECORD REQUIREMENTS.

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

(b) Disclosure. For the purpose of disclosure from individual medical records under these rules, CDDPs under these rules shall be considered "providers" as defined in ORS 179.505(1), and 179.505 shall be applicable.

> (A) Access to records by DHS does not require authorization by the family.
>
> (B) For the purposes of disclosure from non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(c) Abuse. CDDP and provider organizations must maintain documentation in a separate provider file of inquiry into, and subsequent answer of, whether an independent provider or an employee of a provider organization has been found to have committed abuse. Records must also include any founded reports of child abuse or substantiated allegations of abuse against the independent provider or employee of a provider organization.

(d) Individual records. Records for children who receive family support services must be kept up-to-date and must include:

> (A) An easily-accessed summary of basic information as described in OAR 411-320-0070(3) including date of enrollment in family support services as well as the date the child was placed on the wait list for direct assistance funds.
>
> (B) Records related to receipt and disbursement of direct assistance funds, including type of fund used, expenditure

authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-305-0140, and documentation of family acceptance or delegation of record keeping responsibilities outlined in this rule;

(C) Incident reports involving CDDP staff;

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

(E) The child's Annual Plan and reviews;

(F) Services coordinator correspondence;

(G) Services coordinator progress notes documenting case management activities, action plans, and outcomes; and

(H) Family satisfaction information.

(e) General financial policies and practices. The CDDP must:

(A) Maintain up-to-date accounting records consistent with generally accepted accounting principles that accurately reflect all family support services revenue by source, all expenses by object of expense, and all assets, liabilities, and equities; and

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

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

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

(B) Individual records must be kept for a minimum of seven years.

(5) COMPLAINTS AND APPEALS. The CDDP must provide for review of complaints and appeals by or on behalf of children related to family support services as set forth in OAR 411-320-0170(2)(c).

Stat. Auth.: ORS 409.050 & 410.070,
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0025 Required Family Support Services
(Renumbered from OAR 411-305-0070 6/1/2009)

(1) The CDDP must provide or arrange for the following services to support all children enrolled in developmental disability and family support case management services.

(a) SERVICE COORDINATION.

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

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

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

(b) INFORMATION AND REFERRAL.

(A) Assistance with development and expansion of community resources required to meet the support needs of children and families;

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

(C) Access to information, education, technical assistance, community resources, and parent-to-parent groups.

(c) EMPLOYER-RELATED SUPPORTS.

(A) Fiscal intermediary services in the receipt and accounting of direct assistance funds on behalf of families in addition to making payment with the authorization of families; and

(B) Assistance to families to fulfill roles and obligations as employers of support staff when staff is paid for with direct assistance funding.

(d) ACCESS TO FUNDING. Access to direct assistance and immediate access funds when available.

(2) The CDDP must develop and implement a process for informing families about family support services. The CDDP must provide accurate, up-to-date information that must include:

(a) A declaration of the family support services philosophy;

(b) The process for accessing direct assistance and immediate access funds for determining how much assistance with purchasing supports shall be available;

(c) Common processes encountered in using family support services, including how to raise and resolve concerns about family support services;

(d) Clarification of CDDP employee responsibilities as mandatory reporters of child abuse;

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

(f) An explanation of family rights to select and direct the providers, qualified according to OAR 411-305-0140, to provide supports authorized through the eligible child's Annual Plan and purchased with direct assistance funds; and

(g) An assurance that additional information about family support services shall be made available at the family's request. Additional information may include but is not limited to:

(A) A description of the CDDP's organizational structure;

(B) A description of any contractual relationships the CDDP has in place or may establish to accomplish the family support service functions required by rule; and

(C) If applicable, a description of the relationship between the CDDP and the CDDP's Family Support Policy Oversight Group.

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

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0027 Financial Limits of Family Support Services
(Renumbered from OAR 411-305-0100 6/1/2009)

(1) In any plan year, the CDDP shall determine the actual amount a family may access from the direct assistance fund consistent with the intent to serve as many children as possible and not to exceed the maximum limits established by SPD. Funds are made available on a first-come, first-served basis unless the CDDP submits an alternative practice approved by SPD. Unique financial limits may apply to individual categories.

(2) Estimates used to establish the limits of financial assistance for specific services in the child's Annual Plan must be based on the SPD rate guidelines for costs of frequently-used services.

(a) SPD rate guidelines notwithstanding, final costs may not exceed local usual and customary charges for these services as evidenced by the CDDP's own documentation.

(b) The CDDP must establish a process for review and approval of all purchases that exceed the SPD rate guidelines and must monitor authorized Annual Plans for continued cost effectiveness.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0030 Eligibility for Family Support Services
(Amended 6/1/2009)

(1) NON-DISCRIMINATION. Families of children determined eligible according to section (2) of this rule may not be denied family support services or otherwise discriminated against on the basis of age or diagnostic or disability category. Access to service may also not be restricted due to race, color, creed, national origin, citizenship, income, or duration of Oregon residence.

(2) ELIGIBILITY. A child is eligible for family support services when the child:

(a) Is determined eligible for developmental disability services by the CDDP and enrolled into case management services;

(b) Is under the age of 18; and

(c) Lives in the family home and does not receive other paid in-home services other than State Medicaid Plan personal care services, adoption assistance, or SPD-funded short-term crisis diversion services provided to prevent out-of-home placement.

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

(a) Is necessary to affect transition from one county to another with a change of residence;

(b) Is part of a collaborative plan developed by both CDDPs; and

(c) Does not duplicate services and expenditures.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0040 Family Support Service Information and Entry
(Repealed 6/1/2009)

411-305-0050 Family Support Services Enrollment, Duration, and Exit
(Amended 6/1/2009)

(1) ENROLLMENT. A child, who meets the eligibility requirements in OAR 411-305-0030(2), is considered enrolled in family support services when:

(a) The child is enrolled in case management services; and

(b) The family has not declined family support services as documented in the child's Annual Plan.

(2) DURATION OF SERVICES. Once a child has entered a CDDP's family support services, the child and family may continue receiving services from that CDDP through the last day of the month during which the child turns 18, as long as the child remains eligible for developmental disability services, the child's Annual Plan is developed and kept current, the need for family support services remains, and the child has not entered SPD-funded comprehensive services.

(3) EXIT. A child must leave a CDDP's family support services:

(a) At the written request of the child's parent or guardian to end the service relationship;

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

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

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

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

(B) The CDDP has sufficient evidence to believe that the family has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's Annual Plan, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with family support services.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0060 *(Renumbered to OAR 411-305-0105 6/1/2009)*

411-305-0070 *(Renumbered to OAR 411-305-0025 6/1/2009)*

411-305-0080 Family Support Services Annual Plan
(Amended 10/1/2009)

(1) The CDDP must provide or arrange for an annual planning process to assist families in determining needs, planning for supports, establishing outcomes, and reviewing and redesigning support strategies for all children eligible for family support services. The CDDP, the child (as appropriate for age), and the child's family must develop a written Annual Plan as a result of the annual planning process within the first 60 days of entry in case management and family support services and annually thereafter as long as the child is enrolled in case management and family support services. The child's Annual Plan must be conducted on forms provided by SPD and must include but not be limited to:

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

(b) A description of the child's support needs, including the reason the support is necessary, and any referrals to information or

community resources that meet the child's support needs as described in OAR 411-305-0025(1);

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

(d) Projected direct assistance fund costs, if any, limited to the current fiscal year, with sufficient detail to support estimates;

(e) The types of supports to be purchased with direct assistance funds, including the type of provider;

(f) The proposed schedule of the child's Annual Plan reviews; and

(g) Signatures of the child's services coordinator, the child's parent or guardian, and the child (as appropriate for age).

(2) The child's Annual Plan and records supporting development of each child's Annual Plan must include evidence that:

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

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

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

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

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

(f) Education and support for the child and the child’s family to recognize and report abuse.

(3) The CDDP may not use direct assistance funds to implement any plan proposed and written as a result of assistance with planning provided by someone other than the child's services coordinator until the child's services coordinator determines that the new plan meets the applicable requirements of sections (1) and (2) of this rule. In such cases, the services coordinator's signature on the plan shall indicate acceptance of the plan as the child's Annual Plan.

(4) The CDDP may not commit direct assistance funds through the child’s Annual Plan beyond the current fiscal year.

(5) The services coordinator must obtain and attach a Nursing Care Plan to the child's Annual Plan when direct assistance funds are used to purchase services requiring the education and training of a nurse.

(6) The services coordinator must conduct and document reviews of the child's Annual Plan and resources with families as follows:

(a) At least quarterly, review and reconcile receipts and records of purchased supports authorized by the child's Annual Plan and subsequent Annual Plan documents;

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

(A) Evaluate progress toward achieving the purposes of the child's Annual Plan;

(B) Record final direct assistance funds costs;

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

(D) Determine whether changing needs or availability of other resources have altered the family's Annual Plan content needs or for use of direct assistance funds to purchase supports.

(7) The originating CDDP must assist family support recipients when the family and eligible child move to a county outside its area of service by:

(a) Coordinating the application for case management services in the new CDDP; and

(b) Arranging orientation for the child and family to family support services provided by the CDDP of the new county of residence, including transferring the child's file and the child's Annual Plan information, informing the family of how to apply for services in the new CDDP, and coordinating official transition date.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0090 Managing and Accessing Direct Assistance Funds
(Amended 6/1/2009)

(1) The CDDP must develop and implement a written plan for managing access to assistance with purchasing supports through the direct assistance fund using forms and procedures prescribed by SPD which includes but is not limited to:

(a) The number of children anticipated to receive direct assistance funding each year; and

(b) The number of children on the wait list for funding.

(2) The CDDP must review direct assistance fund purchases and obligations at least every 90 days.

(3) DIRECT ASSISTANCE FUNDS. Assistance with the purchase of supports through the direct assistance fund is offered on a first-come, first-served basis consistent with the intent to serve as many children as possible and, unless otherwise approved by SPD on the plan described in section (1) of this rule, as long as direct assistance funds are available. The CDDP must determine the actual amount of funds a family may access per plan year from the direct assistance fund not to exceed the maximum limit established by SPD. Direct assistance funds may be used to purchase one or more of the supports described in OAR 411-305-0120 for children as

supported by each child's Annual Plan and supporting expenditure documents.

(4) IMMEDIATE ACCESS FUNDS. The CDDP must utilize the designated percentage of funds established by SPD to address the immediate needs of those children placed on the wait list. The CDDP shall determine the actual amount of funds a family may access per plan year from the immediate access fund not to exceed the maximum limits established by SPD. Immediate access funds may be used to purchase a limited scope of services including:

(a) Respite;

(b) Specialized equipment and supplies; and

(c) Behavior consultation.

(5) Supports for children may not be purchased from direct assistance and immediate access funds concurrently.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0100 *(Renumbered to OAR 411-305-0027 6/1/2009)*

411-305-0105 Direct Assistance Funding Wait List
(Renumbered from OAR 411-305-0060 6/1/2009)

(1) The CDDP must maintain a wait list when the number of children requesting direct assistance funds exceeds the funds available to the CDDP in a fiscal year. Placement on the wait list must be by the date a child is determined eligible for developmental disability services.

(2) The wait list must include the name and date of birth of each eligible child, name of the child's parent or guardian, and assigned place in the order of service. Information from the wait list must be provided to SPD upon request.

(3) Children on the wait list for direct assistance funding may request assistance with a limited scope of services through immediate access funds as described in OAR 411-305-0090(4).

(4) Despite assignment of order of service on the wait list by one CDDP, when a child and family move outside the area of service of the CDDP and direct assistance funds are not immediately available at the new CDDP, the child must be placed on the wait list for funds from the new CDDP as of the date of transfer. Direct assistance funds do not transfer between CDDPs.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0110 Conditions for Direct Assistance Fund Purchases
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) A CDDP must only use direct assistance funds to assist families to purchase supports for the purpose defined in OAR 411-305-0010(1) and in accordance with the child's Annual Plan that meets the requirements for development and content in accordance with OAR 411-305-0080.

(2) To be authorized and eligible for payment, all supports and services paid for with direct assistance funds must be determined by the services coordinator to be:

(a) Directly related to the eligible child's developmental disability and support needs;

(b) Used only to purchase goods or services necessary for a child to continue to be supported in the family home;

(c) Cost effective;

(d) Not typical for a family to provide a child of the same age; and

(e) Included in the child's approved Annual Plan and support documents or otherwise allowed in this rule.

(3) Goods and services purchased with direct assistance funds to support specific individual children and families must be provided only as social benefits as defined in OAR 411-305-0020.

(4) The CDDP must arrange for supports purchased with direct assistance funds to be provided:

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

(A) The CDDP must provide written instruction about the limits and conditions of group services to families who choose to combine direct assistance funds to purchase services and supports from another qualified provider.

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

(C) The CDDP must evaluate combined arrangements that result in creation of provider organizations or general business providers to determine whether license or certification is required under Oregon law for the organization to provide services for children.

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

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

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

(C) Interferes with community participation;

(D) Results in damage to property; or

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

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

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

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

(f) In accordance with OAR 411-305-0140 governing provider qualifications.

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

(a) Mandatory responsibility to report suspected abuse;

(b) The CDDP's and provider organization's responsibility to inquire of an independent provider if the independent provider has been found to have committed abuse;

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

(d) Limits of payment:

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

(B) The provider must bill all third party resources before using direct assistance funds unless another arrangement is agreed upon by the CDDP and described in the child's Annual Plan.

(e) The provisions of section (8) of this rule regarding sanctions that may be imposed on providers; and

(f) The requirement to maintain a drug-free workplace.

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

(a) Payment of vendors for authorized purchases and supplies. The CDDP may reimburse families for prior-authorized purchases and supplies agreed upon in the child's Annual Plan with corresponding purchase receipts.

(b) Payment of qualified providers of direct care services. The CDDP must issue payment, or arrange through fiscal intermediary services to issue payment, directly to the qualified provider on behalf of the family after approved services described in the child's Annual Plan have been satisfactorily delivered.

(7) The CDDP must inform families in writing of special records and procedures required in OAR 411-305-0160 regarding expenditure of direct assistance funds. During development of the child's Annual Plan, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must delineate responsibility for maintenance of records in written service agreements.

(8) Sanctions for independent providers, provider organizations, and general business providers.

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

(A) Been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or authorization of service, including crimes as described in OAR 411-305-0140(1);

(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 a substantiated abuse allegation;

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

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

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

(I) Falsified required documentation;

(J) Failed to comply with the provisions of section (5) of this rule and OAR 411-305-0115; or

(K) Been suspended or terminated as a provider by another division within DHS.

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

(A) The provider may no longer be paid with direct assistance funds;

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

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

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

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

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0115 Using Direct Assistance Funds for Certain Purchases is Prohibited
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) Direct assistance 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 305-1;

(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 305-1; or

(d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 305-1.

(2) Direct assistance 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;

(c) Notwithstanding abuse as defined in OAR 411-305-0020, services from persons 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) Notwithstanding abuse as defined in OAR 411-305-0020, 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 developmental disability-created need for personal assistance in all home and community settings that would normally be incurred by anyone on vacation, regardless of developmental disability;

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

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

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

(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 the CDDP 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; or

(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 child's Annual Plan, refused to cooperate with record keeping required to document use of direct assistance funds, or otherwise knowingly misused public funds associated with family support services.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0120 Supports Purchased with Direct Assistance Funds
(Amended 6/1/2009)

(1) When conditions of purchase in OAR 411-305-0110 are met, and provided purchases are not prohibited under OAR 411-305-0115, direct assistance funds may be used to purchase a combination of the following supports based upon the needs of the child consistent with the child's Annual Plan and available funding:

(a) Specialized consultation including behavior and nursing delegation;

(b) Community inclusion;

(c) Environmental accessibility adaptations;

(d) Family caregiver supports;

(e) Family training;

(f) In-home daily care;

(g) Physical, occupational, and speech and language therapy;

(h) Respite;

(i) Specialized diet;

(j) Specialized equipment and supplies; and

(k) Transportation.

(2) SPECIALIZED CONSULTATION – BEHAVIOR CONSULTATION. Behavior consultation is the purchase of individualized consultation provided only as needed in the family home to respond to a specific problem or behavior identified by the child's parent or guardian and the services coordinator.

(a) Behavior consultation shall only be authorized to support a primary caregiver in their caregiving role, not as a replacement for an educational service offered through the school.

(b) Behavior consultation must include:

(A) Working with the family to identify:

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

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

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

(B) Assessing the child. The behavior consultant utilized by the family must conduct an assessment and interact with the child in the family home and community setting in which the child spends most of their time. 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 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.

(v) 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

(vi) An assessment of current communication strategies.

(C) Developing a variety of positive strategies that assist the family 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 family and provider to the early warning signs.

(i) Positive, preventive interventions must be emphasized.

(ii) The least intrusive intervention possible 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) Developing emergency and crisis procedures to be used to keep the child, family, and provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-adversive interventions must be utilized. SPD shall not pay

a provider to use physical restraints on a child receiving family support services.

(E) Developing a written Behavior Support Plan that includes the following:

(i) Use of clear, concrete language and in a manner that is understandable to the family and provider; and

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

(F) Teaching the provider and family the recommended strategies and procedures to be used in the child's natural environment.

(G) Monitoring, assessing, and revising the Behavior Support Plan as needed based on the effectiveness of implemented strategies.

(c) Behavior consultation does not include:

(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, adaptations to meet the needs of the child at school, assessment in the school setting for the purposes of an Individualized Education Program, or any service identified by the school as required to carry out the child's Individualized Education Program.

(3) SPECIALIZED CONSULTATION – NURSING DELEGATION.

(a) Nursing delegation is the purchase of individualized consultation from a nurse in order to delegate tasks of nursing services in select situations. Tasks of nursing care are those procedures that require nursing education and licensure of a nurse to perform as described in OAR chapter 851, division 047.

(b) SPD requires nursing delegation for unlicensed providers paid with direct assistance funding when a child requires tasks of nursing care.

(4) COMMUNITY INCLUSION. Community inclusion supports encourage a child to participate in organized group recreation and leisure activities that assist the child to acquire, retain, or improve skills that enhance independence and integration.

(a) Community inclusion supports purchased with direct assistance funds may include:

(A) Cost of individualized provider support required by the child to participate in an organized activity; and

(B) The participation or registration cost of an organized activity that meets the purpose as outlined in section (4) of this rule and includes registration and participation fees up to a maximum of $150 per plan year.

(b) Community inclusion supports exclude:

(A) Supports that replace normal family roles and responsibilities in a child's acquisition and retention of communication, socialization, recreation, and self-help skills;

(B) Supports that replace normal family responsibility for child care while the primary caregiver works or goes to school;

(C) Education and other instructional support available according to the Individuals with Disabilities Education Act;

(D) Substitute care for a child under 12 years of age while the primary caregiver works or goes to school;

(E) Tuition to private schools or payment of programs or services in lieu of school;

(F) Legal fees such as those for setting up trusts or guardianships;

(G) Incentive payments to employers to hire youth with disabilities; and

(H) Private lessons or memberships.

(5) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

(a) Environmental accessibility adaptations include:

(A) Physical adaptations to a family home that are necessary to ensure the health, welfare, and safety of the child in the family home due to the child's developmental disability or that are necessary to enable the child to function with greater independence around the family home and in family activities.

(B) Environmental modification consultation to evaluate the family home and make plans to modify the family home to ensure the health, welfare, and safety of the child.

(C) Motor vehicle adaptations for the primary vehicle used by the child that are necessary to meet the unique needs of the child and ensure the health, welfare, and safety of the child.

(b) The CDDP shall authorize environmental accessibility adaptations when:

(A) Related to the child’s developmental disability;

(B) Determined to be the most cost effective solution;

(C) 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 child's parent or guardian; and

(D) Authorized in writing by the owner of a rental structure prior to initiation of the work. This does not preclude any reasonable accommodation required under the Americans with Disabilities Act.

(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 exclude:

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

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

(C) General repair or maintenance and upkeep required for the family home or motor vehicle.

(6) FAMILY CAREGIVER SUPPORTS. Family caregiver services assist families with unusual responsibilities of planning and managing provider services for their children.

(a) Family caregiver supports include:

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

(B) Assistance with family costs associated with recruiting, hiring, and directing providers, including advertising and translation services related to the advertising; and

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

(b) Family caregiver supports exclude application fees and the cost of fingerprinting or other background check processing fee requirements

(7) FAMILY TRAINING. Family training services include the purchase of training, coaching, counseling, and support that increase the family's ability to care for and maintain the child in the family home. Family training services must be prior authorized by the CDDP and include:

(a) Counseling services that assist the family with the stresses of having a child with a developmental disability.

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

(i) Be provided by licensed providers including but not limited to:

(I) Psychologists licensed under ORS 675.030;

(II) Professionals licensed to practice medicine under ORS 677.100;

(III) Social workers licensed under ORS 675.530; and

(IV) Counselors licensed under ORS 675.715;

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

(iii) Be short term.

(B) Counseling services are excluded for:

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

(ii) General marriage counseling;

(iii) Therapy to address family members' psychopathology;

(iv) Counseling that addresses stressors not directly attributed to the child;

(v) Legal consultation;

(vi) Vocational training for family members; and

(vii) Training for families to carry out educational activities in lieu of school.

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

(A) Conferences, workshops, or group trainings must be prior authorized by the CDDP and include those that:

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

(ii) Increase the knowledge and skills of the family to care for and maintain the child in the family home.

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

(i) Registration fees in excess of $500 per family for an individual event;

(ii) Travel, food, and lodging expenses;

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

(iv) Costs for individual family members who are employed to care for the child.

(c) Rental or purchase of developmental disability related resource materials including books, DVD, and other media.

(A) To be authorized, the materials must relate to the child's developmental disability.

(B) The purchase of materials is limited to a maximum of $100 per plan year.

(d) Purchase of child and family-centered planning facilitation and follow-up.

(8) IN-HOME DAILY CARE. In-home daily care services include the purchase of direct provider support provided to the child in the family home by qualified individual providers and agencies. Provider assistance provided through in-home daily care must support the child to live as independently as appropriate for the child's age and must be based on the identified needs of the child, supporting the family in their primary caregiving role. Primary caregivers are expected to be present in the family home during the provision of in-home daily care or, when occasionally out of the family home, immediately available to return when contacted.

(a) In-home daily care services provided by qualified providers or agencies include:

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

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

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

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

(E) Skin care - Dressing changes;

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

(G) Assisting the child with appropriate leisure activities to enhance development in and around the family home;

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

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

(J) Accompanying the child and family to health related appointments; and

(K) Light housekeeping tasks directly related to the child's developmental disability and necessary to maintain a healthy and safe environment for the child.

(b) In-home daily care services must:

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

(B) Be based on the assessed service needs of the child consistent with, and documented in, the child's Annual Plan;

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

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

(c) In-home daily care services exclude:

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

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

(C) The authorization of hours or level of care not supported by the assessed service needs of the child;

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

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

(F) Services provided by the family; and

(G) Home schooling.

(d) In-home daily care services may not be provided on a 24-hour shift-staffing basis. The child's primary caregiver is expected to provide at least eight hours of care and supervision for the child each day with the exception of overnight respite.

(9) PHYSICAL, OCCUPATIONAL, AND SPEECH AND LANGUAGE THERAPY. Physical, occupational, and speech and language therapy are services provided by a professional licensed physical therapist under ORS 688.020, occupational therapist under ORS 675.240, or speech and language pathologist under ORS 681.250 as defined and approved for purchase under the approved State Medicaid Plan. Physical, occupational, and speech and language therapy services are available to maintain a child's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan and private insurance have been reached, either through private or public resources.

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

(b) To be authorized, the services coordinator must document:

(A) Limits identified under the OHP and private insurance have been reached;

(B) Service is part of a therapist's treatment plan as ordered by a physician;

(C) Services provided are defined and approved for purchase under the approved State Medicaid Plan; and

(D) The total number of visits authorized for payment through direct assistance funds.

(c) Physical, occupational, and speech and language therapy services do not include:

(A) Payment for services not prior-authorized by the CDDP;

(B) Therapies or services identified by the school as required to carry out the child's Individualized Education Program;

(C) Therapy services provided outside of the United States; and

(D) Co-payments.

(10) RESPITE. Respite services include short-term care and supervision provided to a child on a periodic or intermittent basis furnished because of the temporary absence of, or need for relief of, the primary caregiver.

(a) Respite may include both day and overnight services that may be provided in the family home, qualified provider’s home, or qualified facility.

(b) The following types of qualified providers may be authorized by the CDDP to provide respite;

(A) Individual respite provider;

(B) Licensed day care center;

(C) Group home;

(D) Foster home; or

(E) Developmental disability-related or therapeutic recreational camp. Respite provided at a developmental disability-related or therapeutic recreational camp is limited to the camp registration fee and costs.

(c) The CDDP shall not authorize respite services:

(A) Solely to allow primary caregivers to attend school or work;

(B) That are ongoing and occur on a regular schedule such as eight hours a day, five days a week;

(C) On more than a periodic schedule;

(D) For more than 14 consecutive days in a calendar month;

(E) For more than five days per individual plan year when provided at a specialized camp; or

(F) For vacation travel and lodging expenses.

(11) SPECIALIZED DIET. A specialized diet includes specially prepared food, or purchase of particular types of food, specific to a child's medical condition or diagnosis needed to sustain a child in the family home. A specialized diet is in addition to meals a family would provide.

(a) In order for a specialized diet to be authorized by the services coordinator:

(A) The diet must be ordered by a physician licensed by the Oregon Board of Medical Examiners;

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

(C) The foods in the specialized diet must be pre-approved by the CDDP.

(b) Purchased specialized diet services may include:

(A) Registered dietician services when not covered by other resources; and

(B) Specialized diet supplies up to $50 per month.

(c) Specialized diet supports not authorized include:

(A) Special diets and dietician services otherwise available under OHP or other sources;

(B) Restaurant and prepared foods;

(C) Vitamins; and

(D) Food that constitutes a full nutritional regime.

(12) SPECIALIZED EQUIPMENT AND SUPPLIES. Specialized equipment and supplies include the purchase of devices, aids, controls, supplies, or appliances that are necessary to enable a child to increase their abilities to perform and support activities of daily living, or to perceive, control, or communicate with the environment in which they live.

(a) Specialized equipment and supplies may include:

(A) The purchase of specialized equipment and supplies; and

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

(b) To be authorized by the CDDP, specialized equipment and supplies must:

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

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

(C) Be directly related to the child’s disability.

(c) Specialized equipment and supplies exclude:

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

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

(C) Items available through family, community, or other governmental resources;

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

(E) Cost equivalent of toys and activities typically purchased by families of children of the same age; and

(F) Equipment and furnishings of general household use.

(13) TRANSPORTATION. Transportation services include transportation beyond the scope of family responsibility for transporting a child for leisure, recreation, and other non-medical community pursuits provided in order to enable a child to gain access to other community services, activities, and resources as specified in the child's Annual Plan.

(a) Whenever possible, family, neighbors, friends, or community agencies must be utilized to provide transportation services to the child without charge.

(b) Authorization of transportation in the child's Annual Plan must identify the parameters and limits of transportation services for each child.

(c) Transportation services for the child must be provided through the most cost effective means identified and may be purchased through local commercial transportation or mileage reimbursement to a qualified provider.

(d) Transportation services are provided for the child and the child must always be present.

(e) Transportation services exclude:

(A) Transportation to and from school and medical appointments;

(B) Transportation provided by family;

(C) Transportation typically provided by families for children of similar age without disabilities;

(D) Mileage reimbursement in excess of the published federal rate at http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC;

(E) Purchase of any family vehicle;

(F) Vehicle maintenance and repair;

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

(H) Ambulance services;

(I) Transportation services that may be obtained through other means such as OHP or other public or private resources available to the child; and

(J) Mileage paid to the provider to arrive at the work site.

(f) Medical transportation may be provided to transport a child from a distant rural community to an urban medical center that is more than 100 miles round trip.

(A) Payment for medical transportation shall be made per mile.

(B) Medical transportation excludes transportation services that may be obtained through other means such as OHP or other public or private resources available to the child.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0130 *(Renumbered to OAR 411-305-0115 6/1/2009)*

411-305-0140 Standards for Providers Paid with Direct Assistance Funds
(Temporary Effective 1/1/2010 – 6/30/2010)

Independent providers, provider organizations, and general business providers paid with direct assistance funds must be qualified. At the discretion of SPD, providers who have previously been terminated or suspended by any DHS division may not be authorized as providers of service. Providers must meet the following qualifications:

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

(a) Be at least 18 years of age;

(b) Have approval to work based on a criminal records check completed by DHS in accordance with OAR 407-007-0200 to 407-007-0370. 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:

(A) Of a crime listed in Exhibit 305-1;

(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 305-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 305-1;

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

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

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

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

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

(C) Ability to communicate with the child; and

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

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

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

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

(i) If providing transportation services, have a valid driver's license and proof of insurance, as well as other license or certification that

may be required under state and local law depending on the nature and scope of the transportation service.

(2) Nursing consultants must have a current Oregon nursing license and submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law, including at least one year of experience with people with developmental disabilities.

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

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

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

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

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

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

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

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

(a) A license under ORS 443.015 for a home health agency;

(b) A license under ORS 443.315 for an in-home care agency;

(c) 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 for a provider of environmental accessibility adaptations involving family home renovation or new construction;

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

(e) Public transportation providers must be regulated according to established standards and private transportation providers must have business licenses and drivers licensed to drive in Oregon;

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

(g) A current business license for providers of personal emergency response systems; and

(h) Retail business licenses for vendors and supply companies providing specialized diets.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0150 *(Renumbered to OAR 411-305-0023 6/1/2009)*

411-305-0160 Special Record Requirements for Direct Assistance Fund Purchases
(Amended 6/1/2009)

The CDDP must develop and implement written policies and procedures concerning use of direct assistance funds to purchase goods and services required for support of children and described in the child's Annual Plan. These policies and procedures must include but are not limited to:

(1) Minimum acceptable records of expenditures:

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

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

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

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

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

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

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

(b) The CDDP must secure use of equipment or furnishings costing more than $500 through a written agreement between the CDDP and the child's parent or guardian that specifies the time period the item is

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

(c) The CDDP must ensure that projects for environmental accessibility adaptations involving building renovation or new construction in or around the family home costing $5,000 or more per single instance or cumulatively over several modifications:

(A) Are approved by SPD before work begins and before final payment is made;

(B) Are completed or supervised by a contractor licensed and bonded in Oregon; and

(C) That steps are taken as prescribed by SPD for protection of SPD's interest through liens or other legally available means.

(d) The CDDP must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure.

(3) Return of purchased goods. Any goods purchased with direct assistance funds that are not used according to the child's Annual Plan or according to an agreement securing the state's use may be immediately recovered.

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

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0170 Quality Assurance
(Amended 6/1/2009)

The CDDP must participate in statewide quality assurance, service evaluation, and regulation activities as directed by SPD in OAR 411-320-0040.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

411-305-0180 Variances
(Amended 6/1/2009)

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

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

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

(c) If there are other extenuating circumstances.

(2) Variances do not apply to OAR 411-305-0115 and OAR 411-305-0120.

(3) The CDDP requesting a variance must submit to SPD, a written variance request utilizing form DHS 60-01 that contains the following:

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

(b) The reason for the proposed variance;

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

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

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

(4) SPD may approve or deny the variance request.

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

(6) The CDDP may appeal the denial of a variance request by sending a written request for review to the SPD Assistant Director, whose decision is final.

(7) SPD shall determine the duration of the variance.

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

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

Exhibit 305-1

(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