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

CHAPTER 411
DIVISION 308

LONG-TERM SUPPORT FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES

411-308-0010 Statement of Purpose and Principles
(Adopted 12/28/2009)

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

(2) Long-term supports are provided to children with developmental disabilities who are eligible for crisis diversion services. Long-term supports are designed to increase the family's ability to care for the child with developmental disabilities in the family home. Long-term supports resolve the crisis by providing supports to prevent the need for the child to be placed or remain in a residential setting other than the child's family home.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 to 430.670

411-308-0020 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)" means activities usually performed in the course of a normal day in the 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 Support 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 Support 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 Support Plan is the only plan of care required by the Seniors and People with Disabilities Division for a child receiving long-term support.

(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) "Child" means an individual under the age of 18 and eligible for long-term support.

(6) "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.

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

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

(9) "Crisis" means:

(a) A situation where a child with a developmental disability is at imminent risk of placement outside the child’s family home, or has already been placed outside the family home;

(b) The child requires supports due to the developmental disability to be able to safely remain in or return to the family home; and

(c) No alternative resources are available from which to obtain those supports.

(10) "Developmental Disability" 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) "Employer-Related Supports" mean activities that assist a family with directing and supervising provision of services described in a child's Annual Support 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.

(13) "Family" for determining a child's eligibility for long-term support 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.

(14) "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.

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

(16) "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.

(17) "General Business Provider" means an organization or entity selected by the parent or guardian of an eligible child, and paid with long-term support funds that:

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

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

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

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

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

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

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

(22) "Long-Term Support" means individualized planning and service coordination, arranging for services to be provided in accordance with Annual Support Plans, and purchase of supports that are not available through other resources that are required for children with developmental disabilities who are eligible for crisis diversion services to live in the family home. Long-term supports are designed to:

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

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

(23) "Long-Term Support Funds" mean public funds contracted by the Department of Human Services to the community developmental disability program and managed by the community developmental disability program to assist families with the purchase of supports for children with developmental disabilities according to each child's Annual Support Plan.

Long-term support funds are available only to children for whom the Department of Human Services designates funds to the community developmental disability program by written contracts that specify the children by name.

(24) "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.

(25) "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.

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

(27) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The Oregon Intervention System is based on a positive approach that includes methods of effective evasion, deflection, and escape from holding.

(28) "Plan Year" means twelve consecutive months used to calculate what long-term support funds may be made available annually to support an eligible child.

(29) "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.

(30) "Provider Organization" means an entity selected by a child's parent or guardian, and paid with long-term support funds that:

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

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

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

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

(32) "Regional Process" means a standardized set of procedures through which a child's Annual Support Plan and funding to implement the Annual Support Plan are reviewed for approval. The review is performed by a committee of stakeholder representatives from a child's geographic service area and includes review of the potential risk of out-of-home placement, the appropriateness of the proposed supports, and cost effectiveness of the Annual Support Plan.

(33) "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 long-term support, and acts as a proponent for children with developmental disabilities and their families.

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

(35) "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.

(36) "Support" means assistance eligible children and their families require, solely because of the effects of developmental disability on the child, to maintain the child in the family home.

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

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 to 430.670

411-308-0030 Long-Term Support Administration and Operation
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) FISCAL INTERMEDIARY SERVICES. The CDDP must provide, or arrange a third party to provide, fiscal intermediary services for all families. The fiscal intermediary receives and distributes long-term support 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.

(2) 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 – 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 ORS 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 long-term support must be kept up-to-date and must include:

(A) An easily-accessed summary of basic information as described in OAR 411-320-0070(3) including date of enrollment in long-term support;

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

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

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

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

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

(C) Incident reports, including those involving CDDP staff;

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

(E) Documentation of the child's eligibility for crisis services and approval of the child's Annual Support Plan through a regional process;

(F) The child's Annual Support Plan and reviews;

(G) The services coordinator's correspondence and notes related to plan development 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 long-term support revenue by source, all expenses by object of expense, and all assets, liabilities, and equities; and

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any 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.

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

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

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 to 430.670

411-308-0040 Required Long-Term Support
(Adopted 12/28/2009)

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

(a) SERVICE COORDINATION.

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

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

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

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

(b) EMPLOYER-RELATED SUPPORTS.

(A) Fiscal intermediary services in the receipt and accounting of long-term support 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 with long-term support funds.

(2) The CDDP must inform families about long-term support when a child is determined by a qualified services coordinator to be at risk of out-of-home placement. The CDDP must provide accurate, up-to-date information that must include:

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

(b) An overview of common processes encountered in using long-term support, including the long-term support planning process and the regional processes for plan evaluation, review, and funding approval;

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

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

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

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

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

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 to 430.670

411-308-0050 Financial Limits of Long-Term Support
(Adopted 12/28/2009)

(1) In any plan year, long-term support funds used to purchase supports for a child must be limited to the amount of long-term support funds specified in the child's Annual Support Plan.

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

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 to 430.670

411-308-0060 Eligibility for Long-Term Support
(Adopted 12/28/2009)

(1) ELIGIBILITY. The CDDP of a child's county of residence may find a child eligible for long-term support when the child:

> (a) Is determined eligible for developmental disability services by the CDDP;
>
> (b) Is under the age of 18;
>
> (c) Is experiencing a crisis and may be safely served in the family home; and

(d) Is at risk of out-of-home placement, requires long-term support to be maintained in the family home, and does not receive or will stop receiving other DHS-paid in-home or community living services other than state Medicaid plan services, adoption assistance, or short-term assistance, including crisis services provided to prevent out-of-home placement; or

(e) Requires long-term support to return to the family home and resides in a DHS-paid residential service.

(2) CONCURRENT ELIGIBLITY. Children are not eligible for long-term support 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 to 430.670

411-308-0070 Long-Term Support Entry, Duration, and Exit
(Adopted 12/28/2009)

(1) ENTRY. An eligible child may enter long-term support only when long-term support funds are authorized through a regional process specifically to provide supports required to prevent out-of-home placement of the eligible child, or to provide supports required for an eligible child to return to the family home from a community placement. Funds for a child for whom SPD designated funds in family support services to the CDDP by written contract prior to June 30, 2009 that specified the child by name do not need to be reauthorized through a regional process.

(2) DURATION OF SERVICES. Once a child has entered long-term support, 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 supports continue to be necessary to prevent out-of-home placement, the child remains eligible for long-term support, and long-term

support funds are available at the CDDP to continue services. The child's Annual Support Plan must be developed each year and kept current.

(3) CHANGE IN SUPPORTS. All increases in the child's Annual Support Plan, excluding statewide cost of living increases, must be approved through a regional process. Redirection of more than 25% of the long-term support funds in the child's Annual Support Plan to purchase different supports than those originally authorized must be approved through a regional process.

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

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

(b) Contact the new CDDP to negotiate the date on which the long-term support, including responsibility for payments, shall transfer to the new CDDP.

(5) EXIT. A child must leave a CDDP's long-term support:

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

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

(c) When the long-term supports are no longer necessary to prevent out-of-home placement;

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

(e) 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 as required in section (4) of this rule; or

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

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

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

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 to 430.670

411-308-0080 Annual Support Plan
(Adopted 12/28/2009)

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

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

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

(2) The CDDP, the child (as appropriate), and the child's family must develop a written Annual Support Plan for the child as a result of the

planning process prior to purchasing supports with long-term support funds and annually thereafter. The child's Annual Support Plan must include but not be limited to:

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

(b) A description of the supports and the reason the support is necessary to prevent out-of-home placement or to return the child from a community placement outside the family home;

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

(d) The type of provider, quantity, frequency, and per unit cost of supports to be purchased with long-term support funds;

(e) Total annual cost of supports;

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

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

(3) The child's Annual Support Plan or records supporting development of each child's Annual Support Plan must include evidence that:

(a) Long-term support funds are used only to purchase goods or services necessary to prevent the child from out-of-home placement, or to return the child from a community placement to the family home;

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

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

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

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

(4) The services coordinator must obtain and attach a Nursing Care Plan to the child's written Annual Support Plan when long-term support funds are used to purchase care and services requiring the education and training of a nurse.

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

(6) Long-term supports may only be provided after the child's Annual Support Plan is developed in accordance with sections (1)(2)(3)(4) and (5) of this rule, authorized by the CDDP, and signed by the child’s parent or guardian.

(7) The services coordinator must review and reconcile receipts and records of purchased supports authorized by the child's Annual Support Plan and subsequent Annual Support Plan documents, at least quarterly during the plan year.

(8) At least annually or more frequently if required by the region, the services coordinator must conduct and document reviews of the child's Annual Support Plan and resources with the child's family as follows:

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

(b) Record actual long-term support fund 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 need for specific supports or continued use of long-term support funds to purchase supports. This must include a review of the child's continued risk for out-of-home placement.

(9) When the family and eligible child move to a county outside its area of service, the originating CDDP must assist long-term support recipients by:

(a) Continuing long-term support fund payments authorized by the child's Annual Support Plan which is current at the time of the move, if the support is available, until the transfer date agreed upon according to OAR 411-308-0070(4)(b); and

(b) Transferring the unexpended portion of the child's long-term support funds to the new CDDP of residence.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 to 430.670

411-308-0090 Managing and Accessing Long-Term Support Funds
(Temporary Effective 1/1/2010 – 6/30/2010)

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

(2) No child receiving long-term support may concurrently receive services through:

(a) Children's Intensive Behavior Model Waiver;

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

(c) Medically Fragile Children's Model Waiver;

(d) Medically Involved Children's Model Waiver; or

(e) Long-term support from another CDDP unless short-term concurrent services are necessary when a child moves from one CDDP to another and the concurrent supports are arranged in accordance with OAR 411-308-0060(2).

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

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 to 430.670

411-308-0100 Conditions for Long-Term Support Purchases
(Temporary Effective 1/1/2010 – 6/30/2010)

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

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

(a) In settings and under purchasing arrangements and conditions that allow the family to redirect long-term support funds to purchase supports and services from another qualified provider;

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

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

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

(C) Interferes with community participation;

(D) Results in damage to property; or

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

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

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

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

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

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

(a) Mandatory 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 involving the child that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(d) Limits of payment:

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

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

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

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

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

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

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

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

(5) The CDDP must inform families in writing of records and procedures required in OAR 411-308-0030(2)(c)(B) regarding expenditure of long-term support funds. During development of the child's Annual Support Plan, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must delineate responsibility for maintenance of records in written service agreements.

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

(a) A sanction may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with long-term support 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 411-308-0130(1);

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

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

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

(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 (4) of this rule and OAR 411-308-0130; 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 long-term support funds; or

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

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

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

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

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

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

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

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 to 430.670

411-308-0110 Using Long-Term Support Funds for Certain Purchases is Prohibited
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) Long-term support 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 308-1;

(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 308-1; or

(d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 308-1.

(2) Long-term support funds may not be used for:

(a) Services that:

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

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

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

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

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

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

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

(d) Notwithstanding abuse as defined in OAR 411-308-0020, services from 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;

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

(f) Purchase of family vehicles;

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

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

(A) Medical or therapeutic treatments;

(B) Health insurance co-payments and deductibles;

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

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements and vitamins; or

(G) Special diet or treatment supplies not related to incontinence or infection control.

(i) Ambulance services;

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

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

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

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

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

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

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

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

(r) Purchase of services when there is sufficient evidence to believe that the child's parent or guardian, or the service provider chosen by the child's family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's Annual Support Plan, refused to cooperate with record keeping required to document use of

long-term support funds, or otherwise knowingly misused public funds associated with long-term support.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 to 430.670

411-308-0120 Supports Purchased with Long-Term Support Funds
(Adopted 12/28/2009)

(1) When conditions of purchase are met and provided purchases are not prohibited under OAR 411-308-0110, long-term support funds may be used to purchase a combination of the following supports based upon the needs of the child consistent with the child's Annual Support Plan and available funding:

(a) Specialized consultation including behavior consultation and nursing delegation;

(b) Environmental accessibility adaptations;

(c) Family caregiver supports;

(d) Family training;

(e) In-home daily care;

(f) Respite; and

(g) Specialized equipment and supplies.

(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. Behavior consultation services must be documented in a Behavior Support Plan prior to final payment for the services.

(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;

(vi) An assessment of current communication strategies; and

(vii) Identification of possible alternative or replacement behaviors.

(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-aversive interventions that conform to OIS must be utilized. SPD shall not pay a provider to use physical restraints on a child receiving long-term support.

(E) Developing a written Behavior Support Plan consistent with OIS 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. If protective physical intervention techniques are included in the Behavior Support Plan for use by the family, monthly practice of the technique must be observed by an OIS approved trainer.

(c) Behavior consultation does not include:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage; or

(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 Individual 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 long-term support funds when a child requires tasks of nursing care.

(4) 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 determine the appropriate type of adaptation to ensure the health, welfare, and safety of the child; and

(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) 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, including repair of damage caused by the child.

(c) Funding for environmental accessibility adaptations is one time funding that is not continued in subsequent plan years. Funding for each environmental accessibility adaptation must be specifically approved through a regional process to ensure the specific adaptation is necessary to prevent out-of-home placement or to

return the child to the family home, and to ensure that the proposed adaptation is cost effective. Environmental accessibility adaptations may only be included in a child's Annual Support Plan when all other public and private resources for the environmental accessibility adaptation have been exhausted.

(d) The CDDP must ensure that projects for environmental accessibility adaptations involving building renovation or new construction in or around a child's home costing $5,000 or more per single instance or cumulatively over several modifications are approved by SPD before work begins and before final payment is made, are completed or supervised by a contractor licensed and bonded in the State of Oregon, and that steps are taken as prescribed by SPD for protection of SPD's interest through liens or other legally available means.

(e) The CDDP must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure. This does not preclude any reasonable accommodation required under the Americans with Disabilities Act.

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

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

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

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

(6) 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.

(a) Family training services include:

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

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

(I) Be provided by licensed providers including but not limited to psychologists licensed under ORS 675.030, professionals licensed to practice medicine under ORS 677.100, social workers licensed under ORS 675.530, and 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.

(ii) 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.

(i) Conferences, workshops, or group trainings must be prior authorized 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.

(ii) 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.

(b) Funding for family training is one time funding that is not continued in subsequent plan years. Funding for each family training event must be specifically approved through a regional process to ensure the family training event is necessary to prevent out-of-home placement or to return the child to the family home, and to ensure the family training event is cost effective. Family training may only be

included in a child's Annual Support Plan when all other public and private resources for the event have been exhausted.

(7) IN-HOME DAILY CARE. In-home daily care services include the purchase of direct provider support provided to the child in the family home or community 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 or immediately available during the provision of in-home daily care.

(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 – feeding and monitoring intake and output;

(E) Skin care - Dressing changes;

(F) Physical healthcare including delegated nursing tasks;

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

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

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

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

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

(b) In-home daily care services must:

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

(B) Be necessary to resolve the crisis and documented in the child's Annual Support 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 to allow a primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to resolve the crisis;

(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.

(8) RESPITE. Respite services are provided to a child on a periodic or intermittent basis furnished because of the temporary absence of, or need for relief of, the primary caregiver.

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

(A) The family home;

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

(C) A qualified provider’s home. If overnight respite is provided in a qualified provider’s home, the CDDP and the child's parent or guardian must document that the home is a safe setting for the child; or

(D) Disability-related or therapeutic recreational camp.

(b) The CDDP shall not authorize respite services:

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

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

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

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

(E) For vacation travel and lodging expenses; or

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

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

(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) Toys or outdoor play equipment; and

(F) Equipment and furnishings of general household use.

(d) Funding for specialized equipment with an expected life of more than one year is one time funding that is not continued in subsequent plan years. Funding for each specialized equipment purchase must be specifically approved through a regional process to ensure the support is necessary to prevent out-of-home placement or to return the child to the family home, and to ensure the support is cost effective. Specialized equipment may only be included in a child's Annual Support Plan when all other public and private resources for the equipment have been exhausted.

(e) 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. Any equipment or supplies purchased with long-term support funds that are not used according to the child's Annual Support Plan, or according to an agreement securing the state's use, may be immediately recovered.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 to 430.670

411-308-0130 Standards for Providers Paid with Long-Term Support Funds
(Temporary Effective 1/1/2010 – 6/30/2010)

Independent providers, provider organizations, and general business providers paid with long-term support 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 411-308-0120 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 308-1;

(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 308-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 308-1.

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

(d) Not be a parent, adoptive 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 Support 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; and

(i) If transporting the child, 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.

(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.

(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 OIS 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 long-term support 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 long-term support funds must be limited to those within the scope of the general business provider's license. Such licenses include but are not limited to:

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

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

(c) 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 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) 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 Program if vending medical equipment; and

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

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 to 430.670

411-308-0140 Quality Assurance
(Adopted 12/28/2009)

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

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 to 430.670

411-308-0150 Variances
(Adopted 12/28/2009)

(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 shall not be granted to OAR 411-308-0110 and OAR 411-308-0130.

(3) The CDDP requesting a variance must submit to SPD a written variance request utilizing SPD 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 Support 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 to 430.670

Exhibit 308-1
(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