

**DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 308**

**LONG-TERM SUPPORT FOR CHILDREN WITH INTELLECTUAL OR
DEVELOPMENTAL DISABILITIES**

411-308-0010 Statement of Purpose and Principles

(Temporary Effective 7/1/2013 - 12/28/2013)

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

(2) Long-term supports are designed to increase a family's ability to care for a child with an intellectual or developmental disability in the family home. Long-term supports may resolve a 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 and 410.070

Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.670

411-308-0020 Definitions

(Temporary Effective 7/1/2013 - 12/28/2013)

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 308:

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

(2) "Activities of Daily Living (ADL)" mean those personal, functional activities required by a child for continued well-being that are essential for health and safety.

(3) "Annual Support Plan" means the written details of the supports, activities, and resources required for a child to achieve personal outcomes and be supported by the family in the family home. A child's support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an Annual Support Plan. The Annual Support Plan is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. A child's Annual Support Plan is the only plan of care required by the Department for a child receiving long-term supports.

(4) "Behavior Consultant" means a contractor with specialized skills who develops a Behavior Support Plan.

(5) "Behavior Support Plan (BSP)" means a written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow, to cause a child's challenging behaviors to become unnecessary, and to change the provider's own behavior, adjust environment, and teach new skills.

(6) "Behavior Support Services" mean services that are provided to assist with behavioral challenges due to a child's intellectual or developmental disability that prevents the child from accomplishing activities of daily living, instrumental activities of daily living, and health related tasks.

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

(8) "CDDP" means "Community Developmental Disability Program" as defined in this rule.

(9) "Child" means an individual under the age of 18 applying for or determined eligible for long-term support.

(10) "Children's Intensive In-Home Services" mean the services described in:

(a) OAR chapter 411, division 300, Children's Intensive In-Home Services, Behavior Program;

(b) OAR chapter 411, division 350, Medically Fragile Children Services; or

(c) OAR chapter 411, division 355, Medically Involved Children's Program.

(11) "Chore Services" mean the services described in OAR 411-308-0120 needed to maintain a clean, sanitary, and safe environment in a child's home. Chore services include heavy household chores such as washing floors, windows, and walls, tacking down loose rugs and tiles, and moving heavy items of furniture for safe access and egress. Chore services may include yard hazard abatement to ensure the outside of the home is safe for the child to traverse and enter and exit the home.

(12) "Community Developmental Disability Program (CDDP)" means the entity that is responsible for the planning and delivery of services for children with intellectual or developmental disabilities according to OAR chapter 411, division 320. A CDDP operates in a specific geographic service area of the state under a contract with the Department, local mental health authority, or other entity as contracted by the Department.

(13) "Community First Choice State Plan" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.

(14) "Community Nursing Services" mean the services described in OAR 411-308-0120 that include nurse delegation and care coordination for a child living in his or her own home. Community nursing services do not include direct nursing care and are not covered by other Medicaid spending authorities

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

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

(17) "Crisis" means the risk factors described in OAR 411-320-0160 are present for which no appropriate alternative resources are available and a

child meets the eligibility requirements for crisis diversion services in OAR 411-320-0160.

(18) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Seniors and People with Disabilities Division (Division)".

(19) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(20) "Director" means the Director of the Department's Office of Developmental Disability Services, or the Director's designee. The term "Director" is synonymous with "assistant director" and "administrator".

(21) "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.

(22) "Environmental Accessibility Adaptations" mean the physical adaptations as described in OAR 411-308-0120 that are necessary to ensure the health, welfare, and safety of a child in the home, or that enable the child to function with greater independence in the home.

(23) "Exit" means termination or discontinuance of long-term support.

(24) "Family"

(a) Means a unit of two or more persons that includes at least one child with an intellectual or developmental disability where the primary caregiver is:

(A) Related to the child with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

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

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

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

(A) Determining a child's eligibility for long-term supports as a resident in the family home;

(B) Identifying persons who may apply, plan, and arrange for individual supports; and

(C) Determining who may receive family training.

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

(26) "Family Training" means training and counseling services for the family of a child that increase the family's capacity to care for, support, and maintain the child in the home as described in OAR 411-308-0120. Family training includes:

(a) Instruction about treatment regimens and use of equipment specified in the child's Annual Support Plan;

(b) Information, education, and training about the child's intellectual or developmental disability, medical, or behavioral conditions; and

(c) Counseling for the family to relieve the stress associated with caring for a child with an intellectual or developmental disability.

(27) "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.

(28) "Founded Reports" means the Department's 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.

(29) "Functional Needs Assessment (FNAT)" means an assessment that documents the level of need, accommodates a child's participation in service planning, and includes --

(a) Completing a comprehensive and holistic assessment;

(b) Surveying physical, mental, and social functioning; and

(c) Identifying risk factors, choices and preferences, and service needs.

(30) "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.

(31) "Guardian" means a person or agency appointed and authorized by a court to make decisions about services for a child.

(32) "Home and Community-Based Waivered Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with Section 1915(c) and 1115 of the Social Security Act.

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

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

(35) "Individual" means a child with an intellectual or developmental disability applying for or determined eligible for developmental disability services.

(36) "In-Home Daily Care (IHDC)" means Medicaid state plan funded essential supportive daily care as described in OAR 411-308-0120 that is delivered by a qualified provider that enables a child to remain in, or return to, the family home.

(37) "Instrumental Activities of Daily Living (IADL)" mean those activities, other than activities of daily living, required to continue independent living.

(38) "Intellectual Disability" has the meaning set forth in OAR 411-320-0020 and described in OAR 411-320-0080.

(39) "Level of Care" means an assessment completed by a services coordinator has determined a child meets institutional level of care. A child meets institutional level of care for an intermediate care facility for individuals with intellectual or developmental disabilities if --

(a) The child has a condition of an intellectual disability or a developmental disability as defined in OAR 411-320-0020 and meets

the eligibility criteria for developmental disability services as described in OAR 411-320-0080; and

(b) The child has a significant impairment in one or more areas of adaptive functioning. Areas of adaptive functioning include self direction, self care, home living, community use, social, communication, mobility, or health and safety.

(40) "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 intellectual or developmental disabilities who are eligible for long term support 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 intellectual or developmental disabilities who have been placed out of the home.

(41) "Long-Term Support Funds" mean public funds contracted by the Department to the community developmental disability program (CDDP) and managed by the CDDP to assist families with the identification and selection of supports for children with intellectual or developmental disabilities according to the child's Annual Support Plan..

(42) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who comes in contact with and has reasonable cause to believe a child with or without an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(43) "Natural Supports" or "Natural Support System" means the resources available from relatives, friends, significant others, neighbors, roommates, and the community. Services provided by natural supports are resources that are not paid for by the Department.

(44) "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.

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

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

(47) "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. OIS is based on a positive approach that includes methods of effective evasion, deflection, and escape from holding.

(48) "OSIP-M" means Oregon Supplemental Income Program-Medical as defined in OAR 461-101-0010. OSIP-M is Oregon Medicaid insurance coverage for those who meet the eligibility criteria as described in OAR chapter 461.

(49) "Person-Centered Planning" means:

(a) A process, either formal or informal, for gathering and organizing information that helps:

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with a child's needs and preferences.

(50) "Personal Care Services" means assistance with activities of daily living, instrumental activities of daily living, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding.

(51) "Plan Year" means twelve consecutive months from the start date specified on a child's authorized Annual Support Plan.

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

(53) "Protective Physical Intervention (PPI)" means any manual physical holding of, or contact with, a child that restricts the child's freedom of movement. The term "protective physical intervention" is synonymous with "physical restraint".

(54) "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 intellectual or developmental disabilities;

(b) Provides supports 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.

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

(56) "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 regional process 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.

(57) "Respite" means intermittent services as described in OAR 411-308-0120 provided on a periodic basis, but not more than 14 consecutive days, for the relief of, or due to the temporary absence of, a person normally providing supports to a child with an intellectual or developmental disability unable to care for him or herself.

(58) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Department, who plans, procures, coordinates, and monitors long-term support, and acts as a proponent for children with intellectual or developmental disabilities and their families.

(59) "Specialized Equipment and Supplies" mean devices, aids, controls, supplies, or appliances as described in OAR 411-308-0120 that meet applicable standards of manufacture, design, and installation that enables a child to increase the child's abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. Specialized equipment and supplies do not include items not of direct benefit to a child.

(60) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

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

(62) "Support" means the assistance that a child and the child's family require, solely because of the effects of and intellectual or developmental disability, 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 subject to change with time and circumstances.

(63) "Transportation" means services as described in OAR 411-308-0120 that allow a child to gain access to community services, activities, and resources that are not medical in nature.

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

(65) "Volunteer" means any person providing services without pay to support the services provided to a child.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.670

411-308-0030 Long-Term Support Administration and Operation
(Temporary Effective 7/1/2013 - 12/28/2013)

(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 to 192.518, 45 CFR 205.50, 45 CFR 164.512,

Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any Department administrative rules and policies pertaining to service records.

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

(A) Access to records by the Department does not require authorization by the family.

(B) For the purposes of disclosure from non-medical records, all or portions of the information contained in the non-medical record 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) 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 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) When a child is not Medicaid eligible, 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.

(d) 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 Department administrative rule pertaining to fraud and embezzlement.

(e) 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.

(4) DENIAL, TERMINATION, SUSPENSION, OR REDUCTION OF SERVICES FOR MEDICAID RECIPIENTS.

(a) Each time the CDDP takes an action to deny, terminate, suspend, or reduce a child's access to services covered under Medicaid, the CDDP must notify the child's parent or guardian of the right to a hearing and the method to request a hearing. The CDDP must mail the notice by certified mail, or personally serve the notice to the child's parent or guardian 10 days or more prior to the effective date of an action.

(A) The CDDP must use form SDS 0947, Notification of Planned Action, or a comparable Department-approved form for such notification.

(B) This notification requirement does not apply if an action is part of, or fully consistent with the child's Annual Support Plan, and the child's parent or guardian has agreed with the action by signing the Annual Support Plan.

(b) A notice required by subsection (a) of this section must include:

(A) The action the CDDP intends to take;

(B) The reasons for the intended action;

(C) The specific Oregon Administrative Rules that support, or the change in federal or state law that requires, the action;

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

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

(F) A statement that the actions specified in the notice take effect by default if a Department representative does not receive a request for hearing within 45 days from the date that the CDDP mails or personally serves the notice of action;

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

(H) An explanation of the circumstances under which CDDP services are continued if a hearing is requested.

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

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

(e) If a child's parent or guardian requests a hearing before the effective date of the proposed action and requests that the existing services be continued, the Department shall continue the services.

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

(i) The current authorization expires;

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

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

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

(f) The Department may reinstate services if:

(A) The Department takes an action without providing the required notice and the child's parent or guardian requests a hearing;

(B) The Department fails to provide the notice in the time required in this rule and the child's parent or guardian requests a hearing within 10 days of the mailing of the notice of action; or

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

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

(h) The Department representative and the child's parent or legal guardian may have an informal conference, without the presence of

the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the child's parent or guardian to settle the matter;

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

(C) Give the child's parent or guardian an opportunity to review the information that is the basis for that action;

(D) Inform the child's parent or guardian of the rules that serve as the basis for the contested action;

(E) Give the child's parent or guardian and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the child's parent or guardian wishes to have any witness subpoenas issued; and

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

(i) The child's parent or guardian may, at any time prior to the hearing date, request an additional conference with the Department representative. At the Department representative's discretion, the Department representative may grant an additional conference if it facilitates the hearing process.

(j) The Department may provide the child's parent or guardian the relief sought at any time before the final order is issued.

(k) The child's parent or guardian may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal is effective on the date the Department or the Office of Administrative Hearings receives the withdrawal. The Department must issue a final order confirming the withdrawal to the last known address of the child's parent or guardian. The child's parent or guardian may cancel

the withdrawal up to 10 working days following the date the final order is issued.

(l) Proposed and final orders.

(A) In a contested case, the administrative law judge must serve a proposed order to the child's parent or guardian and the Department.

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

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

(5) 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 and 410.070

Stats. Implemented: ORS 427.005, 427.007, and 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

(Temporary Effective 7/1/2013 - 12/28/2013)

(1) In any plan year, support must be limited to the amount of support determined to be necessary by a functional needs assessment and specified in a child's Annual Support Plan. For a child who is not Medicaid eligible, the amount of support specified in the child's Annual Support Plan may not exceed the maximum allowable monthly plan amount published in the Department's rate guidelines in any month during the plan year.

(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 the Department's rate guidelines for costs of frequently-used services.

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

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Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.670

411-308-0060 Eligibility for Long-Term Support

(Temporary Effective 7/1/2013 - 12/28/2013)

(1) STANDARD ELIGIBILITY. In order to be eligible for long-term support, a child must:

(a) Be under the age of 18;

(b) Be eligible for OSIP-M;

(c) Be determined eligible for developmental disability services by the CDDP of the child's county of residence as described in OAR 411-320-0080; and

(d) After completion of an assessment, meet the level of care as defined in OAR 411-308-0020.

(2) CRISIS ELIGIBILITY. When standard eligibility criteria are not met, the CDDP of a child's county of residence may find a child eligible for long-term support when the child --

(a) Is experiencing a crisis as defined in OAR 411-308-0020 and may be safely served in the family home;

(b) Has exhausted all appropriate alternative resources, including but not limited to natural supports and children's intensive in-home services as defined in OAR 411-308-0020;

(c) Does not receive or may stop receiving other Department-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; and

(d) Is at risk of out-of-home placement and requires long-term support to be maintained in the family home; or

(e) Resides in a Department-paid residential service and requires long-term support to return to the family home.

(3) **CONCURRENT ELIGIBILITY.** Children are not eligible for long-term support from more than one CDDP unless the concurrent service:

(a) Is necessary to 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

(Temporary Effective 7/1/2013 - 12/28/2013)

(1) **ENTRY.** An eligible child may enter long-term support when long-term support needs are assessed through an FNAT. Long-term supports must be authorized on an annual basis, prior to the beginning of a new Annual Support Plan.

(2) **DURATION OF SERVICES.** Once a child has entered long-term support, the child and family may continue receiving long-term supports from the 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 and authorized by the Department 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 percent 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 due to either;

(A) The risk of out of home placement no longer exists due to changes in either the child's support needs or the family's ability to provide the support; or

(B) Appropriate alternative resources become available, including but not limited to supports through children's intensive in-home services as defined in OAR 411-308-0020.

(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 and 410.070

Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.670

411-308-0080 Annual Support Plan

(Temporary Effective 7/1/2013 - 12/28/2013)

(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;

(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; and

(c) Includes completing an FNAT using a person-centered planning approach.

(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 required, including the reason the support is necessary. For an initial or annual support plan that is authorized after July 1, 2013, the description must be consistent with the FNAT;

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

(d) A list of personal, community, and public resources that are available to the child and how the resources may be applied to provide the required supports. Sources of support may include waived or state plan services, state general funds, or natural supports.

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

(f) Total annual cost of supports;

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

(h) 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) When the child is not Medicaid eligible, long-term support funds may only be used 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 is 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 as described in 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, 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 and the availability of alternate resources, including eligibility for children's intensive in-home services as defined in OAR 411-308-0020.

(9) When the family and eligible child move to a county outside the 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; 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 and 410.070

Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.670

411-308-0090 Managing and Accessing Long-Term Support Funds
(Amended 8/1/2011)

(1) Funds contracted to a CDDP by the Department 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 the Department's procedures described in these rules.

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

(a) Children's intensive in home services as defined in OAR 411-308-0020;

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

(c) 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 7/1/2013 - 12/28/2013)

(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 and in accordance with the child's Annual Support Plan that meets the 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 choose to receive 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 reporter responsibility to report suspected child abuse;

(b) 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;

(c) 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.

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

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

(f) 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 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 background check upon hiring or authorization of service;

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

(C) Surrendered his or her professional license or 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 Department program;

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

(F) Failed to cooperate with any Department 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 Office within the Department.

(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 the Department, 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 Director.

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

(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 the Department, providers who have previously been terminated or suspended by any Office within the Department may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 and 410.070

Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.670

411-308-0110 Using Long-Term Support Funds for Certain Purchases is Prohibited

(Amended 7/1/2010)

(1) Effective July 28, 2009, long-term support funds may not be used to support, in whole or in part, a provider in any capacity having contact with a recipient of long-term supports who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to employees of a parent, employees of a general business provider, or employees of a provider organization who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(3) 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
(Temporary Effective 7/1/2013 - 12/28/2013)

(1) For an initial or annual support plan that is authorized on or after July 1, 2013, 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) Community First Choice State Plan services:

(A) Specialized consultation including behavior consultation as described in section (3) of this rule;

(B) Community nursing services as described in section (4) of this rule;

(C) Environmental accessibility adaptations as described in section (5) of this rule;

(D) In-home daily care as described in section (6) of this rule;

(E) Respite as described in section (7) of this rule;

(F) Specialized equipment and supplies as described in section (8) of this rule;

(G) Chore services as described in section (9) of this rule; and

(H) Transportation as described in section (10) of this rule.

(b) As a waived service, family training as described in section (11) of this rule.

(2) Family caregiver supports shall not be included in an Annual Support Plan authorized on or after July 1, 2013.

(3) 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 is only 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 may influence the responses that may 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. The Department does not pay a provider to use protective physical intervention 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 Individualized Education Program.

(4) COMMUNITY NURSING SERVICES. Community nursing services as defined in OAR 411-308-0020 include --

(a) Evaluation and identification of supports that minimize health risks, while promoting the child's autonomy and self-management of healthcare;

(b) Medication reviews;

(c) Collateral contact with the services coordinator regarding the child's community health status to assist in monitoring safety and well-being and to address needed changes to the person-centered Annual Support Plan; and

(d) Delegation of nursing tasks to a provider and parent or guardian so that they may safely perform health related tasks.

(5) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS. Environmental accessibility adaptations are 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 intellectual or developmental disability or that are necessary to enable the child to function with greater independence around the family home and in family activities.

(a) Environmental accessibility adaptations include but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation to ensure the health, welfare, and safety of the child;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

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

- (E) An alarm system for doors or windows;
- (F) Protective covering for smoke detectors, light fixtures, and appliances;
- (G) Sound and visual monitoring systems;
- (H) Fencing;
- (I) Installation of ramps, grab-bars, and electric door openers;
- (J) Adaptation of kitchen cabinets and sinks;
- (K) Widening of doorways;
- (L) Handrails;
- (M) Modification of bathroom facilities;
- (N) Individual room air conditioners for a child whose temperature sensitivity issues create behaviors or medical conditions that put the child or others at risk;
- (O) Installation of non-skid surfaces;
- (P) Overhead track systems to assist with lifting or transferring;
- (Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the child;
- (R) Modifications 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 (lift, belts, special safety harnesses, interior alterations such as seats, head, and leg rests, or other unique modifications to keep the child safe in the vehicle); and
- (S) Adaptations to control lights, heat, stove, etc.

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

(d) Environmental modifications must be tied to supporting activities of daily living, instrumental activities of daily living, and health-related tasks as identified in the Plan of Care.

(e) Modifications over \$500 must be completed by a state licensed contractor. Any modification requiring a permit must be inspected and be certified as in compliance with local codes by local inspectors and filed in provider file prior to payment. Environmental modifications must be made within the existing square footage of the family home, except for external ramps, and cannot add to the square footage of the building. Payment to the contractor is to be withheld until the work meets specifications.

(f) 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.

(6) 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 the family home and community, 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 delivered through the most cost effective method as determined by the services coordinator; and

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

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

(D) 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;

(E) Services provided by the family; and

(F) 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 40 hours of care each week and supervise the child

each day with the exception of overnight respite. The 40 hours of care and supervision may not include hours when the child's primary caregiver is sleeping.

(7) 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) A disability-related or therapeutic recreational camp.

(b) The CDDP does 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.

(8) 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 the child's abilities to perform and support activities of daily living, or to perceive, control, or communicate with the environment in which the child lives.

(a) Electronic devices to secure assistance in an emergency in the community and other reminders such as medication minders and alert systems for ADL/IADL supports, or mobile electronic devices. Expenditures for electronic devices of more than \$500 in a plan year require Department approval.

(b) Assistive technology to provide additional security and replace the need for direct interventions to allow self direction of care and maximize independence. Examples include motion sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems.

(A) Limit of \$5000 per year without Department approval.

(B) Any single device or assistance costing more than \$500 must be approved by the Department.

(c) Assistive devices. Examples include durable medical equipment, mechanical apparatus, electrical appliance or information technology device to assist and enhance an individual's independence in performing ADL/IADLs, not covered by other Medicaid programs. Limit of \$5000 per year without Department approval. Any single device or assistance costing more than \$500 must be approved by the department.

(d) 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.

(e) To be authorized by the CDDP, specialized equipment and supplies must be --

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

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

(C) Directly related to the child's disability.

(f) 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.

(g) 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. 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.

(h) 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 the written agreement between the Department and the child's parent or guardian, may be immediately recovered.

(9) CHORE SERVICES. Chore services may be provided only in situations where no one else in the household is capable of either performing or paying for the services and no other relative, caregiver, landlord, community, volunteer agency, or third-party payer is capable of or responsible for providing these services

(10) TRANSPORTATION. Non-medical transportation is provided in order to enable a child to gain access to community services, activities, and resources as specified in the child's Annual Support Plan. Non-medical transportation excludes:

- (a) Transportation provided by family members;
- (b) Transportation used for behavioral intervention or calming;
- (c) Transportation normally provided by schools and by the primary caregiver for children of similar age without disabilities;
- (d) Purchase of any family vehicle;
- (e) Vehicle maintenance and repair;
- (f) Reimbursement for out-of-state travel expenses;
- (g) Ambulance services; or
- (h) Transportation services that may be obtained through other means such as OHP or other public or private resources available to the child.

(11) 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 an intellectual or 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 intellectual or 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 may 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 intellectual or developmental disability, medical, or health conditions.

(i) Conferences, workshops, or group trainings must be prior authorized by the services coordinator and include those that:

(I) Directly relate to the child's intellectual or 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.

Stat. Auth.: ORS 409.050 and 410.070

Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.670

411-308-0130 Standards for Providers Paid with Long-Term Support Funds

(Amended 7/1/2010)

Independent providers, provider organizations, and general business providers paid with long-term support funds must be qualified. At the discretion of the Division, providers who have previously been terminated or suspended by any Department 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 the Department in accordance with OAR 407-007-0200 to 407-007-0370. Any person meeting the definition of subject individual as defined in OAR 407-007-0200 to 407-007-0370 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0200 to 407-007-0370. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes;

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

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

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

(f) 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;

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

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

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

(j) 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) Section (1)(c) of this rule does not apply to employees of a parent, employees of a general business provider, or employees of a provider organization who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

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

(4) 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.

(5) 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.

(6) 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.

(7) 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