

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

**CHAPTER 411  
DIVISION 308**

**IN-HOME SUPPORT FOR CHILDREN  
WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES**

**411-308-0010 Statement of Purpose**

*(Amended 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) In-home supports are designed to increase a family's ability to care for a child with an intellectual or developmental disability in the family home.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

**411-308-0020 Definitions**

*(Temporary Effective 07/01/2014 to 12/28/2014)*

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 308:

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

(2) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(3) "Annual Plan" means the written summary a services coordinator completes for a child, who is not enrolled in waiver or Community First Choice services. An Annual Plan is not an ISP and is not a plan of care for Medicaid purposes.

(4) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances described in OAR 411-308-0120 that are necessary to enable a child to increase the ability of the child to perform ADL and IADLs or to perceive, control, or communicate with the environment in which the child lives.

(5) "Assistive Technology" means the devices, aids, controls, supplies, or appliances described in OAR 411-308-0120 that are purchased to provide additional security for a child and replace the need for direct interventions to enable self-direction of care and maximize independence of the child.

(6) "Attendant Care" means assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, and standby assistance as described in OAR 411-308-0120.

(7) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

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

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

(10) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to the intellectual or developmental disability of a child that prevents the child from accomplishing ADL, IADL, health related tasks, and cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(11) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(12) "Child" means an individual who is less than 18 years of age applying for, or determined eligible for, in-home support.

(13) "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.

(14) "Chore Services" mean the services described in OAR 411-308-0120 that are needed to restore a hazardous or unsanitary situation in the family home to a clean, sanitary, and safe environment.

(15) "Community Nursing Services" mean the nursing services described in OAR 411-308-0120 that focus on the chronic and ongoing health and safety needs of a child living in the family home. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.

(16) "Community Transportation" means the services described in OAR 411-308-0120 that enable a child to gain access to community-based state plan and waiver services, activities, and resources. Community transportation is provided in the area surrounding the family home that is commonly used by people in the same area to obtain ordinary goods and services. The area is not determined by the social or recreational groups or activities of a child.

(17) "Cost Effective" means that a specific service, support, or item of equipment meets the service needs of a child and costs less than, or is

comparable to, other similar service, support, or equipment options considered.

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

(19) "Crisis" means "crisis" as defined in OAR 411-320-0020.

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

(21) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

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

(23) "Employer" means, for the purposes of obtaining in-home support for children through an independent provider as described in these rules, the parent or a person selected by the parent to act on the behalf of the parent to provide the employer responsibilities described in OAR 411-308-0135.

(24) "Employer-Related Supports" mean the activities that assist a family with directing and supervising provision of services described in the ISP for a child. Employer-related supports 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.

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

(26) "Environmental Safety Modifications" means the physical adaptations described in OAR 411-308-0120 that are made to the exterior of the family home as identified in the ISP for a child to ensure the health, welfare, and safety of the child or to enable the child to function with greater independence around the family home.

(27) "Exit" means termination or discontinuance of in-home support.

(28) "Family":

(a) Means a unit of two or more people that includes at least one child with an intellectual or developmental disability where the primary caregiver of the child 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, such as child-rearing, maintenance of the residence, and basic living expenses; and

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

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

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

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

(C) Determining who may receive family training.

(29) "Family Home" means the primary residence for a child that is not under contract with the Department to provide services as a certified foster home for children with intellectual or developmental disabilities or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential support program site. Family home may include a certified child welfare foster home.

(30) "Family Training" means the training services described in OAR 411-308-0120 that are provided to a family to increase the capacity of the family to care for, support, and maintain a child in the family home.

(31) "Fiscal Intermediary" means a person or entity that receives and distributes in-home support funds on behalf of the family of an eligible child according to the ISP or Annual Plan. The fiscal intermediary acts as an agent for the family and performs activities and maintains records related to payroll and payment of employer-related taxes and fees. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

(32) "Founded Reports" means the determination by the Department or Law Enforcement Authority (LEA), 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.

(33) "Functional Needs Assessment":

(a) Means the comprehensive assessment or reassessment that:

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

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; and

(C) Determines the service level.

(b) The functional needs assessment for a child is known as the Child Needs Assessment. The Department incorporates Version B of the Child Needs Assessment dated July 1, 2014 into these rules by this reference. The Child Needs Assessment is maintained by the

Department at: [www.dhs.state.or.us/spd/tools/dd/cm/CNA\\_Child\\_In-home.xls](http://www.dhs.state.or.us/spd/tools/dd/cm/CNA_Child_In-home.xls). Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, OR 97301.

(34) "General Business Provider" means an organization or entity selected by the parent or guardian of an eligible child and paid with in-home support funds that:

- (a) Is primarily in business to provide the service chosen by the 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 person who actually provides support for the child.

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

(36) "IADL" means "instrumental activities of daily living". IADL include activities other than ADL required to enable a child to remain in the family home such as:

- (a) Meal planning and preparation;
- (b) Budgeting;
- (c) Shopping for food, clothing, and other essential items;
- (d) Performing essential household chores;
- (e) Communicating by phone or other media; and
- (f) Participating in the community.

(37) "ICF/IDD" means an intermediate care facility for individuals with intellectual disabilities.

(38) "In-Home Support" means individualized planning and service coordination, arranging for services to be provided in accordance with ISP, 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 in-home support services to live in the family home. In-home 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 family home.

(39) "In-Home Support Funds" mean public funds contracted by the Department to the CDDP and managed by the CDDP to assist a family with the identification and selection of supports for a child with an intellectual or developmental disability according to the ISP or Annual Plan for the child.

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

(41) "Independent Provider" means a person selected by the parent or guardian of a child and paid with in-home support funds to personally provide services to the child.

(42) "Individual" means a person with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(43) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(44) "Intervention" means the action the Department or the designee of the Department requires when an employer fails to meet the employer

responsibilities described in OAR 411-308 -0135. Intervention includes, but is not limited to:

- (a) A documented review of the employer responsibilities described in OAR 411-308 -0135;
- (b) Training related to employer responsibilities;
- (c) Corrective action taken as a result of an independent provider filing a complaint with the Department, the designee of the Department, or other agency who may receive labor related complaints;
- (d) Identifying an employer representative if a person is not able to meet the employer responsibilities described in OAR 411-308 -0135;  
or
- (e) Identifying another representative if the current employer representative is not able to meet the employer responsibilities described in OAR 411-308 -0135.

(45) "ISP" means "Individual Support Plan" as defined in this rule. An ISP includes the written details of the supports, activities, and resources required for a child to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP reflects the services and supports that are important for the child to meet the needs of the child identified through a functional needs assessment as well as the preferences of the child for service providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(46) "Level of Care" means a child meets the following institutional level of care for an ICF/IDD:

- (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 in OAR 411-320-0080 for developmental disability services; and

(b) The child has a significant impairment in one or more areas of adaptive behavior as determined in OAR 411-320-0080.

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

(48) "Natural Supports" mean the parental responsibility for a child who is less than 18 years of age and the voluntary resources available to the child from the relatives, friends, neighbors, and the community that are not paid for by the Department.

(49) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to a child and identifies the diagnoses and health needs of the child and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP and any service plans developed by other health professionals.

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

(51) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b).

(52) "OIS" means the "Oregon Intervention System". OIS is the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior

intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

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

(54) "Parent" means the biological parent, adoptive parent, stepparent, or legal guardian of a child.

(55) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 441.540.

(b) Person centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

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

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

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

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(56) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.

(57) "Plan Year" means 12 consecutive months from the start date specified on the authorized ISP or Annual Plan for a child.

(58) "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.

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

(60) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts freedom of movement.

(61) "Provider" means a person, organization, or business selected by a parent or guardian and paid with in-home support funds to provide support to a child according to the ISP or Annual Plan for the child.

(62) "Provider Organization" means an entity selected by a parent or guardian and paid with in-home support funds that:

(a) Is primarily in business to provide supports for children with intellectual or developmental disabilities;

(b) Provides supports for a child through employees, contractors, or volunteers; and

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

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

(64) "Regional Process" means a standardized set of procedures through which the needs of a child and funding to implement supports 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 Plan for the child. Children who meet the crisis eligibility under OAR 411-308-0060(2) may be granted access to in-home supports through the regional process.

(65) "Relief Care" means the intermittent services described in OAR 411-308-0120 that are provided on a periodic basis for the relief of, or due to the temporary absence of, a primary caregiver.

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

(67) "Services Coordinator" means an employee of a CDDP, Department, or other agency that contracts with the county or Department who provides case management services including, but not limited to, planning, procuring, coordinating, and monitoring in-home support. A services coordinator acts as a proponent for children with intellectual or developmental disabilities and their families' and is the person-centered plan coordinator of a child as defined in the Community First Choice state plan amendment.

(68) "Skills Training" means the activities described in OAR 411-308-0120 that are intended to maximize the independence of a child through training, coaching, and prompting the child to accomplish ADL, IADL, and health-related skills.

(69) "Specialized Medical Supplies" mean the medical and ancillary supplies described in OAR 411-308-0120, such as:

- (a) Necessary medical supplies, specified in an ISP that are not available under the state plan;

(b) Ancillary supplies necessary to the proper functioning of items necessary for life support or to address physical conditions; and

(c) Supplies necessary for the continued operation of augmentative communication devices or systems.

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

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

(72) "Support" means the assistance that a child and a family requires, solely because of the effects of an intellectual or developmental disability on the child, to maintain or increase age-appropriate independence of the child, achieve age-appropriate community presence and participation of the child, and to maintain the child in the family home. Support is subject to change with time and circumstances.

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

(74) "Transition Costs" mean the expenses described in OAR 411-308-0120 required for a child to make the transition to the family home from a nursing facility or ICF/IDD.

(75) "Vehicle Modifications" mean the adaptations or alterations described in OAR 411-308-0120 that are made to the vehicle that is the primary means of transportation for a child in order to accommodate the service needs of the child.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

### **411-308-0030 In-Home Support Administration and Operation**

*(Temporary Effective 07/01/2014 to 12/28/2014)*

(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 in-home support funds on behalf of a child's 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 a child's family who employs a person 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. The CDDP must maintain records of services to children 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.

(a) 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 a child's 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).

(b) SERVICE RECORDS. Records for children who receive in-home 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 the date of the child's enrollment in in-home support;

(B) Records related to receipt and disbursement of in-home 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 the record keeping responsibilities outlined in this rule. Records must include:

(i) Itemized invoices and receipts to record the 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 the acceptable provision of behavior support, nursing, and other professional training and consultation services; and

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

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

(D) A functional needs assessment and other 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 services through a regional process;

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

(G) The services coordinator's correspondence and notes related to plan development and outcomes; and

(H) Family satisfaction information.

(c) 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 in-home 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.

(d) 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 service records) must be retained for a minimum of three years after the close of the contract period, or until audited.

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

### (3) RIGHTS OF THE CHILD.

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

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

### (4) COMPLAINTS.

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

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

(5) NOTIFICATION OF PLANNED ACTION. In the event services are involuntarily denied, reduced, suspended, or terminated, a written advance

Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(6) HEARINGS.

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

(b) The parent of a child may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for involuntary denials, reductions, suspensions, or terminations.

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

(7) 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, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

**411-308-0040 Required In-Home Support**

*(Amended 12/28/2013)*

(1) The CDDP must provide or arrange for the following services to support all children receiving in-home 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 ISP or Annual Plan into practice including help to monitor and improve the quality of personal supports and to assess and revise the child's ISP or Annual 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 in-home support services 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 in-home support funds.

(2) The CDDP must inform families about in-home support when a child is determined eligible for developmental disability services. The CDDP must provide accurate, up-to-date information that must include:

(a) Criteria for entry and for determining how much assistance with supports shall be available, including information about eligibility for in-home supports and how these 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 - in-home support, including the in-home support planning process and the regional processes (as applicable);

(c) Responsibility of providers of in-home 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 an eligible child's ISP or Annual Plan and purchased with in-home 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 in-home 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 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

#### **411-308-0050 Financial Limits of In-Home Support**

*(Temporary Effective 07/01/2014 to 12/28/2014)*

(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 ISP.

(2) For a child who is not Medicaid eligible, support must be limited to:

(a) The amount of support determined to be necessary to prevent out-of-home placement, specified in the child's Annual Plan and may not exceed the maximum allowable monthly plan amount published in the Department's rate guidelines in any month during the plan year;

(b) The amount of time necessary for a child to transition into a waiver or Community First Choice services, if eligible.

(3) Payment rates used to establish the limits of financial assistance for specific service in the child's Annual 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.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

**411-308-0060 Eligibility for In-Home Support**

*(Temporary Effective 07/01/2014 to 12/28/2014)*

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

- (a) Be under the age of 18;
- (b) Be receiving OHP Plus;
- (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 the standard eligibility criteria described in section (1) of this rule are not met, the CDDP of a child's county of residence may find a child eligible for in-home 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 family support as defined in OAR 411-305-0020;
- (c) Does not receive or may stop receiving other Department-paid in-home or community living services other than Medicaid state plan personal care 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 in-home support to be maintained in the family home; or

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

(3) **CONCURRENT ELIGIBILITY.** Children are not eligible for in-home 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, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

#### **411-308-0070 In-Home Support Entry, Duration, and Exit**

*(Temporary Effective 07/01/2014 to 12/28/2014)*

(1) **ENTRY.** An eligible child may enter in-home support when in-home support needs are assessed through a functional needs assessment. In-home supports must be authorized on an annual basis, prior to the beginning of a new ISP or Annual Plan.

(2) **DURATION OF SERVICES.** Once a child has entered in-home support, the child and the child's family may continue receiving in-home supports from the CDDP until the child turns 18. The child must remain eligible for in-home support and in-home support funds must be available at the CDDP and authorized by the Department to continue services. The child's ISP or Annual Plan must be developed each year and kept current.

(3) **CHANGE OF COUNTY OF RESIDENCE.** If a child and the child's family move outside the CDDP's area of service, the originating CDDP

must arrange for services purchased with in-home 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 in-home support, including responsibility for payments, transfers to the new CDDP.

(4) EXIT. A child must leave a CDDP's in-home 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 in-home supports;

(c) For a child eligible via Crisis Eligibility, in-home supports are no longer necessary to prevent out-of-home placement and the child is not eligible via Standard Eligibility.

(d) On the child's 18th birthday;

(e) When the child and the child's 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 (3) 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 ISP or Annual 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 child's family has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's ISP or Annual Plan, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with in-home support.

(g) Any child being exited from in home support services must be given written notice of the intent to terminate service consistent with OAR chapter 411, division 318.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

#### **411-308-0080 Required In-Home Support Services**

*(Temporary Effective 07/01/2014 to 12/28/2014)*

(1) The CDDP must provide 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 in-home 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 the child's 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 a functional needs assessment using a person-centered planning approach.

(2) The CDDP, the child (as appropriate), and the child's family must develop a written ISP or Annual Plan for the child as a result of the planning process prior to purchasing supports with in-home support funds and annually thereafter. The child's ISP or Annual 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. The description must be consistent with the needs identified in the functional needs assessment;

(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 waiver services, state plan services, general funds, or natural supports;

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

(f) The schedule of the child's ISP or Annual Plan reviews.

(g) If accessing services through crisis eligibility, a plan to reduce the need for In Home Supports, which may include assisting the child to access waiver or Community First Choice services, if eligible.

(3) The ISP must also include the following:

(a) Projected costs with sufficient detail to support estimates;

(b) The manner in which services are delivered and the frequency of services;

(c) Service providers;

(d) The child's strengths and preferences;

(e) Individually identified goals and desired outcomes;

(f) The services and supports (paid and unpaid) to assist the child to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(g) The risk factors and the measures in place to minimize the risk factors, including back-up plans;

(h) The identity of the person responsible for case management and monitoring the ISP or Annual Plan; and

(i) A provision to prevent unnecessary or inappropriate care.

(4) The child's ISP or Annual Plan, or records supporting development of each child's ISP or Annual Plan, must include evidence that:

(a) When the child is not Medicaid eligible, in-home 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 in-home 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.

(5) The services coordinator must obtain and attach a Nursing Care Plan to the child's written ISP or Annual Plan when in-home supports are used to purchase care and services requiring the education and training of a nurse.

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

(7) In-home supports may only be provided after the child's ISP or Annual Plan is developed as described in this rule, authorized by the CDDP, and signed by the child's parent or guardian.

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

(9) At least annually, the services coordinator must conduct and document reviews of the child's ISP or Annual Plan and resources with the child's family as follows:

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

(b) Record actual in-home support fund costs;

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

(d) Determine whether changing needs or availability of other resources have altered the need for specific supports or continued use of in-home supports; and

(e) For children who meet the crisis eligibility under OAR 411-308-0060(2), a review of the child's continued risk for out-of-home placement and the availability of alternate resources, including eligibility for waiver and Community First Choice services.

(10) When the eligible child and the child's family moves to a county outside the area of service, the originating CDDP must assist in-home support recipients by:

(a) Continuing in-home supports authorized by the child's ISP or Annual 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 in-home supports to the new CDDP of residence.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

**411-308-0090 Managing and Accessing In-Home Support Funds**  
(Amended 12/28/2013)

(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 ISP or Annual 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 in-home 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) In-home 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(3).

(3) Children receiving in-home support may receive short-term crisis diversion services provided through the CDDP or region. Children receiving in-home support may utilize family support information and referral services, other than direct assistance or immediate access funds, while

receiving in-home 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 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

### **411-308-0100 Conditions for In-Home Support Purchases**

*(Temporary Effective 07/01/2014 to 12/28/2014)*

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

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

(a) In settings and under purchasing arrangements and conditions that enable the family 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 OAR 411-308-0130 governing provider qualifications.

(3) When in-home 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) In-home 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 in-home 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 ISP or Annual 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 in-home support funds. During development of a child's ISP or Annual Plan, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must delineate responsibility for maintenance of records in written service agreements.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

#### **411-308-0110 Using In-Home Support Funds for Certain Purchases is Prohibited**

*(Amended 12/28/2013)*

(1) Effective July 28, 2009, in-home support funds may not be used to support, in whole or in part, a provider in any capacity having contact with a recipient of in-home 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 that remain in the current position for which the employee was hired.

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

(e) 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 ISP or Annual Plan, refused to cooperate with record keeping required to document use of in-home support funds, or otherwise knowingly misused public funds associated with in-home support.

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

**411-308-0120 Supports Purchased with In-Home Support Funds**  
*(Temporary Effective 07/01/2014 to 12/28/2014)*

(1) For an initial or annual ISP, when conditions of purchase are met and provided purchases are not prohibited under OAR 411-308-0110, in-home 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 functional needs assessment, ISP, and available funding:

(a) Community First Choice state plan services:

(A) Behavior Support Services as described in section (2) of this rule;

(B) Community nursing services as described in section (3) of this rule;

(C) Environmental accessibility adaptations as described in section (4) of this rule;

(D) Attendant care as described in section (5) of this rule;

(E) Skills training as described in section (6) of this rule;

(F) Relief care as described in section (7) of this rule;

(G) Assistive devices as described in section (8) of this rule;

(H) Assistive Technology as described in section (9) of this rule;

(I) Chore services as described in section (10) of this rule;

(J) Community transportation as described in section (11) of this rule; and

(K) Transition costs as described in section (12) of this rule.

(b) Home and Community-Based Waiver Services. Individuals who are eligible for OSIPM and meet Level of Care may access Community First Choice Services and the following services.

(A) Family training as described in section (13) of this rule;

(B) Case management as defined in OAR 411-320-0020;

(C) Environmental Safety Modifications as described in section (14) of this rule;

(D) Vehicle modifications as described in section (15) of this rule; and

(E) Specialized Medical Supplies as described in section (16) of this rule.

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

(a) A behavior consultant must:

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

- (i) Areas of a child's family home life that are of most concern for the child and the child's parent;
- (ii) The formal or informal responses the child's family or the provider has used in those areas; and
- (iii) The unique characteristics of the child's family that may influence the responses that may work with the child.

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

- (i) Specific identification of the behaviors or areas of concern;
- (ii) Identification of the settings or events likely to be associated with, or to trigger, the behavior;
- (iii) Identification of early warning signs of the behavior;
- (iv) Identification of the probable reasons that are causing the behavior and the needs of the child that are being met by the behavior, including the possibility that the behavior is:
  - (I) An effort to communicate;
  - (II) The result of a medical condition;
  - (III) The result of an environmental cause; or

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

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

(vi) An assessment of current communication strategies.

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

(i) When interventions in behavior are necessary, the interventions must be done in accordance with positive behavioral theory and practice as defined in OAR 411-308-0010.

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

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

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

(D) Develop emergency and crisis procedures to be used to keep the child and the child's primary caregiver and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to the Oregon Intervention System must be utilized. The use of protective physical intervention

must be part of the Behavior Support Plan for the child. When protective physical intervention is required, the protective physical intervention must only be used as a last resort and the provider must be appropriately trained in OIS;

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

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

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

(b) Behavior support services may include:

(A) Training, modeling, and mentoring the family of a child;

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

(C) Communicating, as authorized by a parent, with school, medical, or other professionals about the strategies and outcomes of the Behavior Support Plan.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

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

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

(E) An assessment in a school setting;

(F) Attendant care; or

(G) Relief care.

### (3) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

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

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

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

(b) Community nursing services exclude direct nursing care.

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

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

(4) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS. Environmental accessibility adaptations are physical adaptations to a child's 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 alarms, light fixtures, and appliances;

(G) Sound and visual monitoring systems;

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

(I) Adaptation of kitchen cabinets and sinks;

(J) Widening of doorways;

(K) Handrails;

(L) Modification of bathroom facilities;

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

(N) Installation of non-skid surfaces;

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

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

(Q) Adaptations to control lights, heat, stove, etc.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the child's 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 child's family home; and

(C) General repair or maintenance and upkeep required for the child's family home, including repair of damage caused by the child.

(D) Adaptations outside of the family home, except for ramps that attach to the family home for the purpose of entering and exiting the family home.

(c) Environmental accessibility adaptations 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 service needs and goals of the child and the determination by the Department of appropriateness and cost-effectiveness.

(d) Environmental accessibility adaptations must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP.

(e) Environmental accessibility adaptations must be completed by a state licensed contractor. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

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

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

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

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

(a) ADL services include, but are not limited to:

(A) Basic personal hygiene - providing or assisting with needs, such as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene;

(B) Toileting, bowel, and bladder care - assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing a child or adjusting clothing related to toileting, emptying a catheter, drainage bag, or assistive device, ostomy care, or bowel care;

(C) Mobility - transfers, and repositioning - assisting with ambulation or transfers with or without assistive devices, turning a child or adjusting padding for physical comfort or

pressure relief, or encouraging or assisting with range-of-motion exercises;

(D) Nutrition - preparing meals and special diets, assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(E) Medication and medical equipment - assisting with ordering, organizing, and administering medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring a child for choking while taking medications, assisting with the administration of medications, maintaining equipment, or monitoring for adequate medication supply;

(F) Delegated nursing tasks;

(G) Cognitive assistance or emotional support provided to a child due to an intellectual or developmental disability - helping the child cope with change and assisting the child with decision-making, reassurance, orientation, memory, or other cognitive functions;

(H) Assistance with necessary medical appointments - help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments;

(I) Observation of the status of a child and reporting of significant changes to a physician, health care professional, or other appropriate person; and

(J) First aid and handling emergencies - addressing medical incidents related to the conditions of a child, such as seizure, aspiration, constipation, or dehydration or responding to the call of the child for help during an emergent situation or for unscheduled needs requiring immediate response.

(b) IADL services include, but are not limited to:

(A) Light housekeeping tasks necessary to maintain a child in a healthy and safe environment - cleaning surfaces and floors, making the child's bed, cleaning dishes, taking out the garbage, dusting, and laundry;

(B) Grocery and other shopping necessary for the completion of other ADL and IADL tasks;

(C) Social support in the community around socialization and participation in the community:

(i) Support with socialization - assisting a child in acquiring, retaining, and improving self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(ii) Support with community participation assisting a child in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses; and

(D) Support with communication - assisting a child in acquiring, retaining, and improving expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills.

(c) Assistance with ADLs and IADLs may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete any of the IADL tasks described in subsection (b) of this section.

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

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

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

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

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

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

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

(d) Attendant care services must:

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

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

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

(e) Attendant care services exclude:

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

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

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

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

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

(F) Services provided by the child's family; and

(G) Home schooling.

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

(6) **SKILLS TRAINING.** Skills training is specifically tied to the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence in supports otherwise provided through state plan or waiver services.

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

(b) Skills training is authorized when:

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

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

(C) Progress towards the anticipated outcomes are measured and the measurements are evaluated by a services coordinator

no less frequently than every six months based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved, the services coordinator must reassess the use of skills training with the individual.

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

#### (7) RELIEF CARE.

(a) Relief care includes two types of care, neither of which may be characterized as daily or periodic services.

(A) Twenty-four hour relief care must be provided in segments of 24-hour units that may be sequential but may not exceed seven consecutive days without permission from the Department.

(B) Hourly relief care is substitute care for the care provided by the primary caregiver.

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

(A) The family home;

(B) A setting licensed or certified by the Department;

(C) The home of a provider. If overnight relief care is provided in the home of a provider, the services coordinator and the parent must document that the home of the provider is a safe setting for the child; or

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

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

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

(B) For more than 7 consecutive overnight stays;

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

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

(E) To pay for room and board.

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

(a) Assistive devices may be purchased with In home support for children funds when the intellectual or developmental disability of a child prevents or limits the independence of the child to assist in areas identified in a functional needs assessment.

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

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

(i) Expenditures for electronic devices are limited to \$500 per plan year.

(ii) A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(B) Assistive devices not covered by other Medicaid programs to assist and enhance the independence of a child in

performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(i) Expenditures for assistive devices are limited to \$5,000 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

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

(c) Assistive devices 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.

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

(A) Not covered by the Medicaid State Plan, OHP and private insurance;

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

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

(e) Assistive devices exclude:

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

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

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

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

(E) Toys or outdoor play equipment; and

(F) Equipment and furnishings of general household use.

(f) Funding for assistive devices with an expected life of more than one year is one time funding that is not continued in subsequent plan years. Assistive devices may only be included in an ISP when all other public and private resources have been exhausted.

(g) A services coordinator must secure use of assistive devices costing more than \$500 through a written agreement between the Department and the parent that specifies the time period the item is to be available to the child and the responsibilities of all parties if the item is lost, damaged, or sold within that time period. The Department may immediately recover any assistive devices purchased with In home support for children funds that are not used according to the ISP for the child or according to the written agreement between the Department and the parent.

(h) Assistive devices must meet applicable standards of manufacture, design, and installation.

## (9) ASSISTIVE TECHNOLOGY.

(a) Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems.

(A) Expenditures for assistive technology are limited to \$5,000 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

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

(b) Assistive technology 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.

(c) To be authorized by a services coordinator, assistive technology must be:

(A) Not covered by the Medicaid State Plan, OHP and private insurance;

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

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

(d) Assistive technology excludes:

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

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

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

(D) Items that are considered unsafe for a child; and

(E) Equipment and furnishings of general household use.

(e) Funding for assistive technology with an expected life of more than one year is one time funding that is not continued in subsequent plan years. Assistive technology may only be included in an ISP when all other public and private resources have been exhausted.

(f) A services coordinator must secure use of assistive technology costing more than \$500 through a written agreement between the Department and the parent that specifies the time period the item is to be available to the child and the responsibilities of all parties if the item is lost, damaged, or sold within that time period. The Department may immediately recover any assistive technology purchased with In home support for children funds that is not used according to the ISP

of the child or according to the written agreement between the Department and the parent.

(g) Assistive technology must meet applicable standards of manufacture, design, and installation.

(10) CHORE SERVICES. Chore services may be provided only in situations where no one else in the family home is able 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.

(a) Chore services include heavy household chores such as --

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

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

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

(11) COMMUNITY TRANSPORTATION.

(a) Community transportation services include, but are not limited to:

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

(B) Reimbursement on a per-mile basis for transporting an individual to accomplish ADL, IADL, or a health related task as identified in an ISP; or

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

(b) Mileage reimbursement is limited to the geographic area surrounding the family home that is commonly used by people in the

same area to obtain goods and services. The geographic area is not determined by the social or recreational groups or activities of a child.

(c) Community transportation excludes:

- (A) Transportation provided by family members;
- (B) Transportation used for behavioral intervention or calming;
- (C) Transportation normally provided by schools;
- (D) Transportation normally provided by a primary caregiver for a child of similar age without disabilities;
- (E) Transportation to obtain medical or non-medical items that may be delivered by a supplier or sent by mail order without cost;
- (F) Purchase or lease of a vehicle;
- (G) Routine vehicle maintenance and repair;
- (H) Reimbursement for out-of-state travel expenses;
- (I) Ambulance services or medical transportation;
- (J) Transportation services that may be obtained through other means, such as OHP or other public or private resources available to the child; and
- (K) Costs for transporting a person other than the child.

(d) Community transportation services must be prior authorized by a services coordinator and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides identified by the functional needs assessment, prior authorized by the services coordinator and documented in the ISP.

(12) TRANSITION COSTS.

(a) Transition costs are limited to individuals transitioning from a nursing facility, ICF/IDD, or acute care hospital to a home or community-based setting where the individual resides.

(b) Transition costs are based on an individual's assessed need determined during the person-centered service planning process and must support the desires and goals of the individual receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The Department's approval is based on the individual's need and the Department's determination of appropriateness and cost-effectiveness.

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

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

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

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

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

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

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

(a) Family training services include:

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

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

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

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

(ii) Conference and workshop costs exclude:

(I) 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) Family training services exclude:

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

(B) Training for a paid provider;

(C) Legal fees;

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

(E) Vocational training for family members; and

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

#### (14) ENVIRONMENTAL SAFETY ADAPTATIONS

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

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

(c) Environmental safety modifications exclude:

(A) Large gates such as automobile gates;

(B) Costs for paint and stain;

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

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

(d) Environmental safety 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 service needs and goals of the child and the determination by the Department of appropriateness and cost-effectiveness.

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

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

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

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

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

#### (15) VEHICLE MODIFICATIONS.

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

(b) Vehicle modifications exclude:

(A) Adaptations or improvements to a vehicle that are of general utility and are not of direct medical or remedial benefit to a child;

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

(C) Routine vehicle maintenance and repair.

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

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

(16) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to a child under section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. 1401 et seq.). Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through the waiver, OHP or Medicaid state plan services.

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

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

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

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

(d) The services coordinator determines, with a behavior consultant, that the child needs two staff present at one time to ensure the safety of the child and others. Prior to approval, the services coordinator must determine that a caregiver, including the parent, has been trained in behavior management and that all other feasible recommendations from the behavior consultant and the services coordinator have been implemented.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

## **411-308-0130 Standards for Providers Paid with In-Home Support Funds**

*(Temporary Effective 07/01/2014 to 12/28/2014)*

Independent providers, provider organizations, and general business providers paid with in-home support funds must be qualified. At the discretion of the Department, providers who have previously been terminated or suspended by the Department or Oregon Health Authority may not be authorized as providers of service. Providers must meet the following qualifications:

(1) **PERSONAL SUPPORT WORKER QUALIFICATIONS.** Each personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(2) Each independent provider who is not a personal support worker who is paid as a contractor or a self-employed person must:

(a) Be at least 18 years of age;

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

(A) Prior background check approval for another Department provider type is inadequate to meet background check requirements for personal support worker enrollment.

(B) Background check approval is effective for two years from the date a personal support worker is hired or contracted with to provide in-home services, except in the following circumstances:

(i) Based on possible criminal activity or other allegations against the personal support worker, a new fitness

determination is conducted resulting in a change in approval status; or

(ii) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the personal support worker.

(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 ISP or Annual Plan, with such demonstration confirmed in writing by the child's parent or guardian, 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 Office of Inspector General's list of excluded or debarred providers (<http://exclusions.oig.hhs.gov/>); and

(j) If transporting the child, have a valid driver's license and proof of insurance, as well as any other license or certification that may be required under state and local law, depending on the nature and scope of the transportation.

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

(3) 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.

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

(5) 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.

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

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

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

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

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least

one year of experience with individuals who present difficult or dangerous behaviors; or

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

(7) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION. A provider organization certified, licensed, and endorsed under OAR chapter 411, division 325 for 24-hour residential services, or licensed under OAR chapter 411, division 360 for adult foster homes, or certified and endorsed under OAR chapter 411, division 345 for employment and alternatives to employment services or OAR 411-328-0550 to 411-328-0830 for supported living services, may not require additional certification as an organization to provide relief care, attendant care, skill training, community transportation, or behavior consultation.

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

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

(B) Provide services according to ISPs; and

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

(b) Provider organizations must assure that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with in home funds meet the standards for qualification of independent providers described in OAR 411-308-0130 Sections 2, 3, 4, 5, and 6.

(8) General business providers must hold any current license appropriate to function required by Oregon and federal laws and regulation. Services purchased with in-home 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) For a home health agency, a license under ORS 443.015;
- (b) For an in-home care agency, a license under ORS 443.315;
- (c) For providers of environmental accessibility adaptations involving building modifications or new construction, a current license and bond as a building contractor as required by either OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractors Board), as applicable;
- (d) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of a child, and developing cost effective plans to make homes safe and accessible;
- (e) For vendors and medical supply companies providing assistive devices, a current retail business license, including enrollment as Medicaid providers through the Division of Medical Assistance Programs if vending medical equipment; and
- (f) A current business license for providers of personal emergency response systems.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

#### **411-308-0135 Standards for Employers**

*(Temporary Effective 07/01/2014 to 12/28/2014)*

(1) EMPLOYEE - EMPLOYER RELATIONSHIP. The relationship between an independent provider and a parent, or a person selected by the parent to act on the behalf of the parent to provide the employer responsibilities described in section (4)(a) of this rule, is that of employee and employer.

(a) A personal support worker who is not an independent contractor must have an employer of record. The Department may not act as the employer of record.

(b) Independent providers, including personal support workers, are not state, CDDP, or brokerage employees.

(2) JOB DESCRIPTION. The employer must create and maintain a job description for an independent provider that is in coordination with the services authorized in the ISP.

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

(4) EMPLOYER RESPONSIBILITIES.

(a) For a child to be eligible for In home support for children provided by an employed personal support worker an employer must demonstrate the ability to:

(A) Locate, screen, and hire a qualified independent provider;

(B) Supervise and train the independent provider;

(C) Schedule work, leave, and coverage;

(D) Track the hours worked and verify the authorized hours completed by the independent provider;

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

(F) Discharge an unsatisfactory independent provider.

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

- (A) Independent provider complaints;
- (B) Multiple complaints from an independent provider requiring intervention from the Department;
- (C) Frequent errors on time sheets, mileage logs, or other required documents submitted for payment that results in repeated coaching from the Department;
- (D) Complaints to Medicaid Fraud involving the employer; or
- (E) Documented observation by the Department of services not being delivered as identified in an ISP.

(c) The Department may require intervention as defined in OAR 411-300-0110 when an employer has demonstrated difficulty meeting the employer responsibilities described in subsection (a) of this section.

(d) A child may not receive In Home Support for Children services provided by an independent provider if, after appropriate intervention and assistance, an employer is not able to meet the employer responsibilities described in subsection (a) of this section. (e) The child may receive In Home Support for Children services provided by a provider organization or general business provider, when available.

#### (5) DESIGNATION OF EMPLOYER RESPONSIBILITIES.

(a) A parent not able to meet all of the employer responsibilities described in section (4)(a) of this rule must:

(A) Designate an employer representative in order for the child to receive or continue to receive In home support for children provided by an independent provider; or

(B) Select a provider organization or general business provider to provide In home support for children.

(b) A parent able to demonstrate the ability to meet some of the employer responsibilities described in section (4)(a) of this rule must:

(A) Designate an employer representative to fulfill the responsibilities the parent is not able to meet in order for the child to receive or continue to receive In home support for children provided by an independent provider; and

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

(c) When an employer representative is not able to meet the employer responsibilities described in section (4)(a) or the qualifications in section (6)(c) of this rule, the parent must:

(A) Designate a different employer representative in order for the child to receive or continue to receive In home support for children provided by an independent provider; or

(B) Select a provider organization or general business provider to provide In home support for children.

#### (6) EMPLOYER REPRESENTATIVE.

(a) A parent may designate an employer representative to act on behalf of the parent to meet the employer responsibilities described in section (4)(a) of this rule.

(b) If an independent provider is selected by the parent to act as the employer, the parent must seek an alternate employer for purposes of the employment of the independent provider. The alternate employer must:

(A) Track the hours worked and verify the authorized hours completed by the independent provider; and

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

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

- (A) A founded report of child abuse or substantiated abuse;
- (B) Participated in billing excessive or fraudulent charges; or
- (C) Failed to meet the employer responsibilities in section (4)(a) or (6)(b) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (4)(a) or (6)(b).

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

#### (7) NOTICE.

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

- (A) The Department denies, suspends, or terminates an employer from performing the employer responsibilities described in sections (4)(a) or (6)(b) of this rule; and
- (B) The Department denies, suspends, or terminates an employer representative from performing the employer responsibilities described in section (4)(a) or (6)(b) of this rule because the employer representative does not meet the qualifications in section (6)(c) of this rule.

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

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

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

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

(c) The hearing rights described in OAR chapter 411, division 318 apply when a denial, suspension, or termination of an employer results in the Department denying, suspending, or terminating a child from In home support for children.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662-670

#### **411-308-0140 Quality Assurance**

*(Amended 12/28/2013)*

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

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

#### **411-308-0150 Variances**

*(Amended 12/28/2013)*

(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 shall result in services or systems that meet or exceed the standards in these rules; or

(c) If there are other extenuating circumstances.

(2) Variances are not granted for OAR 411-308-0110 and OAR 411-308-0130.

(3) The CDDP requesting a variance must submit a written application to the Department 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 ISP or Annual Plan.

(4) The Department may approve or deny the variance request.

(5) The Department's decision shall be sent to the CDDP and to all relevant Department 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 Department's director, whose decision is final.

(7) The Department shall determine the duration of the variance.

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

Stat. Auth.: ORS 409.050 and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670