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

CHAPTER 411
DIVISION 350

MEDICALLY FRAGILE CHILDREN SERVICES

411-350-0010 Purpose
(Amended 3/1/2009)

The rules in OAR chapter 411, division 350 establish the policy of, and prescribe the standards and procedures for, the provision of medically fragile children (MFC) services. These rules are established to ensure that MFC services augment and support independence, empowerment, dignity, and development of medically fragile children through the provision of flexible and efficient services to eligible families. MFC services are exclusively intended to enable a child who is medically fragile to have a permanent and stable familial relationship. MFC services are intended to supplement the natural supports and services provided by the family and provide the support necessary to enable the family to meet the needs of caring for a medically fragile child.

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

411-350-0020 Definitions
(Temporary Effective 1/1/2010 – 6/30/2010)

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

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

(3) "Aide" means a nonlicensed caregiver who may or may not be a certified nursing assistant.

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

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

(6) "Child" means an individual who is under the age of 18 and eligible for medically fragile children services.

(7) "Clinical Criteria (Form DHS-0519)" means the assessment tool used by the Seniors and People with Disabilities Division to evaluate the intensity of the challenges and care needs of medically fragile children.

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

(9) "Delegation" means that a registered nurse authorizes an unlicensed individual to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after the registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047. Delegation by physicians is also allowed.

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

(11) "Family Home" means the residence of a child that may, for the purpose of these rules, include a certified foster home.

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

(13) "Grievance" means a process by which an individual may air complaints and seek remedies.

(14) "Hospital Model Waiver" means the waiver program granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on children living in the family home who otherwise would have to be served in a hospital if the waiver program was not available.

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

(16) "Medicaid Fair Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a Medicaid service. This is a formal process required by federal law (42 CFR 431.200-250). A Medicaid Fair Hearing is also known as a contested case hearing.

(17) "Medically Fragile Children (MFC)" means children, who have a health impairment that requires long term, intensive, specialized services on a daily basis and who have been found eligible for medically fragile children services by the Seniors and People with Disabilities Division.

(18) "Medically Fragile Children's Unit (MFCU)" means the program for medically fragile children administered by the Department of Human Services, Seniors and People with Disabilities Division.

(19) "Nurse" means an individual who holds a valid, current license from the Oregon Board of Nursing as a registered nurse (RN) or licensed practical nurse (LPN).

(20) "Nursing Care Plan" means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of a child, and how those needs shall be met. The nursing care plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or primary caregiver. When a nursing care plan exists, it becomes a part of the plan of care.

(21) "Nursing Tasks or Services" mean the care or services that require the education and training of a licensed professional nurse to perform. Nursing tasks or services may be delegated.

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

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

(24) "Plan of Care" means a written document developed for each eligible child by the service coordinator and the primary caregiver that describes the individual needs of the child, the needs and resources of the family that impact the child, and how those individual needs shall be met with family and public resources. The plan of care includes the nursing care plan when one exists.

(25) "Primary Caregiver" means the parent or foster provider that provides the direct care of the child at the times that a paid provider is not available.

(26) "Provider or Performing Provider" means an individual who meets the requirements of OAR 411-350-0080 that is qualified to receive payment from the Seniors and People with Disabilities Division for in-home daily care. Providers work directly with medically fragile children. Providers may be employees of billing providers, employees of the parent, or independent contractors.

(27) "Respite" means intermittent services provided on a periodic basis for the relief of, or due to the temporary absence of, the primary caregiver.

(28) "Service Budget" means the monthly dollar amount allotted for the care of the child based on the clinical criteria level of care determination. The service budget consists of in-home care and, if the child is on a waiver, waivered services. Service budgets increase or decrease in direct relationship to the increasing or decreasing clinical criteria score.

(29) "Service Coordinator" means an employee of the Seniors and People with Disabilities Division who ensures a child's eligibility for medically fragile children services and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

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

(31) "Specialized Diet" means specially prepared or particular types of food needed to sustain a child in the family home.

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

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

(34) "These Rules" means the rules in OAR chapter 411, division 350.

(35) "Waivered Services" mean a menu of disability related services and supplies, beyond in-home daily care and the Oregon Health Plan, that are specifically identified by the Title XIX Centers for Medicare and Medicaid Services Waiver.

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

411-350-0030 Eligibility
(Amended 3/1/2009)

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

(a) Be eligible to receive Title XIX (Medicaid) or Title XXI (CHIPS) services;

(b) Be a U.S. citizen;

(c) Be under the age of 18;

(d) Score 50 or greater on the clinical criteria and have a status of medical need that is likely to last for more than two months;

(e) Reside in the family home; and

(f) Be capable of being safely served in the family home. This includes, but is not limited to, the primary caregiver demonstrating the willingness, skills, and ability to provide the direct care, not paid for in

the plan of care, as determined by the service coordinator within the limitations of OAR 411-350-0050.

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

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

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

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

(3) REDETERMINATION. SPD shall redetermine a child's eligibility for MFC services using the clinical criteria at a minimum of every six months, or as the child’s status changes.

(4) TRANSITION. A child who meets the following criteria shall begin a transition period to phase out of MFC services within 60 days and at the end of the 60 days transition period, shall no longer be eligible to receive MFC services:

(a) The child has been previously eligible for MFC services;

(b) The needs of the child have decreased; and

(c) The score on the clinical criteria remains at less than 30 during the transition period.

(5) WAIT LIST. SPD may place a child eligible for MFC services on a wait list, based on the date of referral, if the allowable numbers of children on the Hospital Model Waiver are already being served. State plan services are available for a child with Medicaid services in place.

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

411-350-0040 Plan of Care
(Amended 3/1/2009)

(1) To develop the plan of care, the service coordinator must assess the individual service needs of the child and must interview the parent, other caregivers, or when appropriate, other interested individuals. The assessment must identify:

(a) The services for which the child is currently eligible;

(b) The services currently being provided; and

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

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

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

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

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

(d) The number of hours of MFC services authorized for the child; and

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

(3) The service coordinator must prepare a plan of care that includes:

(a) The maximum hours of authorized provider services;

(b) The annual service budget;

(c) The estimated number of hours that an aide is authorized and the number of hours that a licensed nurse is authorized;

(A) RN hours may not be authorized when an LPN can safely perform the duties.

(B) RN or LPN hours may not be authorized when an aide can safely perform the duties.

(d) The date of the next planned review that, at a minimum, must be completed within 365 calendar days of the last plan of care or more frequent if the child's medical status changes; and

(e) The nursing care plan, when one exists.

(4) The parent must review the plan of care prior to implementation.

(5) The parent and the service coordinator must sign the plan of care and a copy must be provided to the parent.

(6) The service coordinator must reflect significant changes in the needs of the child in the plan of care, as they occur, and provide a copy of the revised plan of care to the parent.

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

411-350-0050 Scope and Limitations of MFC Services
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) MFC services are intended to support, not supplant, the natural supports supplied by the primary caregiver. The primary caregiver is expected to provide a minimum of 40 hours per week of the child's care. MFC services are not available to replace services provided by the primary caregiver or to replace other governmental or community services.

(2) MFC services may include, for a child on the Hospital Model Waiver, a combination of the following services based upon the needs of the child as determined by the service coordinator and as consistent with the child's plan of care:

(a) In-home daily care;

(b) Environmental accessibility adaptations; or

(c) Goods, services, and supplies.

(3) IN-HOME DAILY CARE (IHDC). IHDC services may include a combination of assistance with ADLs, nursing services, or other supportive services provided by qualified providers. The extent of the IHDC services may vary, but the extent of service is limited as described in this rule.

(a) SPD shall only authorize IHDC service hours that support a parent in their primary caregiving role.

(b) IHDC services include:

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

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

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

(D) Nutrition - Preparing meals, special diets, gastrostomy feedings, monitoring intake and output, and feeding;

(E) Skin care - Dressing changes and ostomy care;

(F) Respiratory - Monitoring and administering oxygen, applying and adjusting ventilators and other respiratory equipment, providing inhalation therapies, and monitoring and responding to apnea monitors and oximeters;

(G) Cardiovascular - Monitoring of vital signs, and monitoring, replacement, and flushing of vascular access sites;

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

(I) Other nursing or personal care tasks or services.

(c) When any of the IHDC services listed in section (3)(b) of this rule are essential to the health and welfare of the child and listed in the job description signed by the parent and paid provider, the provider may provide the following supportive services:

(A) Housekeeping tasks necessary to maintain a healthy and safe environment for the child;

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

(C) Arranging for necessary medical appointments;

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

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

(d) The service coordinator shall base the number of IHDC service hours upon the projected amount of time to perform the specified assistance for the child, for which the child must be physically present. IHDC service hours may be spread throughout the time authorized in the billing form or used in large blocks of time as the parent determines. IHDC service hours may only be used when the child is physically residing in the family home.

(e) IHDC services must:

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

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

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

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

(f) SPD does not authorize IHDC service hours:

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

(B) For the purpose of allowing a parent to work or attend school.

(4) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

(a) SPD shall authorize environmental accessibility adaptations when:

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

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

(C) Provided in accordance with applicable state or local building codes by licensed contractors.

(b) Environmental accessibility adaptations exclude:

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

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

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

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

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

(a) Specialized medical equipment and supplies. Specialized medical equipment and supplies may include, among others, communication devices, adaptive clothing, adaptive eating equipment, or adaptive sensory or habilitation devices or supplies. Specialized medical equipment and supplies funded by OHP are excluded.

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

(c) Homemaker. Homemaker services consist of general household activities to allow the primary caregiver time to care for the child. SPD shall not authorize homemaker services if the child receives paid IHDC of 16 hours or more per day regardless of the type of service provider.

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

(e) Non-medical transportation. Non-medical transportation is provided in order to enable a child to gain access to community services, activities, and resources as specified in the plan of care.

Non-medical transportation excludes transportation provided by family members. Non-medical transportation does not replace medical transportation furnished or reimbursed by OHP.

(f) Family training. Funding for family training is included in the monthly service budget as calculated by the service coordinator. Family training services include services that increase the primary caregiver's capacity to care for the child.

(A) Conference or workshop registrations.

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

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

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

(ii) Travel and lodging expenses are excluded.

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

(B) Counseling services.

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

(I) Be provided by licensed mental health providers;

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

(III) Be short term; and

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

(ii) Counseling services are excluded for:

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

(II) General marriage counseling;

(III) Therapy to address primary caregiver or other family members' psychopathology; or

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

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

(h) Specialized diets. A specialized diet is in addition to meals a primary caregiver would provide and specific to a child's medical condition or diagnosis. Specialized diet services include registered dietician services. A specialized diet must be ordered by a physician and monitored at least annually and as necessary by a dietician. SPD shall not authorize food that constitutes a full nutritional regime.

(i) Other. SPD shall authorize other goods, services, and supplies for payment if:

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

(B) Included in an approved plan of care;

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

(D) Cost effective;

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

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

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

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

(7) MFC services for a child not on the Hospital Model Waiver are limited to IHDC services only.

(8) All MFC services authorized by SPD must be included in a written plan of care in order to be eligible for payment.

(9) The plan of care must use the most cost effective services for safely meeting the child's needs as determined by the service coordinator.

(10) SERVICE LEVELS. SPD shall base the average monthly service budget for the MFC services authorized in the plan of care on the child's service level as follows:

(a) Level I.

(A) A child who is eligible for level I services must:

(i) Be ventilator-dependent for 20 or more hours per day;

(ii) Have a score on the clinical criteria of 75 or greater; and

(iii) Require that the provider or primary caregiver be awake for the full 24 hours.

(B) A child must be ventilator-dependent 24 hours per day for the maximum service budget to be allowed.

(b) Level II.

(A) A child who is eligible for level II services must:

(i) Be ventilator-dependent for 14 to 20 hours per day;

(ii) Have a score on the clinical criteria between 70 and 74; and

(iii) Require the provider or primary caregiver to remain awake for the full 24 hours.

(B) A child must be ventilator-dependent 20 hours per day for the maximum service budget to be allowed.

(c) Level III.

(A) A child who is eligible for level III services must:

(i) Be ventilator-dependent for six to 13 hours per day;

(ii) Have a score on the clinical criteria between 65 and 69; and

(iii) Require the provider or primary caregiver to remain awake for the full 24 hours.

(B) A child must be ventilator-dependent 13 hours per day for the maximum service budget to be allowed.

(d) Level IV.

(A) A child who is eligible for level IV services must:

(i) Be ventilator-dependent for up to six hours per day;

(ii) Have a score on the clinical criteria between 60 and 64; and

(iii) Require the provider or primary caregiver to remain awake for the full 24 hours.

(B) A child must be ventilator-dependent six hours per day for the maximum budget to be allowed.

(e) Level V. A child who is eligible for level V services must:

(A) Have a score on the clinical criteria between 50 and 59; and

(B) Require close proximity of the provider or primary caregiver to monitor for the full 24 hours.

(f) Level VI. A child who is eligible for level VI services must:

(A) Have a score on the clinical criteria less than 50;

(B) Meet the other eligibility criteria in OAR 411-350-0030; and

(C) Not have been transitioned out of MFC services.

(11) EXCEPTIONS. Exceptions, not to exceed 60 consecutive days without SPD supervisor review and approval, shall only be authorized by SPD in the following circumstances:

(a) To prevent the child's hospitalization.

(b) To provide initial teaching of new care needs.

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

(12) SPD shall only authorize MFC services to enable the primary caregiver to meet the needs of caring for the child. All MFC services funded by SPD must be based on actual and customary costs related to best practice standards of care for children with similar disabilities.

(13) When multiple children in the same family home or setting qualify for MFC services, the same primary caregiver must provide services to all qualified children if services may be safely delivered by a single primary caregiver, as determined by the service coordinator.

(14) SPD shall not pay for MFC services that are:

(a) Notwithstanding abuse as defined in ORS 419B.005, abusive, aversive, or demeaning;

(b) Experimental;

(c) Illegal, including crimes identified in OAR 411-350-0080(1)(d);

(d) Determined unsafe for the general public by recognized child and consumer safety agencies;

(e) Not necessary or cost effective;

(f) Educational services for school-age children, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills;

(g) Services or activities that the legislative or executive branch of Oregon government has prohibited use of public funds;

(h) Medical treatments; or

(i) Services or supplies provided by private health insurance or OHP.

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

411-350-0060 Denial of Services, Amount of Services, or Eligibility
(Renumbered to OAR 411-350-0118)

411-350-0070 Scope and Limitations of In-Home Daily Care Services
(Repealed 3/1/2009) Rule text moved to OAR 411-350-0050

411-350-0080 Standards for Providers
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) A provider must:

(a) Be at least 18 years of age;

(b) Maintain a drug-free work place;

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

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

(A) Of a crime listed in Exhibit 350-1;

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

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 350-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 350-1.

(e) Not be a parent, step parent, foster provider, or legal guardian of the child; and

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

(2) A provider who is providing IHDC services as a nurse must have:

(a) A current Oregon nursing license; and

(b) Be in good standing with appropriate professional associations and boards.

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

(4) If the provider or billing provider is an independent contractor during the terms of the contract, the provider or billing provider must maintain in force, at the providers own expense, professional liability insurance with a combined single limit of not less than $1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(a) The provider or billing provider must provide written evidence of insurance coverage to SPD prior to beginning work.

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

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

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

(a) Current, valid, non-restricted Oregon nurses' licenses for each employee who is providing services as a nurse;

(b) Current criminal records checks on each employee who provides services in a family home that shows the employee has no disqualifying criminal convictions, including crimes as described in OAR 411-350-0080(1)(d);

(c) Professional liability insurance that meets the requirements of section (4) of this rule; and

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

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

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

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

411-350-0090 Prior Authorization for In-Home Daily Care
(Repealed 3/1/2009) Rule text moved to OAR 411-350-0050

411-350-0100 Documentation Needs for MFC Services
(Amended 3/1/2009)

(1) Original, accurate timesheets of MFC services, dated and signed by the provider after the services are provided, must be maintained and submitted to SPD with any request for payment for services.

(2) Requests for payment for MFC services must:

(a) Include an original copy of the billing form indicating prior authorization for the services;

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

(c) Be signed by the primary caregiver after the services were delivered, verifying that the services were delivered as billed.

(3) Documentation of provided MFC services must be provided to the service coordinator upon request and maintained in the family home or the place of business of the provider of services. SPD shall not pay for services unrelated to the child's disability as outlined in the plan of care.

(4) A nursing care plan must be developed within seven days of the initiation of MFC services and submitted to SPD for approval when IHDC services are provided by a nurse.

(a) The nursing care plan must be reviewed, updated, and resubmitted to SPD in the following instances:

(A) Every six months;

(B) Within seven working days of a change of the registered nurse who writes the nursing care plan;

(C) With any request for authorization of an increase in hours of service; or

(D) After any significant change of condition. Examples of significant changes of condition include, but are not limited to, hospital admission or change in health status.

(b) The provider must share the nursing care plan with the parent.

(5) IHDC services provided by a nurse must be documented and maintained in a format acceptable to SPD, contain information required by SPD, and submitted to SPD upon request.

(6) Delegation, teaching, and assignment of nursing tasks and performance of nursing care must be in accordance with OAR chapter 851.

(7) SPD must be notified by the provider or primary caregiver within one working day of the hospitalization or death of any eligible child.

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

(9) The billing provider must maintain documentation of provided services for at least seven years from the date of service. If a provider is a nurse and does not use a billing provider, the nurse must either maintain documentation of provided services for at least five years or send the documentation to SPD.

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

(11) Access to records by DHS inclusive of medical, nursing, or financial records, to include individuals providing care and vendors providing goods and services, does not require authorization or release by the primary caregiver.

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

411-350-0110 Payment for MFC Services
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) Services budgets shall be individually negotiated by SPD, based on the individual needs of the child.

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

(A) Of a crime listed in Exhibit 350-1;

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

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 350-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 350-1.

(3) Authorization must be obtained prior to the delivery of any MFC services for those services to be eligible for reimbursement.

(4) Providers must request payment authorization for MFC services provided during an unforeseeable emergency on the first business day following the emergency service. The service coordinator shall determine if the service is eligible for payment. (5) The delivery of authorized MFC services must occur so that any individual employee of the parent does not exceed 40 hours per work week. SPD shall not authorize services that require the payment of overtime, without prior written authorization by the MFCU supervisor.

(6) SPD shall make payment for MFC services, described in OAR 411-350-0050, after services are delivered as authorized and required documentation is received by the service coordinator.

(7) SPD shall make payment to the individual employee of the parent on behalf of the parent. The following shall be ancillary contributions:

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

(b) SPD shall cover real and actual costs to the Employment Department, in lieu of the parent as the provider's employer.

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

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

(10) In order to be eligible for payment, requests for payments must be submitted to SPD within six months of the delivery of MFC services.

(11) Payment by SPD for MFC services is considered full payment for the services rendered under Title XIX or Title XXI. Under no circumstances may the provider or billing provider demand or receive additional payment for these services from the parent or any other source.

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

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

(14) SPD may void without cause prior authorizations that have been issued in the event of any of the following:

(a) Change in the status of the child. Examples include, but are not limited to, hospitalization, improvement in health status, or death of the child;

(b) Decision of the parent to change providers;

(c) Inadequate services, inadequate documentation, or failure to perform other expected duties; or

(d) Documentation of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 350-1;

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

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 350-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 350-1.

(e) Any situation, as determined by the service coordinator that puts the child's health or safety at risk.

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

(a) All rules in OAR chapter 411;

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

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(16) All billings must be for MFC services provided within the provider's licensure.

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

(18) No individual shall submit to SPD:

(a) A false billing form for payment;

(b) A billing form for payment that has been or is expected to be paid by another source; or

(c) Any billing form for MFC services that have not been provided.

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

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

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

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

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

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

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

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

(24) If recoupment is sought from a parent whose child received MFC services, hearing rights in OAR 411-350-0118 apply.

(25) Payment for services provided to more than one child in the same setting at the same time shall not exceed the maximum hourly rate for one child without prior written authorization by the MFCU supervisor.

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

411-350-0115 Complaints and Grievances
(Adopted 3/1/2009)

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

(a) Informal resolution. The parent of a child has an opportunity to informally discuss and resolve any complaint or grievance regarding action taken by SPD that is contrary to law, rule, or policy and that

does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude the parent from pursuing resolution through formal grievance processes.

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

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

(i) The date the complaint was received;

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

(iii) The nature of the complaint;

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

(v) The disposition of the complaint.

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

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

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

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

(d) Review. A manager of SPD must review the complaint if the complaint involves SPD staff or services, or if the complaint is not or cannot be resolved with SPD staff. SPD manager response to the complaint must be made in writing, within 30 days following receipt of

the complaint, and include a response to the complaint as described in section (1)(c) of this rule.

(e) Third-party review when complaints are not resolved by the SPD manager. Unless the grievant is a Medicaid recipient who has elected to initiate the hearing process according to OAR 411-350-0118, a complaint involving the provision of service or a service provider may be submitted to SPD for an administrative review.

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

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

(C) The Administrative Review Committee must review the complaint and the decision by the SPD manager and make a recommendation to the SPD Assistant Director within 45 days of receipt of the complaint unless the grievant and the Administrative Review Committee mutually agree to an extension.

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

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

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

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

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

(b) The right of a Medicaid recipient to a hearing pursuant to OAR 411-350-0118 and the procedure to request a hearing.

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

411-350-0118 Denial, Termination, Suspension, Reduction, or Eligibility of Services for Individual Medicaid Recipients
(Amended 3/1/2009)

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

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

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

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

(A) The action SPD intends to take;

(B) The reasons for the intended action;

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

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

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

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

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

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

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

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

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

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

(i) The current authorization expires;

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

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

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

(g) DHS may reinstate services if:

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

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

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

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

(i) The DHS representative and the parent may have an informal conference, without the presence of the administrative law judge, to

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

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

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

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

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

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

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

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

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

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

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

(2) PROPOSED AND FINAL ORDERS.

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

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

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

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

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

411-350-0120 Sanctions for MFC Providers
(Temporary Effective 1/1/2010 – 6/30/2010)

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

(a) The provider has been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or issuance of a provider number, including crimes as described in OAR 411-350-0080(1)(d);

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

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

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

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

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

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

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

(i) The provider has falsified required documentation;

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

(k) The provider has not adhered to the provisions of these rules.

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

(a) Termination from providing MFC services;

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

(c) Payments to the provider may be withheld.

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

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

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

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

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

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

Exhibit 350-1
(Temporary Effective 1/1/2010 – 6/30/2010)

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