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

CHAPTER 411
DIVISION 355

MEDICALLY INVOLVED CHILDREN'S PROGRAM

411-355-0000 Purpose
(Adopted 10/9/2008)

The rules in OAR chapter 411, division 355 establish the policy of, and prescribe the standards and procedures for, the provision of services for children enrolled in the Medically Involved Children's Program by the Seniors and People with Disabilities Division. MICP services are exclusively intended to allow children who meet the nursing facility level of care to return to the family home, or remain at the family home, with specialized supports and services. MICP services specifically preserve a parent's capacity to care for their child, assure the health and safety of the child within the family home, and permit children who have been separated from their families due to their health and medical care needs to return to the family home to prevent out of home placement. MICP services complement and supplement the services that are available through the State Medicaid Plan and other federal, state and local programs as well as the natural supports that families and communities provide.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007, & 430.215

411-355-0010 Definitions
(Temporary Effective 1/1/2010 – 6/30/2010)

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

(2) "Activities of Daily Living (ADL)" means activities usually performed in the course of a normal day in 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) "Assistant Director" means the Assistant Director of the Department of Human Services, Seniors and People with Disabilities Division, or that individual's designee.

(4) "Behavior Consultant" means a contractor with specialized skills who meets the requirements of OAR 411-355-0050(2) and provides the services described in OAR 411-355-0040(2).

(5) "Billing Form" means the document generated by the Seniors and People with Disabilities Division that acts as a prior authorization, contract, and payment mechanism for services.

(6) "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.

(7) "Child" means an individual who is under the age of 18 and eligible for the Medically Involved Children's Program.

(8) "CMS" means Centers for Medicare and Medicaid Services, the federal agency charged with delivery and oversight of all Medicare and Medicaid services.

(9) "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 service options considered.

(10) "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.

(11) "Developmental Disability (DD)" is always provisional and means;

(a) For children five years and younger.

(A) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder, a learning disability, or sensory impairment; AND

(B) There is a standardized test demonstrating significant adaptive behavior impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning:

(i) Self care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; OR

(C) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that shall likely cause significant adaptive impairment in at least two of the areas listed in section (10)(a)(B) of this rule.

(b) For children six years and older.

(A) There is a diagnosis of mental retardation; OR

(B) There is a diagnosis of developmental disability; AND

(C) There is a significant adaptive behavior impairment (more than two standard deviations below the norm) that requires training or supports similar to that required by individuals with mental retardation in at least two of the following areas of functioning:

(i) Self care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self direction; AND

(D) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder, a learning disability, or sensory impairment; AND

(E) The child is expected to need multiple, specialized supports indefinitely.

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

(13) "Family Home" means the residence of the child that is not a foster home, group home, or other residential service funded with public funds.

(14) "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.

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

(16) "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.

(17) "Medically Involved Criteria (Form DHS-0521)" means the assessment tool used by the Seniors and People with Disabilities Division to evaluate the intensity of the challenges presented by children eligible for the Medically Involved Children's Program.

(18) "Medically Involved Children's Program (MICP)" 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 their family home who otherwise would have to be served in a nursing facility if the waiver program was not available.

(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 parent. When a nursing care plan exists, it becomes a part of the plan of care.

(21) "Nursing Facility (NF)" means a residential medical facility.

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

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

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

(25) "Plan of Care (POC)" means a written document developed by the service coordinator and the parent 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.

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

(27) "Provider or Performing Provider" means an individual who meets the requirements of OAR 411-355-0050 that is qualified to receive payment

from the Seniors and People with Disabilities Division for in-home daily care. Providers work directly with children. Providers may be employees of billing providers, employees of the parent, or independent contractors.

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

(29) "Service Budget" means the monthly dollar amount allotted for the care of the child based on a medically involved criteria level of care determination. The service budget consists of in-home care and, if the child is on a waiver, waivered services.

(30) "Service Coordinator" means an employee of the Seniors and People with Disabilities Division who ensures a child's eligibility for the Medically Involved Children's Program and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

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

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

(33) "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.

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

(35) "These Rules" means the rules in OAR chapter 411, division 355.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007, & 430.215

411-355-0020 Eligibility
(Adopted 10/9/2008)

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

(a) Be under the age of 18;

(b) Require nursing facility level of care;

(c) Score 100 or greater on the medically involved criteria within four months of starting services;

(d) Be eligible to receive Title XIX (Medicaid) services;

(e) Require services offered under the MICP;

(f) Be a U.S. citizen;

(g) Reside in the family home or reside in a nursing facility and wish to return to the family home; and

(h) Be capable of being safely served in the family home. This includes, but is not limited to, the parent demonstrating the willingness, skills, and ability to provide the direct care as outlined in the plan of care in a cost effective manner as determined by the service coordinator within the limitations of OAR 411-355-0040.

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

(a) Continues to reside in a hospital, school, sub-acute facility, nursing facility, intermediate care facility for the mentally retarded, residential facility, foster home, 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)(h) of this rule.

(3) DISENROLLMENT. SPD shall disenroll a child from the MICP when:

(a) The child no longer meets the medically involved criteria of section (1) of this rule; or

(b) The child’s medically involved criteria score falls below 80.

(4) REDETERMINATION. SPD shall redetermine a child's eligibility for the MICP using the medically involved criteria at a minimum of every 12 months, or as the child’s status changes.

(5) ENROLLMENT. If a child meets the criteria of section (1) of this rule and space is available in the MICP, the child's priority for enrollment shall be in accordance with ORS 417.345, CMS model waiver requirements, and geographical distribution for equal access to services. The date the initial application is complete is the date that SPD receives all of the required demographic and referral information on the child.

(6) WAIT LIST. SPD may place a child eligible for the MICP on a wait list if the allowable numbers of children in the MICP are already being served.

> (a) The date the initial application for the MICP is completed shall determine the order on the wait list. A child previously enrolled in children's intensive in-home services that currently meets eligibility criteria and applies for the MICP shall be put on the wait list as of the date the child's original application for services was complete.
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> (b) Children on the wait list shall be served on a first come, first served basis according to the legislatively mandated enrollment priorities, per geographical region, and as space on the MICP allows.

(7) ASSESSMENT. Anyone can request an assessment for a child for MICP services.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007, & 430.215

411-355-0030 Plan of Care
(Adopted 10/9/2008)

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

(a) The current care needs of the child including ADL care, medication management, communication, supervisory needs, and physical environment;

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

(c) The services currently being provided;

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

(e) Areas of unmet 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 in-home daily care or other related 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 average service budget;

(c) The date of the next planned review that, at a minimum, must be completed within 365 calendar days of the last plan of care;

(d) The nursing care plan, when one exists; and

(e) All behavior and specialized consultant services purchased through the MICP.

(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 updated plan of care to the parent.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007, & 430.215

411-355-0040 Scope and Limitations of MICP Services
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) To be authorized and eligible for payment by SPD, all MICP supports and services must be:

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

(b) Required to maintain the health and safety of the child;

(c) Cost effective;

(d) Considered not typical for a parent to provide a child of the same age;

(e) Required to help the parent to continue to meet the needs of caring for the child; and

(f) Included in an approved plan of care.

(2) MICP services may include a combination of the following waiver and non-waivered 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) Respite;

(c) Specialized medical equipment and supplies;

(d) Motor vehicle adaptations;

(e) Environmental accessibility adaptations;

(f) Homemaker and chore;

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

(h) Non-medical transportation;

(i) Family training;

(j) Translation;

(k) Special diets; or

(l) Specialized consultation (behavior and nursing delegation).

(3) The annual average service budget, as authorized by SPD in the plan of care, dated from the initial plan of care to the anniversary date, must not exceed the allowed maximum service budget amount. Service budgets increase or decrease in direct relationship to the increasing or decreasing medically involved criteria score.

(4) Ninety day exceptions shall only be authorized by SPD in the following circumstances:

(a) The child is at immediate risk of loss of the family home without the expenditure;

(b) The expenditure provides supports for emerging or changing care needs; or

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

(5) SPD shall evaluate exceptions beyond 90 days on an individual basis using the criteria in section (4) of this rule

(6) SPD shall not pay for MICP 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 411-355-0050(1)(a)(F);

(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; or

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

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

(8) IN-HOME DAILY CARE. In-home daily care services include a combination of direct provider support assistance with ADLs, nursing services, or other supportive services provided by qualified providers and agencies. The extent of the services may vary, but the extent of service is limited as described in this rule.

(a) SPD shall only authorize in-home daily care service hours that support a parent in their primary caregiving role.

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

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

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

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

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

(E) Skin care - Dressing changes;

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

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

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

(I) Other personal care tasks or services.

(c) When any of the in-home daily care services listed in section (8)(b) of this rule are essential to the health and welfare of the child, 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.

(d) In-home daily care service hours may be spread throughout the time authorized in the billing form or used in large blocks of time as the parent determines.

(e) In-home daily care 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 in-home daily care services as ordered by the physician, shall be authorized for payment according to these rules.

(f) In-home daily care services exclude:

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

(B) Hours solely to allow a parent to work or attend school; and

(C) The authorization of hours or level of care not supported by the assessed service needs of the child as documented in the plan of care.

(9) RESPITE. Respite services are provided to a child on a periodic or intermittent basis furnished because of the temporary absence of, or need for relief of, the primary caregiver. Respite includes both day and overnight care and may be provided in the family home, qualified provider's home, or qualified facility.

(a) SPD may authorize the following types of qualified providers to provide respite care:

(A) Individual respite provider;

(B) Licensed day care center;

(C) Group home;

(D) Foster home; or

(E) Disability-related or therapeutic recreational camp.

(b) SPD shall not authorize respite services:

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

(B) On more than a periodic schedule;

(C) For more than 56 days in a calendar year;

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

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

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

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

(a) Specialized equipment and supplies may include:

(A) Communication devices;

(B) Adaptive clothing;

(C) Adaptive eating equipment;

(D) Adaptive sensory or habilitation devices or supplies;

(E) Incontinent supplies; or

(F) Increased utility costs associated with medically necessary equipment and procedures.

(b) If a professional is required to assess, identify, adapt, or fit the specialized equipment, SPD shall include the cost in the purchase price of the equipment.

(c) To be authorized by SPD, specialized equipment and supplies must:

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

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

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

(d) Specialized equipment and supplies exclude:

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

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

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

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

(11) MOTOR VEHICLE ADAPTATIONS. Motor vehicle adaptations are physical adaptations to a vehicle that are necessary to meet the unique needs of the child and ensure the health, welfare, and safety of the child.

(a) SPD shall only authorize motor vehicle adaptations for the primary vehicle used by the child. The motor vehicle adaptations must be cost effective and directly relate to the child's disability.

(b) Motor vehicle adaptations do not include general repair or maintenance and upkeep required by a motor vehicle.

(12) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS. Environmental accessibility adaptations are physical adaptations to a family home that are necessary to ensure the health, welfare, and safety of the child in the family home, or that are necessary to enable the child to function with greater independence around the family home and in family activities. Environmental accessibility adaptations also include an environmental modification consultation to evaluate the family home and make plans to modify the family home to ensure the health, welfare, and safety of the child.

(a) SPD shall authorize environmental accessibility adaptations when:

(A) Related to the child’s disability;

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

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

impedes egress shall be approved only if a risk assessment demonstrates no safer solution and a safety plan is signed by the parent; and

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

(b) 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.

(c) Environmental accessibility adaptations exclude:

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

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

(13) HOMEMAKER AND CHORE. Homemaker and chore services are services that are required to maintain the family home in a clean, sanitary, and safe environment. Homemaker services include general housekeeping activities while chore services consist of heavy household chores including washing floors, windows, and walls.

(a) SPD shall authorize homemaker and chore services:

(A) When the individual regularly responsible for these activities is temporarily absent or unable to manage the family home and care for him or herself or others in the family home; or

(B) To allow the primary caregiver more time to care for the child enrolled in the MICP.

(b) Homemaker services may not exceed 24 hours per month.

(c) Chore services are considered one-time or intermittent services that are not available on a routine basis.

(d) Homemaker and chore services must be prior authorized by the service coordinator after agreement to scope of work, hours and cost.

(14) PHYSICAL THERAPY, OCCUPATIONAL THERAPY, AND SPEECH AND LANGUAGE THERAPY. Physical, occupational, and speech and language therapy are services provided in the family home or clinic setting by a physical therapist, occupational therapist, or speech and language pathologist as defined under OAR 410-120-0000 except that the amount and duration specified in the State Medicaid Plan do not apply. Physical, occupational, and speech and language therapy services are provided as an extension to state plan services and include interventions and treatments that are commonly accepted practice.

(a) To be authorized by SPD, the physical, occupational, and speech and language therapy services must:

(A) Have exhausted the limits identified under OHP and private insurance;

(B) Be denied by OHP for additional treatments;

(C) Be assessed by the professional, service coordinator, and physician concluding that the child would benefit by continued services;

(D) Include medical doctor orders and a therapist's treatment plan with the authorization request;

(E) Identify the number of services provided in the plan year until OHP or private insurance renew; and

(F) Be reviewed by the service coordinator.

(b) The following physical, occupational, and speech and language therapy services are excluded:

(A) Services and treatments that supplant those provided under OHP or other resources;

(B) Services and treatments that are not commonly accepted practice;

(C) Services and treatments offered by a non-licensed professional; and

(D) Services that are not defined under the approved State Medicaid Plan.

(15) NON-MEDICAL TRANSPORTATION. Non-medical transportation for children served by the MICP includes transportation provided in order to enable a child to gain access to MICP and other community services, activities, and resources as specified in the plan of care.

(a) Whenever possible, family, neighbors, friends, or community agencies that may provide non-medical transportation service to the child without charge must be utilized.

(b) Authorization of non-medical transportation in the plan of care must identify the parameters and limits of non-medical transportation service for each child.

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

(d) Non-medical transportation services are provided for the child and the child must always be present.

(e) Non-medical transportation excludes:

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

(B) Transportation provided by parents, guardians, or legally responsible adults;

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

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

(16) FAMILY TRAINING. Family training services include:

(a) Training and counseling services that increase the parent's capability to care for and maintain the child in the family home.

(b) Disability related resource materials including books, DVD, and other media.

(A) To be authorized by SPD, the materials must relate to the child’s specific disability.

(B) Resource materials shall not be authorized by SPD when determined by the service coordinator to be available for loan from other available resources such as local, state, or specialty libraries.

(c) Conferences, workshop registrations, and group trainings that offer information, education, training, and materials about the child’s disability, medical, and health conditions.

(A) SPD shall authorize conference, workshop, or group training that:

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

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

(B) SPD shall not authorize conference, workshop, or group trainings costs for:

(i) Travel and lodging expenses;

(ii) Meals not included in the registration cost;

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

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

(d) Counseling services that assist the parent with the stresses of having a child with a disability.

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

(i) Be provided by licensed providers;

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

(iii) Be short term; and

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

(B) Counseling services are excluded for:

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

(ii) Marriage therapy;

(iii) Therapy to address parent or other family members' psychopathology; and

(iv) Counseling that addresses stressors not directly attributed to the child eligible for the MICP.

(17) SPECIALIZED DIET. A specialized diet is in addition to meals a parent would provide and specific to a child’s medical condition or diagnosis. A

specialized diet includes specially prepared food, or purchase of particular types of food, needed to sustain a child in the family home. Specialized diet services include the purchase of registered dietician services.

(a) In order for a specialized diet to be authorized by SPD:

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

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

(C) The foods must be on the approved list developed by SPD;

(b) The maximum monthly purchase for specialized diet supplies must not exceed $100 per month.

(c) SPD shall not authorize:

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

(B) Restaurant and prepared foods;

(C) Vitamins; and

(D) Food that constitutes a full nutritional regime.

(18) TRANSLATION.

(a) Translation service includes the services of a translator or interpreter required for a monolingual provider. Translation service is provided solely for the purpose of safely implementing the plan of care between parent, child, and provider for those MICP services delivered within the family home. The purpose of translation services is to establish and maintain the same understanding of the child's care requirements between the private providers and the families who must work together to implement the plan of care.

(b) SPD shall not authorize translation services for administrative purposes or services available through Medicaid.

(19) NURSING DELEGATION. Nursing delegation is the purchase of individualized consultation from a registered nurse in order to delegate tasks of nursing care in select situations. Tasks of nursing care are those procedures that require nursing education and licensure of a nurse to perform.

(a) SPD requires nursing delegation for unlicensed providers paid by SPD when a child requires tasks of nursing care.

(b) Nursing delegation may only occur after a registered nurse has:

(A) Assessed the child and the ability of the provider to perform a specific task;

(B) Taught the task to the provider;

(C) Documented the task in the nursing care plan; and

(D) Ensured on-going assessment of the child and re-evaluation and supervision of the provider.

(c) Nursing delegation consultation must include:

(A) An assessment of the child that determines the child's condition is stable and predictable.

(B) An assessment of the provider that determines the ability of the provider to understand the task and safely perform the task without direct nursing supervision. The task shall not be delegated if, in the judgment of the registered nurse, the provider is unable to understand or perform the task in a safe and accurate manner.

(C) Provision of initial direction by teaching the task of nursing care to the provider, including:

(i) The proper procedure and technique;

(ii) Why the task of nursing care is necessary;

(iii) The risks associated with the task;

(iv) Anticipated side effects;

(v) The appropriate response to risks or side effects;

(vi) Observation of the child's response;

(vii) Documentation of the task of nursing care; and

(viii) Observation of the provider performing the task to ensure the task is performed safely and accurately.

(D) Written instructions regarding the task including:

(i) A step by step outline of how the task is to be performed;

(ii) Signs and symptoms to be observed;

(iii) Guidelines for what to do if signs and symptoms occur;

(iv) Instruction to the provider that the task is specific to the child and is not transferable to other children nor may it be taught to other providers by the delegated provider; and

(v) Determination and documentation of the need and time frame for the next assessment and supervisory visit that may be frequent until the delegation is complete.

(I) The initial return assessment and supervisory visit must be made within 60 days from the initial date of the delegation.

(II) Subsequent visits must be no greater than every 180 days.

(20) BEHAVIOR CONSULTATION. Behavior consultation is the purchase of individualized consultation provided in the family home, only as needed, to respond to a specific problem or behavior identified by the parent and the service coordinator.

(a) Behavior consultation shall only be authorized to support a parent in their caregiving role, not as an educational service.

(b) Behavior consultants must:

(A) Work with the parent to identify:

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

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

(iii) The unique characteristics of the parent that could influence the responses that would 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 parent and provider to help the child use acceptable, alternative actions to meet the child's needs in the most cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by a parent and provider to the early warning signs.

(i) Positive, preventive interventions must be emphasized.

(ii) The least intrusive intervention possible must be used.

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

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

(D) Develop emergency and crisis procedures to be used to keep the child, parent, and provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-adversive interventions must be utilized. SPD shall not pay a provider to use physical restraints on a child receiving MICP services.

(E) Develop a written behavior support plan that includes the following:

(i) Use of clear, concrete language that is understandable to the parent and provider; and

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

(F) Teach the provider and parent the strategies and procedures to be used.

(G) Monitor and revise the behavior support plan as needed.

(21) GOODS, SERVICES, AND SUPPLIES.

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

(b) SPD may protect its interest through any legally allowable means for any good, service, or supply.

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

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007, & 430.215

411-355-0050 Standards for Providers Paid with MICP Funds
(Temporary Effective 3/18/2010 – 6/30/2010)

(1) PROVIDER QUALIFICATIONS.

(a) Each provider who is paid as a contractor, a self-employed individual, or an employee of the parent to provide homemaker and chore, in-home daily care, respite, transportation, family training, occupational therapy, physical therapy, speech and language therapy, dietician, nursing delegation, or specialized supports must:

(A) Be at least 18 years of age;

(B) Maintain a drug-free work place;

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

(D) Not be on the current CMS list of excluded or debarred providers (http://exclusions.oig.hhs.gov/);

(E) Not be a parent, step parent, or legal guardian of the child;

(F) 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, prior to enrolling as a provider. Criminal records rechecks must be performed bi-annually, or as needed, if a report of criminal activity has been received by DHS. 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 as required by administrative rule, and who has been convicted:

(i) Of a crime listed in Exhibit 355-1;

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

(iii) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 355-1; or

(iv) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 355-1.

(G) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any in-home daily care services; and

(H) Provide evidence satisfactory to SPD that demonstrates, by background, education, references, skills, and abilities, the provider is capable of safely and adequately providing the services authorized. The evidence must be confirmed in writing by the parent and include:

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

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

(iii) Ability to communicate with the child;

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

(v) Current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training, and skill;

(vi) Understanding requirements of maintaining confidentiality and safeguarding the child's information; and

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

(b) 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.

(c) 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.

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

(e) A provider must immediately notify the parent and, if appropriate, 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 MICP services are being provided.

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

(2) BEHAVIOR CONSULTANTS. Behavior consultants providing specialized consultations must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services as outlined in OAR 411-355-0040 including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have current certification demonstrating completion of Level II training in Oregon Intervention Systems; and

(c) Submit a resume to SPD 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 people with developmental disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with people with developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant as outlined OAR 411-355-0040.

(d) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-355-0040.

(3) NURSES. Nurses providing direct care or delegation services must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to SPD indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law, including at least one year of experience with people with developmental disabilities.

(4) ENVIRONMENTAL MODIFICATION CONSULTANTS. Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing individual needs, and developing cost effective plans that make the home safe and accessible for the child.

(5) ENVIRONMENTAL ACCESSIBILITY ADAPTATION PROVIDERS. Environmental accessibility adaptation providers must be building contractors licensed as applicable under either OAR chapter 812, Construction Contractor's Board, or OAR chapter 808, Landscape Contractors Board.

(6) FAMILY TRAINING PROVIDERS. Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Clinical social workers licensed under ORS 675.530;

(c) Licensed professional counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

(7) DIETICIANS. Dieticians providing specialized diets must be licensed according to ORS 691.415 through 691.465.

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

411-355-0060 Standards for Provider Organizations Paid by SPD
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) A provider organization may not require additional certification to provide respite, community inclusion, or emergent services if they are licensed or certified as:

(a) 24-hour residential programs under OAR chapter 411, division 325;

(b) Foster homes for children with developmental disabilities under OAR chapter 411, division 346;

(c) Child care centers under OAR chapter 414, division 300; or

(d) Organizational camps under OAR chapter 333, division 030.

(2) Provider organizations licensed or certified as described in section (1) of this rule may be considered sufficient demonstration of ability to:

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

(b) Provide services according to individual support plans; and

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

(3) A provider organization that wishes to enroll with the MICP must maintain and submit evidence upon initial application and upon request by SPD the following:

(a) Current criminal records checks on each employee who shall be providing services in a family home showing that the employee has no disqualifying criminal convictions, including crimes identified in OAR 411-355-0050(1)(a)(F);

(b) Professional liability insurance that meets the requirements of OAR 411-355-0050; and

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

(4) Provider organizations must assure that all individuals directed by the provider organization as employees, contractors, or volunteers to provide services paid for with MICP funds meet standards for qualification of providers outlined in OAR 411-355-0050.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007, & 430.215

411-355-0070 Standards for General Business Providers paid by SPD
(Adopted 10/9/2008)

General business providers providing services to children paid with MICP funds must hold any current license appropriate to operate required by the state of Oregon or federal law or regulation.

(1) Home health agencies must be licensed under ORS 443.015.

(2) In-home care agencies must be licensed under ORS 443.315.

(3) Public transportation providers must be regulated according to established standards and private transportation providers must have business license and drivers licensed to drive in Oregon.

(4) Vendors and medical supply companies providing specialized medical equipment and supplies must have a current retail business license and, if

vending medical equipment, be enrolled as Medicaid providers through the Division of Medical Assistance Programs.

(5) Providers of personal emergency response systems must have a current retail business license.

(6) Vendors and supply companies providing specialized diets must have a current retail business license.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007, & 430.215

411-355-0080 Documentation Needs for MICP Services
(Adopted 10/9/2008)

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

(2) Requests for payment for MICP services must:

> (a) Include the billing form indicating prior authorization for the services;
>
> (b) Be signed by the parent after the services were delivered, verifying that the services were delivered as billed; and
>
> (c) 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.

(3) Documentation of provided MICP services must be provided to the service coordinator 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) SPD shall retain billing forms and timesheets for at least five years from the date of service.

(5) Behavior consultants must submit to SPD the following written in clear, concrete language, understandable to the parent and provider:

(a) An evaluation of the child, the parent's concerns, the environment of the child, current communication strategies used by the child and used by others with the child, and any other disability of the child that would impact the appropriateness of strategies to be used with the child; and

(b) Any behavior plan or instructions left with the parent or provider that describes the suggested strategies to be used with the child.

(6) Nurses providing delegation services must submit to SPD the following written in clear, concrete language, understandable to the parent and provider:

(a) A copy of the written statement acknowledging the specific provider receiving training, the nursing tasks delegated to that provider, and the date of the next scheduled review; and

(b) Any nursing delegation plan or instructions left with the parent or provider.

(7) Billing providers must maintain documentation of provided services for at least seven years from the date of service.

(8) 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 time frame specified in the written request. Failure to comply with the request may be considered by SPD as reason to deny or recover payments.

(9) Access to records by DHS inclusive of medical or nursing records, behavior or psychiatric records, or financial records, does not require authorization or release by the parent.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007, & 430.215

411-355-0090 Payment for MICP Services
(Temporary Effective 3/18/2010 – 6/30/2010)

(1) SPD shall make payment for MICP services, described in OAR 411-355-0040, after services are delivered as authorized and required documentation is received by the service coordinator.

(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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 as required by administrative rule, and who has been convicted:

(a) Of a crime listed in Exhibit 355-1;

(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 355-1; or

(d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 355-1.

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

(4) Authorization must be obtained prior to the delivery of any MICP services for those services to be eligible for payment.

(5) Providers must request payment authorization for MICP services provided during an unforeseeable emergency on the first business day following the emergency service. The service coordinator must determine if the service is eligible for payment.

(6) SPD shall make payment to the individual employee of the parent on behalf of the parent. SPD shall pay the employer's share of the Federal Insurance Contributions Act (FICA) and withhold the employee's share of FICA as a service to the parent as the provider's employer.

(7) The delivery of authorized MICP 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 supervisor of children's intensive in-home services.

(8) SPD shall not pay for any hours of MICP services provided by a provider beyond 16 hours in any 24-hour period unless the hours are part of a 24-hour service budget negotiated by SPD and there is evidence the child may be safely served with a 24-hour service budget. Exceptions require written authorization by the supervisor of children's intensive in-home services.

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

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

(11) In order to be eligible for payment, requests for payments must be submitted to SPD within three months of the delivery of MICP services.

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

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

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

(15) SPD may void without cause prior authorizations that have been issued.

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

(a) All rules in OAR chapter 411;

(b) 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.

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

(18) 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.

(19) 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 MICP services that have not been provided.

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

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

(22) 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.

(23) 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.

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

(25) If recoupment is sought from a parent whose child received MICP services, hearing rights in OAR 411-355-0110 apply.

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

411-355-0100 Complaints and Grievances
(Adopted 10/9/2008)

(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 to pursue resolution through formal grievance processes.

(b) Receipt of complaints. SPD shall maintain a log of all complaints regarding the provision of MICP 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) Agreement to resolve the complaint. Any agreement to resolve the complaint must be reduced to writing and must be specifically approved by the grievant. The grievant must be provided with a copy of the agreement.

(d) Review. If the complaint involves SPD staff or services, or if the complaint is not or cannot be resolved with SPD staff, a review by the SPD manager must be completed. SPD manager response to the complaint must be made in writing, within 30 days following receipt of the complaint, and must 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 411-355-0110, 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 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 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 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 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 411-355-0110 and the procedure to request a hearing.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007, & 430.215

411-355-0110 Denial, Termination, Suspension, Reduction or Eligibility for MICP Services for Individual Medicaid Recipients
(Adopted 10/9/2008)

(1) MEDICAID FAIR HEARING RIGHTS. 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 & 417.345
Stats. Implemented: ORS 417.345, 427.007, & 430.215

411-355-0120 Sanctions for MICP 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 411-355-0050(1)(a)(F);

(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 and adequately provide the MICP 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 not adhered to the provisions of these rules; or

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

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

(a) Termination from participation in the MICP;

(b) Suspension from participation in the MICP 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 Assistant Director of SPD.

(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 & 417.345
Stats. Implemented: ORS 417.345, 427.007, & 430.215

Exhibit 355-1

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