

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on [upon filing] by the
Date prior to or same as filing date

Department of Human Services, Developmental Disabilities

411

Agency and Division

Administrative Rules Chapter Number

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to become effective [April 10, 2015] through [October 6, 2015].

Date upon filing or later

A maximum of 180 days including the effective date.

RULE CAPTION

ODDS - Children's Intensive In-Home Services (Behavior Program and Medically Fragile Children's Services)

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND:

411-300-0120, 411-350-0030

SUSPEND:

Stat. Auth.: **ORS 409.050**

Other Auth.:

Stats. Implemented: **ORS 427.005, 427.007, 430.215**

RULE SUMMARY

To meet the expectations of the Centers for Medicare and Medicaid Services (CMS), the Department of Human Services, Office of Developmental Disability Services (ODDS) is immediately amending:

- OAR 411-300-0120 for the Children's Intensive In-Home Services (CIIS), Behavior Program to align the initial and reassessment behavior criteria scores, require an annual assessment for ongoing eligibility, and limit the transition period to 30 days; and
- OAR 411-350-0030 for Medically Fragile Children's (MFC) services to change the clinical criteria score to 45 or greater, align the initial and reassessment clinical criteria scores, and limit the transition period to 30 days.

Signed Lilia Teninty, Director, Developmental Disabilities

4/1/2015

Signature

Date

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Developmental Disabilities

411

Agency and Division

Administrative Rules Chapter Number

In the Matter of: **The temporary amendment of OAR 411-300-0120 relating to the CIIS Behavior Program and OAR 411-350-0030 relating to MFC services.**

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

ODDS - Children's Intensive In-Home Services (Behavior Program and Medically Fragile Children's Services)

Statutory Authority:

ORS 409.050

Other Authority:

Stats. Implemented:

ORS 427.005, 427.007, 430.215

Need for the Temporary Rule(s):

OAR 411-300-0120 and OAR 411-350-0030 need to be immediately amended to meet the expectations of CMS when determining ongoing eligibility for the CIIS Behavior Program (Behavioral Model Waiver) or MFC services (Hospital Model Waiver) and when transitioning a child from the waived services.

The temporary rule changes to OAR 411-300-0120 and OAR 411-350-0030 meet the expectations of CMS by:

- Changing the clinical criteria score to 45 or greater;
- Aligning the initial and reassessment behavior criteria scores to 200 or greater;
- Aligning the initial and reassessment clinical criteria scores to 45 or greater; and
- Limiting the transition period from waived services to 30 days as required by CMS for Medicaid payment.

Documents Relied Upon, and where they are available:

Behavioral Model Waiver and Hospital Model Waiver

Available upon request by emailing christina.hartman@state.or.us or calling 503-945-5805

Justification of Temporary Rule(s):

Failure to act promptly and immediately amend OAR 411-300-0120 and OAR 411-350-0030 will result in serious prejudice to children with intellectual or developmental disabilities applying for or receiving waived services, the parents and family members of children with intellectual or developmental disabilities, providers, and the Department.

OAR 411-300-0120 needs to be updated promptly to assure children in the CIIS Behavior Program are:

- Annually reassessed and maintain a behavior criteria score of 200 or greater; and
- Transitioned from the CIIS Behavior Program within 30 days as required by CMS for Medicaid payment.

OAR 411-350-0030 needs to be updated promptly to assure children receiving MFC services:

- Maintain a clinical criteria score of 45 or greater; and
- Transition from MFC services within 30 days as required by CMS for Medicaid payment.

Failure to immediately update OAR 411-300-0120 and OAR 411-350-0030:

- Prevents the Department from implementing eligibility requirements. If eligibility is unclear, children that do not meet the eligibility requirements may receive services, which would result in a potential loss of funding to support staffing, services, and systems for children experiencing intellectual or developmental disabilities that meet the eligibility requirements;
- Risks non-compliance with federal requirements. Negative audit findings could impact federal financial participation for children who are not annually reassessed, do not maintain a behavior criteria score of 200 or greater or a clinical criteria score of 45 or greater, or receives Medicaid funding beyond 30 days while transitioning from the CIIS Behavior Program or MFC services;
- Prevents the Department from being able to effectively administer the Behavioral Model Waiver or Hospital Model Waiver to children who qualify;
- Risks inconsistent implementation across the state; and
- In the case of a hearing request, prevents the Department from having rules that support denials, suspensions, and terminations when a child is no longer eligible for the CIIS Behavior Program or MFC services due to a change in the child's behavior or clinical criteria.

Signed Lilia Teninty, Director, Developmental Disabilities

Signature

4/1/2015

Date

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

**CHAPTER 411
DIVISION 300**

**CHILDREN'S INTENSIVE IN-HOME SERVICES,
BEHAVIOR PROGRAM**

411-300-0120 Eligibility for CIIS

(Temporary Effective 04/10/2015 to 10/06/2015)

(1) ELIGIBILITY. In order to be eligible for CIIS, a child must:

- (a) Be under the age of 18;
- (b) Be an Oregon resident who meets the citizenship and alien status requirements of OAR 461-120-0110;
- (c) Be receiving Medicaid Title XIX benefits under OSIPM or OHP Plus. This does not include CHIP Title XXI benefits;
- (d) For a child with excess income, contribute to the cost of services pursuant to OAR 461-160-0610 and OAR 461-160-0620;
- (e) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;
- (f) Meet the level of care as defined in OAR 411-320-0020;
- (g) Be accepted by the Department by scoring ~~greater than 200~~ or greater on the behavior criteria within two months prior to starting services and maintain an eligibility score ~~above 150 of 200 or greater~~ as determined by reassessment annually;
- (h) Reside in the family home; and
- (i) Be safely served in the family home. This includes, but is not limited to, a qualified primary caregiver demonstrating the willingness,

skills, and ability to provide direct care as outlined in an ISP in a cost effective manner, as determined by a services coordinator within the limitations of OAR 411-300-0150, and participate in planning, monitoring, and evaluation of the CIIS provided.

(2) TRANSFER OF ASSETS.

(a) As of October 1, 2014, a child receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the child was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(A) An annuity evaluated according to OAR 461-145-0022;

(B) A transfer of property when a child retains a life estate evaluated according to OAR 461-145-0310;

(C) A loan evaluated according to OAR 461-145-0330; or

(D) An irrevocable trust evaluated according to OAR 461-145-0540.

(b) When a child is considered ineligible for CIIS due to a disqualifying transfer of assets, the parent or guardian and child must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the child was requesting services under OSIPM.

(3) INELIGIBILITY. A child is not eligible for CIIS if the child:

(a) Resides in a medical hospital, psychiatric hospital, school, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, foster home, or other 24-hour residential setting;

(b) Does not require waiver services or Community First Choice state plan services as evidenced by a functional needs assessment;

(c) ~~Has~~ Receives sufficient family, government, or community resources available to provide for his or her care; or

(d) ~~Is not~~ Cannot be safely served in the family home as described in section (1)(i) of this rule.

(4) TRANSITION. A child whose reassessment score on the behavior criteria is less than ~~150-200~~ is transitioned out of CIIS within 90-30 days. The child must exit from CIIS at the end of the 90-30 day transition period.

(a) When possible and agreed upon by the parent or guardian and the services coordinator, CIIS may be incrementally reduced during the 90-30 day transition period.

(b) The services coordinator must coordinate and attend a transition planning meeting ~~at least 30 days~~ prior to the end of the transition period. The transition planning meeting must include a CDDP representative, the parent or guardian, and any other person at the request of the parent or guardian.

(5) EXIT.

(a) CIIS may be terminated:

(A) At the oral or written request of a parent or guardian to end the service relationship; or

(B) In any of the following circumstances:

(i) The child no longer meets the eligibility criteria in section (1) of this rule;

(ii) The child does not require waiver services or Community First Choice state plan services;

(iii) There are sufficient family, government, community, or alternative resources available to provide for the care of the child;

(iv) The child may not be safely served in the family home as described in section (1)(i) of this rule;

(v) The parent or guardian either cannot be located or has not responded after 30 days of repeated attempts by a services coordinator to complete ISP development and monitoring activities and does not respond to a notice of intent to terminate;

(vi) The services coordinator has sufficient evidence that the parent or guardian has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with documenting expenses of CIIS funds, or otherwise knowingly misused public funds associated with CIIS.

(vii) The child is incarcerated or admitted to a medical hospital, psychiatric hospital, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, foster home, or other 24-hour residential setting and it is determined that the child is not returning to the family home or is not returning to the family home after 90 consecutive days; or

(viii) The child does not reside in Oregon.

(b) In the event CIIS are terminated, a written Notification of Planned Action must be provided as described in OAR chapter 411, division 318.

(6) WAIT LIST. If the maximum number of children allowed on the ICF/ID Behavioral Model Waiver are enrolled and being served, the Department may place a child eligible for CIIS on a wait list. A child on the wait list may access other Medicaid-funded services or General Fund services for which the child is determined eligible through the CDDP.

(a) The date of the initial completed application for CIIS determines the order on the wait list. A child, who previously received CIIS that currently meets the criteria for eligibility as described in section (1) of

this rule, is put on the wait list as of the date the original application for CIIS was complete.

(b) The date the application for CIIS is complete is the date that the Department has the required demographic data for the child and a statement of eligibility for developmental disability services.

(c) Children on the wait list are served on a first come, first served basis as space on the ICF/ID Behavioral Model Waiver allows. A re-evaluation is completed prior to entry to determine current eligibility.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 350

MEDICALLY FRAGILE CHILDREN'S SERVICES

411-350-0030 Eligibility for MFC Services

(Temporary Effective 04/10/2015 to 10/06/2015)

(1) ELIGIBILITY.

(a) In order to be eligible for MFC services, a child must:

(A) Be under the age of 18;

(B) Be an Oregon resident who meets the citizenship and alien status requirements of OAR 461-120-0110;

(C) Be receiving Medicaid Title XIX benefits under OSIPM or OHP Plus. This does not include CHIP Title XXI benefits;

(D) For a child with excess income, contribute to the cost of services pursuant to OAR 461-160-0610 and OAR 461-160-0620;

(E) Meet the level of care as defined in OAR 411-350-0020;

(F) Be accepted by the Department by scoring 50-45 or greater on the clinical criteria prior to starting services and have a status of medical need that is likely to last for more than two months and maintain a score of 45 or greater on the clinical criteria as assessed every six months;

(G) Reside in the family home; and

(H) Be safely served in the family home This includes, but is not limited to, a qualified primary caregiver demonstrating the

willingness, skills, and ability to provide direct care as outlined in an ISP in a cost effective manner, as determined by a services coordinator within the limitations of OAR 411-300-0150, and participate in planning, monitoring, and evaluation of the MFC services provided.

(b) A child that resides in a foster home that meets the eligibility criteria in subsection (a)(A) to (E) of this section is eligible for private duty nursing as described in OAR 411-350-0050.

(c) A child that resides in a foster home is eligible for only private duty nursing as described in OAR 411-350-0050;

(d) TRANSFER OF ASSETS.

(A) As of October 1, 2014, a child receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the child was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(i) An annuity evaluated according to OAR 461-145-0022;

(ii) A transfer of property when a child retains a life estate evaluated according to OAR 461-145-0310;

(iii) A loan evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust evaluated according to OAR 461-145-0540.

(B) When a child is considered ineligible for MFC services due to a disqualifying transfer of assets, the parent or guardian and child must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the child was requesting services under OSIPM.

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

(a) Resides in a medical hospital, psychiatric hospital, school, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, residential facility, or other 24-hour residential setting;

(b) Does not require waiver services or Community First Choice state plan services as evidenced by a functional needs assessment;

(c) ~~Has~~ Receives sufficient family, government, or community resources available to provide for his or her care; or

(d) ~~Is not~~ Cannot be safely served in the family home as described in section (1)(a)(~~HG~~) of this rule.

(3) REDETERMINATION. The Department redetermines the eligibility of a child for MFC services using the clinical criteria at least every six months, or as the status of the child changes.

(4) TRANSITION. A child whose reassessment score on the clinical criteria is less than ~~35-45~~ is transitioned out of MFC services within ~~60-30~~ days. The child must exit from MFC services at the end of the ~~60-30~~ day transition period.

(a) When possible and agreed upon by the parent or guardian and the services coordinator, MFC services may be incrementally reduced during the ~~60-30~~ day transition period.

(b) The services coordinator must coordinate and attend a transition planning meeting ~~at least 30 days~~ prior to the end of the transition period. The transition planning meeting must include a CDDP representative if eligible for developmental disability services, the parent or guardian, and any other person at the request of the parent or guardian.

(5) EXIT.

(a) MFC services may be terminated:

(A) At the oral or written request of a parent or legal guardian to end the service relationship; or

(B) In any of the following circumstances:

(i) The child no longer meets the eligibility criteria in section (1) of this rule;

(ii) The child does not require waiver services or Community First Choice state plan services;

(iii) There are sufficient family, government, community, or alternative resources available to provide for the care of the child;

(iv) The child ~~may not be able to~~cannot be safely served in the family home as described in section (1)(a)(G) of this rule;

(v) The parent or guardian either cannot be located or has not responded after 30 days of repeated attempts by a services coordinator to complete ISP development and monitoring activities and does not respond to a notice of intent to terminate;

(vi) The services coordinator has sufficient evidence that the parent or guardian has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with documenting expenses of MFC funds, or otherwise knowingly misused public funds associated with MFC services;

(vii) The child is incarcerated or admitted to a medical hospital, psychiatric hospital, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, or other 24-hour residential setting and it is determined that the child is not returning to the family home or is not returning to the family home after 90 consecutive days; or

(viii) The child does not reside in Oregon.

(b) In the event MFC services are terminated, a written Notification of Planned Action must be provided as described in OAR chapter 411, division 318.

(6) WAIT LIST. If the maximum number of children allowed on the Hospital Model Waiver are enrolled and being served, the Department may place a child eligible for MFC services on a wait list. A child on the wait list may access other Medicaid-funded services or General Fund services for which the child is determined eligible ~~through the CDDP~~.

(a) The date of the initial completed application for MFC services determines the order on the wait list. A child who previously received MFC services that currently meets the criteria for eligibility as described in section (1) of this rule is put on the wait list as of the date the original application for MFC services was complete.

(b) Children on the wait list are served on a first come, first served basis as space on the Hospital Model Waiver allows. A re-evaluation is completed prior to entry to determine current eligibility.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215