

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services, Developmental Disabilities

411

Agency and Division	Administrative Rules Chapter Number
Kimberly Colkitt-Hallman	(503) 945-6398
500 Summer Street NE, E-48 Salem, OR 97301-1074	

Rules Coordinator	Address	Telephone
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RULE CAPTION

ODDS - In-Home Support for Children with Intellectual or Developmental Disabilities

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

November 19, 2014	2:30 p.m.	Human Services Building 500 Summer Street NE, Rm. 160 Salem, Oregon 97301	Staff
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Hearing Date	Time	Location	Hearings Officer
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Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

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

ADOPT:
411-308-0135

AMEND:
Rules in OAR chapter 411, division 308

REPEAL:
Temporary rules: 411-308-0135(T), 411-308-0020(T), 411-308-0030(T),
411-308-0050(T), 411-308-0060(T), 411-308-0070(T), 411-308-0080(T),
411-308-0100(T), 411-308-0120(T), 411-308-0130(T)

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 409.050, 430.662

Other Auth.:

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

RULE SUMMARY

The Department of Human Services (Department), Office of Developmental Disability Services is proposing to update the rules in OAR chapter 411, division 308 for in-home support for children with intellectual or developmental disabilities.

The proposed rules:

- Make permanent temporary rule language that became effective on July 1, 2014;
- Incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking;
- Provide a uniform dispute resolution process by incorporating the complaint, Notification of Planned Action, and hearing rules adopted in OAR chapter 411, division 318;
- Clarify that a child who accesses in home support through general fund eligibility must be to prevent out-of-home placement and to allow time for the transition into other Medicaid services, if eligible;
- Account for changes in Medicaid service eligibility;
- Clarify when a child may be exited from in-home supports and to reiterate the requirement for a Notification of Planned Action in the instance supports are terminated;
- Require a plan to reduce or eliminate the need for children accessing in-home supports through general funds. The plan may include assisting the child to access waiver or Community First Choice services, if eligible;
- Remove the sanctions for independent providers, provider organizations, and general business providers;
- Update the language to reflect the completion of the transition period for implementation of the Community First Choice 1915(k) state plan amendment and update the available supports to reflect changes to the proposed 1915(c) Home and Community-Based Services waiver;
- Update provider types to reflect changes in the 1915(c) Home and Community-Based Services waiver;

- Adopt standards for employers to assure the proper authority exists to withdraw employer authority in cases where it is necessary to protect a child, parent, or an employee from its misuse;
- Reflect new Department terminology and current practice; and
- Correct formatting and punctuation.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

November 28, 2014 at 5 p.m.

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Signed Lilia Teninty, Director, Developmental Disabilities

10/09/2014

Signature

Date

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Human Services, Developmental Disabilities

411

Agency and Division

Administrative Rules Chapter Number

ODDS - In-Home Support for Children with Intellectual or Developmental Disabilities

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

In the Matter of: The adoption of OAR 411-308-0135; amendment of rules in OAR chapter 411, division 308; and the repeal of temporary OAR 411-308-0135(T), 411-308-0020(T), 411-308-0030(T), 411-308-0050(T), 411-308-0060(T), 411-308-0070(T), 411-308-0080(T), 411-308-0100(T), 411-308-0120(T), and 411-308-0130(T) relating to in-home support for children with intellectual or developmental disabilities.

Statutory Authority: ORS 409.050, 430.662

Other Authority:

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

Need for the Rule(s):

The Department needs to permanently update the rules in OAR chapter 411, division 308 for in-home support for children with intellectual or developmental disabilities to:

- Make permanent temporary rule language that became effective on July 1, 2014;
- Streamline definitions and incorporate definitions for terms created by the temporary rulemaking;
- Provide a uniform complaints and hearings process;
- Provide clarity around general fund eligibility;
- Update the Medicaid eligibility criteria;
- Provide clarity around when a child may be exited from in-home supports;
- Require a plan to reduce or eliminate the need for children accessing in-home supports through general funds. The plan may include assisting the child to access waiver or Community First Choice services, if eligible;
- Remove the sanctions for independent providers, provider organizations, and general business providers;
- Come into compliance with the Community First Choice 1915(k) state plan amendment because current requirements are less strict than the state plan amendment and the Department is at risk of non-compliance without these changes;

- Be consistent with the rules for personal support workers in OAR chapter 411, division 375 and to assure provider requirements are consistent with the proposed 1915(c) Home and Community-Based Services waiver;
- Assure the proper authority exists to withdraw employer authority in cases where it is necessary to protect a child, parent, or an employee from its misuse. The Department has received complaints from independent providers and other government entities, reporting that independent providers are being subjected to harassment, unhealthy or unsafe working conditions, or other violations of employee rights protected under state and federal law;
- Reflect new Department terminology and current practice; and
- Correct formatting and punctuation.

The proposed rules:

- Make permanent temporary rule language that became effective on July 1, 2014;
- Incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking, including definitions for services included in the 1915(c) Home and Community Based Services waiver, definitions associated with the completion of the transition period for the implementation of the Community First Choice 1915(k) state plan amendment, and definitions associated with the employer responsibilities adopted in 411-308-0135;
- Incorporate the complaint, Notification of Planned Action, and hearing rules adopted in OAR chapter 411, division 318;
- Clarify that a child who accesses in-home support through general fund eligibility must be to prevent out-of-home placement and to allow time for the transition into other Medicaid services if eligible;
- Account for changes in Medicaid service eligibility;
- Clarify when a child may be exited from in-home supports and reiterate the requirement for a Notification of Planned Action in the instance supports are terminated;
- Require a plan to reduce or eliminate the need for children accessing in-home supports through general funds. The plan may include assisting the child to access waiver or Community First Choice services, if eligible;
- Remove the sanctions for independent providers, provider organizations, and general business providers;
- Update the language to reflect the completion of the transition period for implementation of the Community First Choice 1915(k) state plan amendment and update the available supports to reflect changes to the proposed 1915(c) Home and Community-Based Services waiver;

- Update provider types to reflect changes in the 1915(c) Home and Community Based Services waiver;
- Adopt standards for employers to assure the proper authority exists to withdraw employer authority in cases where it is necessary to protect a child, parent, or an employee from its misuse. The proposed rule defines indications of misuses of employer authority, the steps that must be taken to remove employer authority, and appeals of the removal;
- Reflect new Department terminology and current practice; and
- Correct formatting and punctuation.

Documents Relied Upon, and where they are available:

1. Community First Choice 1915 (k) state plan amendment

Available at: <http://www.oregon.gov/dhs/k-plan/Documents/K%20Option%20State%20Plan%20Amendment.pdf>

2. Proposed 1915(c) Support Services Home and Community-Based Services waiver
Available upon request by emailing christina.hartman@state.or.us or calling 503-945-5805.

Fiscal and Economic Impact:

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Department is proposing to amend OAR 411-308-0050 to incorporate newly available in-home supports and the In-Home Expenditure Guidelines.

The Department has determined the proposed rule changes will not impact the public because the rule changes do not directly impact the public.

The Department estimates the following impact on state agencies, units of local government, children receiving services and their families, and providers:

Department (state agency): The estimated impact to the Department is due to providing focused training and detailed guidance for the Expenditure Guidelines. Ongoing technical assistance in the interpretation of the rules and the Expenditure Guidelines will also be necessary. Additionally, the Department will be developing a standard funding review process for exception requests. The Department plans to accomplish these activities with existing staff and fiscal resources.

Community Developmental Disability Programs (CDDPs) (local government): The estimated impact to CDDPs is due to service coordinators devoting time to reviewing the Expenditure Guidelines and participating in training. Training costs

have been accounted for in the new CDDP Workload Model developed by the Department. The Workload Model will be revisited on a regular basis to determine which measurements have been impacted by these changes. Until the Workload Model is revisited, the Department is unable to estimate the overall impact of the rule changes.

Children/Families: Overall, there will be a positive fiscal impact to children receiving supports and their families because additional options for in-home supports have become available. The Department is unable to estimate the overall impact to children and their families because the Department is unable to quantify the number of children that may be impacted by the rule changes.

Providers: There will be a positive fiscal impact to providers because the newly available in-home supports may increase the demand for providers. The Department is unable to estimate the overall impact to providers because the Department is unable to quantify the number of providers that may be impacted by the rule changes.

The Department is proposing to amend OAR 411-308-0060 to add a requirement that children contribute to the cost of their services and clarify appropriate options of services and requirements through different in-home service programs, including types of medical benefits and how and where to apply.

The Department has determined the proposed rule changes will not impact providers and the public because the rule changes do not directly impact providers and the public.

The Department estimates the following impact on state agencies, units of local government, and children receiving services and their families:

Department (state agency): The estimated impact to the Department is due to providing an accounting of the cost for in-home services, calculating the contribution, and collecting payment. In addition, the Department will be required to provide ongoing technical assistance to service coordinators on in-home supports. The Department plans to accomplish these activities with existing staff and fiscal resources.

Aging and People with Disabilities (APD) and the Children's Medical Eligibility Unit (CMEU) (state agencies): The Department anticipates some impact to the local APD offices or CMEU for those instances when a child has been found to

be ineligible based on a transfer of assets. The Department is unable to estimate the overall impact to local APD offices and CMEU because the Department is unable to quantify the number of children that may be impacted by the rule changes.

CDDPs (local government): Service coordinators may need to explain this change to affected children and their families. Case management costs have been accounted for in the new CDDP Workload Model developed by the Department. The Workload Model will be revisited on a regular basis to determine which measurements have been impacted by these changes. Until the Workload Model is revisited, the Department is unable to estimate the overall impact of the rule changes.

Children/Families: Children subject to these rules have not previously been required to offset the cost of their services in a formalized manner. With this change, some children will now be required to offset the cost of services. To the extent that a child had been using resources to supplement funded services, there will be no fiscal impact to the child and family. In other cases, the impact will be determined by the income and service utilization consistent with OAR 461-160-0610 and OAR 461-160-0620. The Department is unable to estimate the overall impact to children and their families because the Department is unable to quantify the number of children that may be impacted by the rule changes.

The Department is proposing to amend OAR 411-308-0070 to clarify requirements for accessing services through standard and general fund eligibility.

The Department has determined the proposed rule changes will not impact providers and the public because the rule changes do not directly impact providers and the public.

The Department estimates the following impact on state agencies, units of local government, and children receiving services and their families:

Department (state agency): The Department will be required to provide training and ongoing technical assistance to service coordinators as to when a child may access in-home supports through standard/Medicaid vs. general fund eligibility. Training will include clarification of requirements and processes to assist a child to obtain the correct type of medical benefit. The Department plans to accomplish these activities with existing staff and fiscal resources.

CDDPs (local government): Service coordinators will need to learn about how medical benefits affect in-home supports. In addition, a services coordinator may need to explain this change to affected children and families. Case management costs have been accounted for in the new CDDP Workload Model developed by the Department. The Workload Model will be revisited on a regular basis to determine which measurements have been impacted by these changes. Until the Workload Model is revisited, the Department is unable to estimate the overall impact of the rule changes.

Children/Families: The Department expects that this change will impact a very limited number of children, primarily children who may be receiving large child support payments or those with unprotected trusts. The Department is unable to estimate the overall impact to children and their families because the Department is unable to quantify the number of children that may be impacted by the rule changes.

The Department is proposing to amend OAR 411-308-0110 to add new categories of non-allowable expenses.

The Department has determined the proposed rule changes will not impact children receiving services and their families, providers, and the public because the rule changes do not directly impact children receiving services and their families, providers, and the public.

The Department estimates the following impact on state agencies and units of local government:

Department (state agency): Some amount of technical assistance from Department staff may be required to guide service coordinators through the application of these new non-allowable expenses. The Department plans to accomplish this activity with existing staff and fiscal resources.

CDDPs (local government): Service coordinators will need to be made aware of the new rule language related to non-allowable expenses. Some staff may require additional instruction. In addition, the rule changes may require that a services coordinator commit time to researching a request for a particular service or item to see if it is subject to the new rule. Training and case management costs have been accounted for in the new CDDP Workload Model developed by the Department. The Workload Model will be revisited on a regular basis to determine which measurements have been impacted by these changes. Until the

Workload Model is revisited, the Department is unable to estimate the overall impact of the rule changes.

The Department is proposing to amend OAR 411-308-0120 to add new waiver and state plan services and update previously available services.

The Department has determined the proposed rule changes will not impact providers and the public because the rule changes do not directly impact providers and the public.

The Department estimates the following impact on state agencies, units of local government, children receiving services and their families, and small businesses:

Department (state agency): The changes and clarifications to both waiver and state plan services available to children (i.e., environmental modifications, community transportation) will require the Department to develop guidance and training for service coordinators (i.e., qualifications of providers, scope of work). The Department plans to accomplish this activity with existing staff and fiscal resources. The Department anticipates there may be an increase in hearing requests. Hearing requests require administrative time for processing, preparing for hearings (including informal conferences), and testifying at hearings (as needed). It is estimated that the Department will be charged an average of \$1,344 for each hearing request processed by the Office of Administrative Hearings. The Department is unable to estimate the overall impact because the Department is unable to quantify the number of hearings that will occur as a result of the rule changes.

CDDPs (local government):

- Service coordinators will be required to devote some time to becoming familiar with the newly available services through training and technical assistance.
- Service coordinators will need to be made aware of the availability and limits of employment supports for eligible children. In addition, if an eligible child chooses to access employment supports there is time associated with assessing the needs of the child and the inclusion of employment supports in the Individual Support Plan. The Department is unable to quantify the number of children that may access employment supports but expects it to be few as the affected children are school-age and unlikely to access employment supports.
- It may take a services coordinator additional time to confirm Medicaid eligibility through the presumptive Medicaid process, if disability must be determined as

a basis of need, besides the required institutional level of care for an intermediate care facility for individuals with intellectual or developmental disabilities (ICF/IDD) to receive waiver services through OSIPM (Oregon Supplemental Income Program-Medical). All children who are receiving Title XIX Medicaid are eligible for Community First Choice state plan services, but not all are eligible for OSIPM to be eligible for waiver services. The Department is unable to quantify the impact because the time it takes to verify eligibility for waiver services varies widely depending on the records available at the time a request for services is made.

Training and case management costs have been accounted for in the new CDDP Workload Model developed by the Department. The Workload Model will be revisited on a regular basis to determine which measurements have been impacted by these changes. Until the workload model is revisited, the Department is unable to estimate the overall impact of the rule changes.

Children/Families: To the extent that children or their families were covering the costs of these new services using their own funds, some children or their families will be able to re-direct those personal resources towards meeting previously unmet needs. To the degree that children obtain paid employment due to the presence of newly available employment supports, a positive impact for those children will occur. The Department is unable to quantify the number of children that may be impacted but expects it to be few as the affected children are school-age and unlikely to access employment supports.

Small Businesses: Small businesses such as those who provide assistive technology or devices, employment supports, or environmental modifications may experience an increase in business as a result of access to new services based on assessed need. The Department is unable to estimate the overall impact to small businesses because the plan for each child is unique to the child and services vary.

The Department is proposing to amend OAR 411-308-0100 and OAR 411-308-0130 in regards to provider sanctions, qualifications, and terminations.

The Department has determined the proposed rule changes will not impact the public because the rule changes do not directly impact the public.

The Department estimates the following impact on state agencies, units of local government, children receiving services and their families, and providers:

Department (state agency): As the Department exercises intervention activities, the Department will have to process the termination of provider numbers and inform personal support workers of the termination and their right to a hearing. The Department is unable to estimate the overall impact because the Department is unable to quantify the number of providers that may be impacted by the rule changes.

CDDPs (local government): CDDPs will not be able to sanction or recommend sanctioning of a provider but may be required to inform the Department if intervention activities are required to terminate a provider. The Department is unable to quantify the number of providers that may be impacted by these rule changes. Costs have been accounted for in the new CDDP Workload Model developed by the Department. The Workload Model will be revisited on a regular basis to determine which measurements have been impacted by these changes. Until the workload model is revisited, the Department is unable to estimate the overall impact of the rule changes.

Children/Families: By making allowance for agency providers to deliver in-home supports to children under these rules, the pool of available providers will expand. This will likely make it less time consuming to locate providers in some cases. Families of children receiving services who have a provider who has been terminated due to Department or CDDP intervention may be impacted by limited availability of an alternate provider, as well as time to interview and recruit an alternate provider. The Department is unable to estimate the overall impact to children and their families because the Department is unable to quantify the number of providers and children that may be impacted by the rule changes.

Providers: As sanctions have been removed, there is no fiscal impact to providers unless intervention is required and the provider pursues appeal rights. Providers will no longer be required to pay sanctions for certain violations resulting in a positive fiscal impact for providers. However, violations may now result in termination of their provider number. The Department is unable to estimate the overall impact to providers because the Department is unable to quantify the number of providers that may be impacted by the rule changes.

The Department is proposing to adopt OAR 411-308-0135 to add employer responsibilities.

The Department has determined the proposed rule changes will not impact the public because the rule changes do not directly impact the public.

The Department estimates the following impact on state agencies, units of local government, children receiving services and their families, and providers:

Department (state agency): The Department may experience a small increase in workload due to administrator reviews being requested because a parent or guardian or a representative for the parent or guardian has not been able to demonstrate the ability to meet the employer responsibilities. The Department is unable to estimate the overall impact because the Department is unable to quantify the number of administrator reviews that may be requested.

CDDPs (local government): The proposed standards allowing the CDDPs to intervene when a parent or guardian or a representative for the parent or guardian is not able to meet the employer responsibilities may result in more efficient use of staff time because time will not have to be spent resolving conflict or managing the relationship between the employee and the parent or guardian or a representative for the parent or guardian. However, staff time may be redirected to assisting with finding another representative or conducting other various intervention steps. Case management costs have been accounted for in the new CDDP Workload Model developed by the Department. The Workload Model will be revisited on a regular basis to determine which measurements have been impacted by these changes. Until the Workload Model is revisited, the Department is unable to estimate the overall impact of the rule changes.

Children/Families: The proposed employer responsibilities will provide an improvement in the quality of services provided to children. Additionally, parents, guardians, and representatives for a parent or guardian will have more clarity around the expectations of employer responsibilities, which will prevent frustration, turnover of independent providers, and ultimately result in more stable support for the child. The Department is unable to estimate the overall impact to children and their families because the Department does not centrally track information on the turnover of independent providers.

Providers: Independent providers will receive more support when complaints arise between the independent provider and a parent or guardian or a representative for the parent or guardian, particularly when there are complaints regarding working conditions or payments. The Department is unable to estimate

the overall impact because the Department is unable to quantify the number of providers that may be impacted by the rule changes.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The Department is unable to estimate the number of service providers, employment providers, providers of assistive technology, and general business providers, such as environmental consultants, that may be considered a small business as defined in ORS 183.310.

Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The impact is described above in the Department's statement of cost of compliance.

c. Equipment, supplies, labor and increased administration required for compliance:

The impact is described above in the Department's statement of cost of compliance.

How were small businesses involved in the development of this rule?

Representatives from the Oregon Rehabilitation Association which represents provider organizations participated on the Rule Advisory Committee (RAC). A representative from the Community Providers Association of Oregon also participated on the RAC. Small businesses as defined in ORS 183.310 will also be included in the public review and comment period.

Administrative Rule Advisory Committee consulted?:

Yes. The RAC met in person on July 14th, 24th, 31st, and August 13th to consider proposed rule changes and discuss the fiscal impact. The RAC included representation from CDDPs, support services brokerages, providers, provider organizations, Association of Oregon Counties, Community Providers Association of Oregon, Disability Rights Oregon, Oregon Council on Developmental Disabilities, Oregon Health Authority, Oregon Home Care Commission, Oregon Rehabilitation Association, Oregon Small Provider Coalition, Oregon Support Services Association, Service Employees International Union Local 503, individuals with intellectual or developmental disabilities, family members of individuals with intellectual or developmental disabilities, and the Department.

Signed Lilia Teninty, Director, Developmental Disabilities

10/09/2014

Signature

Date

DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 308

IN-HOME SUPPORT FOR CHILDREN
WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES

411-308-0010 Statement of Purpose

(1) The rules in OAR chapter 411, division 308 prescribe standards, responsibilities, and procedures for [Community Developmental Disability Programs to partner with families and community partners in identifying and providing in-home support for children with intellectual or developmental disabilities. Supports are intended to maximize the independence of a child and engagement in a life that is fully integrated into the community. Supports are designed to increase the ability of a family to care for a child with an intellectual or developmental disability in the family home. to prevent out-of-home placement, or to return a child with an intellectual or developmental disability back to the family home from a residential setting other than the child's family home.](#)

(2) In-home supports are ~~designed to increase a family's ability to care for a child with an intellectual or developmental disability in the family home. also~~ [designed to prevent out-of-home placement or to return a child with an intellectual or developmental disability back to the family home from a residential setting other than the family home.](#)

Stat. Auth.: ORS 409.050, ~~and~~ 430.662

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

411-308-0020 Definitions

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

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

~~(2) "Activities of Daily Living (ADL)" means basic personal everyday activities, including but not limited to tasks such as eating, using the restroom, dressing, grooming, bathing, and transferring.~~

~~(32) "ADL" means "activities of daily living" as defined in this rule. ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.~~

~~(3) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.~~

~~(4) "Alternative Resources" mean possible resources for the provision of supports to meet the needs of a child. Alternative resources include, but are not limited to, private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.~~

~~(45) "Annual Plan" means the written summary a services coordinator completes for a child, who is not enrolled in waiver or Community First Choice state plan services. An Annual Plan is not an Individual Support Plan-ISP and is not a plan of care for Medicaid purposes.~~

~~(6) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances described in OAR 411-308-0120 that are necessary to enable a child to increase the ability of the child to perform ADL and IADLs or to perceive, control, or communicate with the home and community environment in which the child lives.~~

~~(7) "Assistive Technology" means the devices, aids, controls, supplies, or appliances described in OAR 411-308-0120 that are purchased to provide support for a child and replace the need for direct interventions to enable self-direction of care and maximize independence of the child.~~

~~(58) "Attendant Care" means assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding as described in the Medicaid state plan funded essential supportive daily care described in OAR 411-~~

~~308-0120 that is delivered by a qualified provider to enable a child to remain in, or return to, the child's family home.~~

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

(710) "Behavior Consultant" means a contractor with specialized skills who conducts functional assessments and develops a Behavior Support Plan.

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

(912) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to a child's the intellectual or developmental disability of a child that prevents the child from accomplishing activities of daily livingADL, instrumental activities of daily livingIADL, health related tasks, and provides cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

~~(10) "Case Management" means the functions performed by a services coordinator. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.~~

(4113) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.~~this rule.~~

(4214) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability. ~~applying for, or determined eligible for, in-home support.~~

(4315) "Children's Intensive In-Home Services" means the services described in:

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

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

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

(1416) "Chore Services" mean the services described in OAR 411-308-0120 that are needed to restore a hazardous or unsanitary situation in a child's the family home to a clean, sanitary, and safe environment.

~~(15) "Community Developmental Disability Program (CDDP)" means the entity that is responsible for plan authorization, delivery, and monitoring of developmental disability services according to OAR chapter 411, division 320.~~

~~(16) "Community First Choice (K Plan)" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.~~

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

(18) "Community Transportation" means the services described in OAR 411-308-0120 that enable a child to gain access to community-based state plan and waiver services, activities, and resources that are not medical in nature. Community transportation is provided in the area surrounding the family home that is commonly used by people in the same area to obtain ordinary goods and services. ~~community services, activities, and resources that are not medical in nature.~~

(19) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet the support needs of a child. Less costly alternatives include other programs available from the Department, the

utilization of assistive devices, natural supports, environmental modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department. that a specific service, support, or item of equipment meets a child's service needs and costs less than, or is comparable to, other similar service, support, or equipment options considered.

(20) "CPMS" means the "Client Processing Monitoring System". CPMS is the Department computerized system for enrolling and terminating services for individuals with intellectual or developmental disabilities.

(21) "Crisis" means "crisis" as defined in OAR 411-320-0020. ~~the risk factors described in OAR 411-320-0160 are present for which no appropriate alternative resources are available and a child meets the eligibility requirements for crisis diversion services in OAR 411-320-0160.~~

~~(22) "Day" means a calendar day unless otherwise specified in these rules.~~

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

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

(24) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and ~~a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as~~ described in OAR 411-320-0080.

(25) "Director" means the ~~d~~Director of the Department's of Human Services, Office of Developmental Disability Services, or the ~~director's~~ designee of the Director.

(26) "Employer" means, for the purposes of obtaining in-home support through a personal support worker as described in these rules, the parent or a person selected by the parent to act on the behalf of the parent to Oconduct the employer responsibilities described in OAR 411-308-0135.

(2627) "Employer-Related Supports" mean the activities that assist a family with directing and supervising provision of services described in a child's Annual Plan the ISP for a child. Employer-related supports may include, but are not limited to:

- (a) Education about employer responsibilities;
- (b) Orientation to basic wage and hour issues;
- (c) Use of common employer-related tools, such as job descriptions service agreements; and
- (d) Fiscal intermediary services.

(28) "Employment Path Services" means "employment path services" as defined in OAR 411-345-0020.

(29) "Employment Services" means "employment services" as defined in OAR 411-345-0020.

(30) "Employment Specialist" means "employment specialist" as defined in OAR 411-345-0020.

(31) "Entry" means admission to a Department-funded developmental disability service.

(2732) "Environmental ~~Accessibility Adaptations~~ Modifications" mean the physical adaptations described in OAR 411-308-0120 that are necessary to ensure the health, welfare, and safety of a child in the ~~child's~~ family home, or that are necessary to enable a the child to function with greater independence ~~in-around~~ the family home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.

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

decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.

(2834) "Exit" means termination or discontinuance of in-home support.

(2935) "Family":

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

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

(B) In a domestic relationship where partners share:

(i) A permanent residence;

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

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

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

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

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

(C) Determining who may receive family training.

(3036) "Family Home" means a child's the primary residence for a child that is not under contract with the Department to provide services as a certified foster home for children with intellectual or developmental disabilities or a

licensed or certified residential care facility, assisted living facility, nursing facility, or other residential ~~setting support program site~~. ~~A F~~family home may include a ~~certified foster home funded by eChild wWelfare foster home~~.

~~(3137)~~ "Family Training" means the training ~~and counseling~~ services described in OAR 411-308-0120 that are provided to a ~~child's~~ family to increase the ~~family's~~ capacity of the family to care for, support, and maintain ~~the a~~ child in the ~~child's~~ family home.

~~(3238)~~ "Fiscal Intermediary" means a person or entity that receives and distributes ~~in-home support IHS~~ funds on behalf of ~~the a~~ family ~~of an eligible child who employs a provider to provide services, supervision beyond basic supervision provided by a parent or guardian, or training to a child in the family home or community of the child~~ according to the ~~child's Individual Support Plan ISP~~ or Annual Plan for the child.

~~(33)~~ "Founded Reports" means ~~the Department's or Law Enforcement Authority's (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.~~

~~(3439)~~ "Functional Needs Assessment":

~~(a)~~ mMeans ~~a the~~ comprehensive assessment or reassessment that documents:

~~(aA)~~ Documents Pphysical, mental, and social functioning; ~~and~~

~~(bB)~~ Identifies Rrisk factors, choices and preferences, service and support needs, strengths, and goals; ~~and~~

(C) Determines the service level.

(b) The functional needs assessment for a child is known as the Child Needs Assessment (CNA). The Department incorporates Version B of the CNA dated July 1, 2014 into these rules by this reference. The CNA is maintained by the Department at: www.dhs.state.or.us/spd/tools/dd/cm/CNA_Child_In-home.xls.

Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

~~(3540)~~ "General Business Provider" means an organization or entity selected by ~~the a~~ parent or guardian ~~of an eligible child~~ and paid with ~~in-home support IHS~~ funds that:

- ~~(a)~~ Is primarily in business to provide the service chosen by the ~~child's~~ parent or guardian to the general public;
- ~~(b)~~ Provides services for the child through employees, contractors, or volunteers; and
- ~~(c)~~ Receives compensation to recruit, supervise, and pay the person who actually provides support for the child.

~~(3641)~~ "Guardian" means the parent of a minor child or a person or agency appointed and authorized by a court to make decisions about services for a child.

~~(37)~~ ~~"Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) and 1115 of the Social Security Act.~~

~~(3842)~~ "IADL" means "instrumental activities of daily living" ~~as defined in this rule.~~ IADL include activities other than ADL required to enable a child to be independent in the family home and community such as:

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

(3943) "~~ICF/MR~~IDDID" means an intermediate care facilities facility for individuals with intellectual disabilities. ~~the mentally retarded. Federal law and regulations use the term "intermediate care facilities for the mentally retarded (ICF/MR)". The Department prefers to use the accepted term "individual with intellectual disability (ID)" instead of "mental retardation (MR)". However, as ICF/MR is the abbreviation currently used in all federal requirements, ICF/MR is used.~~

(44) "IHS Funds" means "in-home support funds". IHS funds are public funds contracted by the Department to the CDDP and managed by the CDDP to assist a family with the identification and selection of supports for a child according to an ISP or Annual Plan.

(45) "In-Home Expenditure Guidelines" mean the guidelines that describe allowable uses for IHS funds. Effective January 1, 2015, the Department incorporates version 2.0 of the In-home Expenditure Guidelines into these rules by this reference. The In-home Expenditure Guidelines are maintained by the Department at:
http://www.oregon.gov/dhs/dd/adults/ss_exp_guide.pdf. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(4046) "In-Home Support" means individualized planning and service coordination, arranging for services to be provided in accordance with an ISP or Annual Plan ~~Individual Support Plans~~, and purchase of supports that are not available through other resources that are required for children_a child with an intellectual or developmental ~~disabilities~~ disability who ~~are~~ is eligible for in-home support services to live in the ~~child's~~ family home. In-home supports are designed to:

(a) Support a child to be independent and to be engaged in a life that is fully integrated in the community.

(b) Prevent unwanted out-of-home placement and maintain family unity; and

(bc) Whenever possible, reunite families a family with children with intellectual or developmental disabilities a child who have has been placed out of the family home.

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

(4247) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving a child.

(4348) "Independent Provider" means a person selected by a child's parent or guardian and paid with in-home support IHS funds to personally directly provide services to the a child.

(4449) "Individual" means a person a child or an adult with an intellectual or developmental disability applying for, or determined eligible for, developmental disability Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and to exercise the rights of the individual.

~~(45) "Individual Support Plan" means the written details of the supports, activities, and resources required for a child to achieve and maintain personal outcomes. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. Individual support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an ISP. The ISP is the child's plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.~~

~~(46) "Instrumental Activities of Daily Living (IADL)" mean the activities other than activities of daily living, including but not limited to:~~

~~(a) Meal planning and preparation;~~

~~(b) Budgeting;~~

~~(c) Shopping for food, clothing, and other essential items;~~

~~(d) Performing essential household chores;~~

~~(e) Communicating by phone or other media; and~~

~~(f) Traveling around and participating in the community.~~

~~(4750) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.~~

~~(4851) "ISP" means "Individual Support Plan" as defined in this rule. An ISP includes the written details of the supports, activities, and resources required for a child to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering that is driven by the child. The ISP reflects the services and supports that are important to meet the needs of the child identified through a functional needs assessment as well as the preferences for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources.~~

~~(52) "Job Development" means "job development" as defined in OAR 411-345-0020.~~

~~(49) "K Plan" means "Community First Choice" as defined in this rule.~~

~~(50) "Level of Care" means a child meets the following institutional level of care for an intermediate care facility for individuals with intellectual or developmental disabilities (formerly referred to as an ICF/MR):~~

~~(a) The child has a condition of an intellectual disability or a developmental disability as defined in OAR 411-320-0020 and meets the eligibility criteria for developmental disability services as described in OAR 411-320-0080; and~~

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

~~(51) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who comes in contact with and has reasonable cause to believe a child with or without an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child with or without an intellectual or developmental disability, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.~~

~~(5253) "Natural Supports" means the parental responsibility responsibilities for a child who is less than 18 years of age and the voluntary resources available to the child from the child's relatives, friends, neighbors, and the community that are not paid for by the Department.~~

~~(53) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.~~

~~(5454) "Nursing Care-Service Plan" means the plan that is developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of a child and how those needs are met. The Nursing Care Plan includes the tasks that are taught or delegated to the child's primary caregiver or a qualified provider. When a Nursing Care Plan exists, it is a supporting document for an Individual Support Plan based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.~~

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

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

(~~5555~~) "OHP" means the Oregon Health Plan.

(56) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(~~5657~~) "OIS" means "Oregon Intervention System". ~~means OIS is~~ the system of providing training ~~to people who work with designated individuals to provide of~~ elements of positive behavior support and non-aversive behavior intervention. ~~The Oregon Intervention System OIS~~ uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

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

(~~5759~~) "Parent" means the biological parent, adoptive parent, stepparent, or legal guardian of a child.

(~~5860~~) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by a child n individual with an intellectual or developmental disability that gathers, includes people chosen by the child, ensures that the child directs the process to the maximum extent possible, and that the child is enabled to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizes organizing information that to reflect what is important to and for the child and to helps an individual:

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

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

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

~~(bc)~~ The methods for gathering information vary, but all are consistent with the ~~individual's~~ cultural considerations, needs, and preferences of the child.

~~(59) "Personal Care Services" means assistance with activities of daily living, instrumental activities of daily living, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding.~~

~~(61) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.~~

~~(60) "Plan of Care" means the written plan of Medicaid services required by Medicaid regulation. Oregon's plan of care is the Individual Support Plan.~~

~~(6162)~~ "Plan Year" means 12 consecutive months from the start date specified on ~~a child's an~~ authorized Individual Support Plan-ISP or Annual Plan.

~~(6263)~~ "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intrusive intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(~~6364~~) "Primary Caregiver" means ~~a child's the~~ parent, guardian, relative, or other non-paid parental figure ~~of a child~~ that provides direct care at the times that a paid provider is not available.

(~~6465~~) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts ~~the child's~~ freedom of movement.

(~~6566~~) "Provider" means a person, ~~agency, organization, or business selected by a parent or guardian that provides recognized Department-funded services and is approved by the Department or other appropriate agency to provide Department-funded services. who is qualified as described in OAR 411-308-0130 to receive payment from the Department for providing support and services to a child according to the child's Individual Support Plan or Annual Plan.~~

(~~6667~~) "Provider Organization" means an entity ~~licensed or certified by the Department that is~~ selected by a ~~child's~~ parent or guardian and paid with ~~in-home support-IHS~~ funds that:

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

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

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

(~~6768~~) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(~~6869~~) "Regional Process" means a standardized set of procedures through which ~~a child's the~~ needs ~~of a child~~ and funding to implement supports are reviewed for approval. The regional process includes review of the potential risk of out-of-home placement, the appropriateness of the

proposed supports, and cost effectiveness of the ~~child's~~ Annual Plan for the child. ~~Children~~ A child who meets the ~~crisis~~ general fund eligibility under OAR 411-308-0060~~(2)~~ may be granted access to in-home supports through the regional process.

~~(6970)~~ "Relief Care" means the intermittent services described in OAR 411-308-0120 that are provided on a periodic basis of not more than 14 consecutive days for the relief of, or due to the temporary absence of, a ~~child's~~ primary caregiver.

(71) "Scope of Work" means the written statement of all proposed work requirements for an environmental modification which may include dimensions, measurements, materials, labor, and outcomes necessary for a contractor to submit a proposal to complete such work. The scope of work is specific to the identified tasks and requirements necessary to address the needs outlined in the supplemental assessment referenced in an ISP and relating to the ADL, IADL, and health-related tasks of a child as discussed by the parent, services coordinator, and ISP team.

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

~~(70) "Services Coordinator" means an employee of a community developmental disability program, Department, or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor in-home support, and to act as a proponent for children with intellectual or developmental disabilities and their families. A services coordinator is a child's person-centered plan coordinator as defined in the Community First Choice state plan,~~

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

~~(71) "Specialized Equipment and Supplies" means the devices, aids, controls, supplies, or appliances described in OAR 411-308-0120 that enable a child to increase the child's ability to perform activities of daily~~

~~living or to perceive, control, or communicate with the environment in which the child lives.~~

(74) "Social Benefit" means the service or financial assistance solely intended to assist a child with an intellectual or developmental disability to function in society on a level comparable to that of a child who does not have an intellectual or developmental disability. Social benefits are pre-authorized by a services coordinator and provided according to the description and limits written in an ISP.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to a child regardless of intellectual or developmental disability;

(B) Replace normal parental responsibilities for the services, education, recreation, and general supervision of a child;

(C) Provide financial assistance with food, clothing, shelter, and laundry needs common to a child with or without an intellectual or developmental disability; or

(D) Replace other governmental or community services available to a child.

(b) Assistance provided as a social benefit is reimbursement for an expense previously authorized in an ISP or prior payment in anticipation of an expense authorized in a previously authorized ISP.

(c) Assistance provided as a social benefit may not exceed the actual cost of the support required by a child to be supported in the family home.

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

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

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

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

(~~7276~~) "Substantiated" means an abuse investigation has been completed by the Department or the ~~Department's~~ designee of the Department and the preponderance of the evidence establishes the abuse occurred.

(~~7377~~) "Supplant" means take the place of.

(~~7478~~) "Support" means the assistance that a child and ~~the child's a~~ family requires, solely because of the effects of ~~the child's an~~ intellectual or developmental disability of the child, to maintain or increase the ~~child's~~ age-appropriate independence of the child, achieve ~~a child's~~ age-appropriate community presence and participation of the child, and to maintain the child in the ~~child's~~ family home. Support is subject to change with time and circumstances.

(79) "Support Services Brokerage" means "Brokerage" as defined in OAR 411-340-0020.

(80) "Supported Employment - Individual Employment Support" means "supported employment - individual employment support" as defined in OAR 411-345-0020.

(81) "Supported Employment - Small Group Employment Support" means "supported employment - small group employment support" as defined in OAR 411-345-0020.

(~~7582~~) "These Rules" mean the rules in OAR chapter 411, division 308.

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

(84) "Unacceptable Background Check" means a check that produces information related to the background of a person that precludes the person

from being an independent provider for one or more of the following reasons:

(a) The person applying to be an independent provider has been disqualified under OAR 407-007-0275;

(b) The person was enrolled as an independent provider for the first time, or after any break in enrollment, after July 28, 2009 and has been disqualified under OAR 407-007-0275; or

(c) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.

(85) "Unusual Incident" means any incident involving a child that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(86) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department as described in OAR 411-308-0150.

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

~~(76) "Volunteer" means any person providing services without pay to support the services and supports provided to a child.~~

Stat. Auth.: ORS 409.050, ~~and~~ 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, ~~and~~ 430.662 ~~to~~ ~~430.~~670

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

(1) FISCAL INTERMEDIARY SERVICES. The CDDP must provide, or arrange a third party to provide, fiscal intermediary services ~~for all families.~~

The fiscal intermediary receives and distributes ~~in-home support IHS~~ funds on behalf of a ~~child's~~ family. The responsibilities of the fiscal intermediary include payments to vendors as well as all activities and records related to payroll and payment of employer-related taxes and fees as an agent of ~~a child's~~ the family who employs a person to provide services, supervision, or training in the family home or community. In this capacity, the fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

(2) GENERAL RECORD REQUIREMENTS. ~~The CDDP must maintain records of services to children in accordance with OAR 411-320-0070, ORS 179.505, ORS 192.515 to 192.518, 45 CFR 205.50, 45 CFR 164.512, Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any Department administrative rules and policies pertaining to service records.~~

(a) DISCLOSURE. For the purpose of disclosure from medical records under these rules, ~~a CDDPs are is~~ considered a "public providers" as defined in ORS 179.505~~(4)~~ and ORS 179.505 is applicable.

(A) Access to records by the Department does not require authorization by ~~a child's~~ the family.

(B) For the purposes of disclosure from non-medical records, all or portions of the information contained in the non-medical record may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) SERVICE RECORDS. Records for children who receive in-home support must be kept up-to-date and must include:

(A) An easily accessed summary of basic information as described in OAR 411-320-0070, including the date of ~~the child's enrollment~~ entry into in-home support;

(B) Records related to receipt and disbursement of ~~in-home support IHS~~ funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports,

verification that providers meet requirements of OAR 411-308-0130, and documentation of [family the](#) acceptance or delegation [from the family](#) of the record keeping responsibilities outlined in [this these](#) rules. Records must include:

(i) Itemized invoices and receipts to record the purchase of any single item;

(ii) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals;

(iii) Written professional support plans, assessments, and reviews to document the acceptable provision of behavior support, nursing, and other professional training and consultation services; and

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

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

(D) A [functional needs assessment and other](#) assessments used to determine required supports, preferences, and resources;

(E) When a child is not Medicaid [Title XIX](#) eligible, documentation of [the child's general fund](#) eligibility ~~for crisis services and approval of the child's services through a regional process~~;

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

(G) ~~The services coordinator's eC~~orrespondence and notes [from the services coordinator](#) related to plan development and outcomes; and

(H) Family satisfaction information.

~~(c) GENERAL FINANCIAL POLICIES AND PRACTICES. The CDDP must:~~

~~(A) Maintain up-to-date accounting records consistent with generally accepted accounting principles that accurately reflect all in-home support revenue by source, all expenses by object of expense, and all assets, liabilities, and equities; and~~

~~(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement.~~

~~(d) RECORDS RETENTION. Records must be retained in accordance with OAR chapter 166, division 150, Secretary of State, Archives Division.~~

~~(A) Financial records, supporting documents, statistical records, and all other records (except service records) must be retained for a minimum of three years after the close of the contract period, or until audited.~~

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

(3) RIGHTS OF A CHILD.

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

(b) The individual rights described in OAR 411-318-0010 must be provided as described in OAR 411-320-0060.

(4) COMPLAINTS.

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

(b) The policy and procedures for complaints must be explained and provided as described in OAR 411-320-0175.

(5) NOTIFICATION OF PLANNED ACTION. In the event a developmental disability service is denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(6) HEARINGS.

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

(b) A parent or guardian may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025.

(c) A notice of hearing rights and the policy and procedures for hearings as described in OAR chapter 411, division 318 must be explained and provided as described in OAR 411-320-0175.

~~(3) COMPLAINTS AND APPEALS. The CDDP must provide for review of complaints and appeals by or on behalf of children related to in-home support as set forth in OAR 411-320-0170.~~

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

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

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

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

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

~~(A) The action the CDDP intends to take;~~

~~(B) The reasons for the intended action;~~

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

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

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

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

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

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

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

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

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

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

~~(i) The current authorization expires;~~

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

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

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

~~(f) The Department may reinstate services if:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(I) Proposed and final orders.~~

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

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

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

(57) OTHER OPERATING POLICIES AND PROCEDURES. The CDDP must develop and implement such written statements of policy and procedure, in addition to those specifically required by this rule, as are necessary and useful to enable the CDDP to accomplish ~~its~~the objectives of the CDDP and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050, ~~and~~ 430.662

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

411-308-0040 Required In-Home Support

(1) The CDDP must provide or arrange for the following services ~~to support~~ all as required to meet the support needs of children receiving in-home support in the family home:

(a) SERVICE COORDINATION.

(A) Assistance for families to determine needs, plan supports in response to needs, and develop individualized plans based on available natural supports and ~~public~~alternative resources;

(B) Assistance for families to find and arrange the resources to provide planned supports;

(C) Assistance for families and children (as appropriate) to effectively put ~~the child's an~~ ISP or Annual Plan into practice, including help to monitor and improve the quality of personal supports and to assess and revise the ~~child's goals of the~~ ISP or Annual Plan ~~goals~~; and

(D) Assistance to families to access information, referral, and local capacity building services through the ~~county's~~ family support program under OAR chapter 411, division 305.

(b) EMPLOYER-RELATED SUPPORTS.

(A) Fiscal intermediary services in the receipt and accounting of ~~in-home support services IHS funds~~ on behalf of families in addition to making payment with the authorization of ~~families the~~ ~~family~~; and

(B) Assistance ~~to for~~ families to fulfill roles and obligations as employers ~~of support staff~~ when ~~staff is providers are~~ paid with ~~in-home support IHS~~ funds.

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

(a) ~~The C~~ criteria for entry and for determining ~~how much assistance with~~ supports ~~shall be available~~, including information about eligibility for in-home supports and how these supports are different from family support services ~~the child and family may have received provided~~ under OAR chapter 411, division 305;

(b) An overview of common processes encountered in using in-home support, including the in-home support planning process and the regional processes (as applicable);

(c) ~~The R~~responsibility of providers of in-home support and CDDP employees as mandatory reporters of child abuse;

(d) A description of ~~family the~~ responsibilities of the family in regards to the use of public funds;

(e) An explanation of ~~family the~~ rights of the family to select and direct ~~the providers of from among those qualified according to OAR 411-308-0130 to provide~~ services authorized through an ~~eligible child's~~ ISP or Annual Plan and purchased with ~~in-home support IHS~~ funds ~~from among those qualified according to OAR 411-308-0130 to provide supports~~; and

(f) Information on complaint and appeal hearing rights and how to raise and resolve concerns about in-home supports.

(3) The CDDP must make the information required in sections (1) and (2) of this rule available using language, format, and presentation methods appropriate for effective communication according to ~~each family's the~~ needs and abilities of each family.

Stat. Auth.: ORS 409.050, ~~and~~ 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, ~~and~~ 430.662 ~~to 430.-~~670

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

(1) ~~In any plan year, support must be limited to the amount of support determined to be necessary by a functional needs assessment and specified in a child's ISP or Annual Plan. The use of IHS funds to purchase supports is limited to:~~

(a) The service level for a child as determined by a functional needs assessment. The functional needs assessment determines the total number of hours available to meet identified needs. The total number of hours may not be exceeded without prior approval from the Department. The types of services that contribute to the total number of hours used include;

(A) Attendant care;

(B) Hourly relief care;

(C) Skills training; and

(D) State plan personal care service hours as described in OAR chapter 411, division 034.

(b) Other services and supports determined by a services coordinator to be necessary to meet the support needs identified through a person-centered planning process and consistent with the In-home Expenditure Guidelines; and

(c) Employment services and payment for employment services are limited to:

(A) An average of 25 hours per week for any combination of job coaching, small group employment support, and employment path services;

(B) 40 hours in any one week for job coaching if job coaching is the only service utilized; and

(C) If an individual is utilizing less than 25 hours of job coaching in any one week, employment services may be combined with small group employment support and employment path services so long as the combination of services does not exceed 25 hours per week.

(2) For a child who is not Medicaid Title XIX eligible;

(a) Support must be limited to:

(A) The amount of support determined to be necessary to prevent out-of-home placement that is specified in the child's an Annual Plan and may does not exceed the maximum allowable monthly plan amount published in the Department's rate In-home Expenditure Guidelines in any month during the plan year; and

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

~~(2b) Payment rates used to establish the limits of financial assistance for a specific service in the child's Annual Plan must be based on the Department's rate In-home Expenditure Guidelines for costs of frequently used services. Department rate guidelines notwithstanding, final costs may not exceed local usual and customary charges for these services as evidenced by the CDDP's own documentation.~~

Stat. Auth.: ORS 409.050, ~~and~~ 430.662

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

411-308-0060 Eligibility for In-Home Support

(1) STANDARD ELIGIBILITY.

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

(aA) Be under the age of 18;

~~(bB) Be receiving the full Medicaid benefit through the Oregon Health Plan Title XIX Medicaid benefits~~Be receiving Medicaid Title XIX benefits under OSIPM or OHP Plus. This does not include CHIP Title XXI benefits;

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

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

~~(dE) After completion of an assessment, m~~(eE) Meet the level of care as defined in OAR 411-~~308320~~320-0020;

(F) Reside in the family home; and

(G) Be safely served in the family home. and ~~(e) Have support and services provided by qualified providers as defined in OAR 411-308-0130.~~

(b) 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 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 that is evaluated according to OAR 461-145-0022;

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

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

(iv) An irrevocable trust that is evaluated according to OAR 461-145-0540;

(B) When a child is disqualified for a transfer of assets, the parent 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) ~~CRISIS-GENERAL FUND~~ ELIGIBILITY. When the standard eligibility ~~criteria-criterion~~ described in section (1)~~(a)(B)~~ of this rule ~~are-is~~ not met, the CDDP of ~~a child's the~~ county of ~~residence origin~~ may find a child eligible for in-home support when the child: --

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

(b) Has exhausted all appropriate alternative resources, including, but not limited to, natural supports and [family support as defined in OAR 411-305-0020](#) ~~children's intensive in-home services as defined in OAR 411-308-0020~~;

(c) Does not receive or may stop receiving other Department-paid in-home or community living services other than ~~state~~ Medicaid [state plan personal care](#) services, adoption assistance, or short-term ~~assistance including crisis~~ [diversion](#) services [provided as described in 411-320-0160](#) to prevent out-of-home placement; and

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

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

(3) CONCURRENT ELIGIBILITY. ~~Children are A child~~ not eligible for in-home support from more than one CDDP unless the concurrent service:

(a) Is necessary to transition from one county to another with a change of residence;

(b) Is part of a collaborative plan developed by both CDDPs; and

(c) Does not duplicate services and expenditures.

Stat. Auth.: ORS 409.050, ~~and~~ 430.662

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

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

(1) ENTRY. ~~An eligible child may enter in-home support when~~

(a) For standard eligibility, a CDDP must:

(A) Confirm a child meets the standard eligibility criteria described in OAR 411-308-0060; and

~~(B) Has in-home support needs are assessed through Complete a level of care determination, a functional needs assessment, an ISP, and authorize funds for services as described in OAR 411-308-0080. Has an authorized ISP. In-home supports must be authorized on an annual basis, prior to the beginning of a new ISP or Annual Plan~~

(b) For general fund eligibility, a CDDP must:

(A) Determine crisis eligibility and have confirmation from the Regional Crisis Diversion Program that a child meets the crisis diversion criteria;

(B) Complete an Annual Plan, based on the collaboration between the Regional Crisis Diversion Program and the CDDP, that includes strategies to resolve identified crisis risk factors and possible resources; and

(C) Have the Annual Plan approved by the Department prior to implementation of proposed crisis intervention services.

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

~~(32) CHANGE OF COUNTY OF RESIDENCE. If a child and the child's family move outside the CDDP's service area of servicea CDDP, the originating CDDP must arrange for services purchased with in-home support-IHS funds to continue, to the extent possible, in the new county of residence. The originating CDDP must:~~

~~(a) Provide information to the family about the need to apply for services in the new CDDP and assist the family with the application for services if necessary; and~~

(b) Contact the new CDDP to negotiate the date on which the in-home support, including responsibility for payments, transfers to the new CDDP.

(43) EXIT. ~~A child must leave a CDDP's in-home support --~~

(a) For standard eligibility, a child must exit In-Home Support for Children when the child:

(A) Is no longer resides in the family home receiving Medicaid Title XIX;

(B) At the written request of tThe child's parent or guardian submits a written request to end the iIn-hHome sSupports for Children services;

(C) Turns 18 years of age;

(D) Is no longer eligible for developmental disability services as determined by the CDDP of the county of origin as described in OAR 411-320-0080;

(E) Does not meet the level of care as defined in OAR 411-320-0020;

(F) May not be safely served in the family home;

(G) No longer resides in the family home;

(H) Moves to a county outside the service area of the CDDP, unless transition services have been previously arranged and authorized by the CDDP as required in section (2) of this rule;

(I) The parent or guardian either cannot be located or has not responded after 30 days of repeated attempts by CDDP staff to complete the ISP or Annual Plan development and monitoring activities and does not respond to a notice of intent to terminate; or

(J) The CDDP has sufficient evidence that the parent or guardian has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP or Annual Plan, refused to cooperate with documenting expenses of IHS funds, or otherwise knowingly misused public funds associated with in-home support.

(b) For general fund eligibility, a child must exit in-home support when the child:

(A) No longer needs in-home support to prevent out-of-home placement;

(B) Meets the standard eligibility requirements for in-home support;

(C) Turns 18 years of age;

(D) Is no longer eligible for developmental disability services determined by the CDDP of the county of origin as described in OAR 411-320-0080;

(E) May not be safely served in the family home;

(F) No longer resides in the family home;

(G) Moves to a county outside the service area of the CDDP, unless transition services have been previously arranged and authorized by the CDDP as required in section (2) of this rule;

(H) The parent or guardian either cannot be located or has not responded after 30 days of repeated attempts by CDDP staff to complete the ISP or Annual Plan development and monitoring activities and does not respond to a notice of intent to terminate; or

(I) The CDDP has sufficient evidence that the parent or guardian has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP or Annual Plan, refused to cooperate with documenting expenses of IHS funds,

~~or otherwise knowingly misused public funds associated with in-home support. in-home supports are no longer necessary to prevent out-of-home placement due to either~~

~~(c) When a child is being exited from in-home support, a written Notification of Planned Action must be provided as described in OAR 411-318-0020.~~

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

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

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

~~(e) When the child and the child's family moves to a county outside the CDDP's area of service, unless transition services have been previously arranged and authorized by the CDDP as required in section (3) of this rule; or~~

~~(f) No less than 30 days after the CDDP has served written notice, in the language used by the family, of intent to terminate services because:~~

~~(A) The child's family either cannot be located or has not responded to repeated attempts by CDDP staff to complete the child's ISP or Annual Plan development and monitoring activities and does not respond to the notice of intent to terminate; or~~

~~(B) The CDDP has sufficient evidence that the child's family has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's ISP or Annual Plan, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with in-home support.~~

Stat. Auth.: ORS 409.050, and 430.662

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

411-308-0080 ~~Written Plan Required~~ Service Planning

(1) The CDDP must provide an annual planning process to assist families in establishing outcomes, determining needs, planning for supports, and reviewing and redesigning support strategies for all children eligible for in-home support.

(a) The planning process must occur in a manner that:

(aA) Identifies and applies existing abilities, relationships, and resources while strengthening naturally occurring opportunities for support at home and in the community; and

(bB) Is consistent in both style and setting with the ~~child's and the child's family's~~ needs and preferences, of the child and the family including, but not limited to, informal interviews, informal observations in home and community settings, or formally structured meetings; ~~and.~~

(eb) ~~Includes completing~~ For standard eligibility, a functional needs assessment must be completed using a person-centered planning approach.

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

(a) The ~~child's~~ ISP or Annual Plan must include, but not be limited to:

(aA) The ~~eligible child's~~ legal name of the child and the name of the ~~child's~~ parent (if different than the ~~child's~~ last name of the child) or the name of the ~~child's~~ guardian;

(bB) A description of the supports required that is consistent with the support needs identified in an assessment of the child, including the reason the support is necessary. ~~The description~~

~~must be consistent with the needs identified in the functional needs assessment;~~

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

~~(dD)~~ A list of personal, community, and public-alternative resources that are available to the child and how the resources may be applied to provide the required supports. Sources of support may include waiver services, Community First Choice state plan services, other state plan services, state general funds, or natural supports;

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

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

~~(fG)~~ The review schedule of the ~~child's~~ ISP or Annual Plan reviews.

(b) For a child accessing in-home supports through general fund eligibility, a plan to reduce or eliminate the need for in-home supports through general funds must be included. The plan may include assisting the child to access waiver or Community First Choice state plan services, if eligible.

~~(3c)~~ The An ISP must also include the following:

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

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

~~(cB)~~ Service providers type;

~~(dC)~~ The ~~child's~~ strengths and preferences of the child;

(eD) Individually identified goals and desired outcomes;

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

(gF) The risk factors and the measures in place to minimize the risk factors, including back-up plans [for assistance with support and service needs](#); and

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

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

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

(a) When the child is not Medicaid eligible, ~~in-home support IHS~~ funds are used only to purchase goods or services necessary to prevent the child from out-of-home placement, or to return the child from a community placement to the family home;

(b) The services coordinator has assessed the availability of other means for providing the supports before using ~~in-home support IHS~~ funds, and other public, private, formal, and informal resources available to the child have been applied and new resources have been developed whenever possible;

(c) Basic health and safety needs and supports have been addressed, including, but not limited to, identification of risks, including risk of serious neglect, intimidation, and exploitation;

(d) Informed decisions by the ~~child's~~ parent or guardian regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(e) Education and support for the child and the ~~child's~~ family to recognize and report abuse.

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

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

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

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

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

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

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

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

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

(~~ed~~) For ~~children a child~~ who meets the ~~crisis general fund~~ eligibility under OAR 411-308-0060(~~2~~), a ~~quarterly~~ review of the ~~child's~~ continued risk for out-of-home placement and the availability of ~~alternate alternative~~ resources, including eligibility for ~~children's~~

~~intensive in-home services as defined in OAR 411-308-0020~~waiver and Community First Choice state plan services.

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

(a) Continuing in-home supports authorized by the ~~child's~~ ISP or Annual Plan which is current at the time of the move, if the support is available, until the transfer date agreed upon according to OAR 411-308-0070; and

(b) Transferring the unexpended portion of the ~~child's~~ in-home supports to the new CDDP of residence.

Stat. Auth.: ORS 409.050, and 430.662

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

411-308-0090 Managing and Accessing In-Home Support Funds

(1) IHS Funds contracted to a CDDP by the Department to serve a specifically-named child must only be used to support that specified child. Services must be provided according to each child's an approved ISP or Annual Plan. The IHS funds may only be used to purchase supports described in OAR 411-308-0120. Continuing need for services must be regularly reviewed according to the Department's procedures described in these rules.

(2) No child receiving in-home support may concurrently receive services through:

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

(b) Direct assistance or immediate access funds under family support as described in OAR 411-305-0120; or

(c) In-home support from another CDDP unless short-term concurrent services are necessary when a child moves from one CDDP to

another and the concurrent supports are arranged in accordance with OAR 411-308-0060~~(3)~~.

(3) Children receiving in-home support [via general fund eligibility](#) may receive short-term crisis diversion services provided through the CDDP or region. Children receiving in-home support [via general fund eligibility](#) may utilize family support information and referral services, other than direct assistance ~~or immediate access~~ funds [under family support](#) while receiving in-home support. The CDDP must clearly document the services and demonstrate that the services are arranged in a manner that does not allow duplication of funding.

Stat. Auth.: ORS 409.050, ~~and~~ 430.662

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

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

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

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

(a) In settings and under purchasing arrangements and conditions that enable ~~the a~~ family to receive supports and services from ~~another a~~ qualified provider [as described in OAR 411-308-0130](#);

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to [the](#) health and safety of ~~the a~~ child or others;

(B) Is likely to continue and become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental ~~accessibility adaptations~~ modifications to the family home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks; ~~and~~

(f) In accordance with OAR 411-308-0130 governing provider qualifications; ~~and~~

(g) In accordance with the In-Home Expenditure Guidelines.

(3) When ~~in-home support~~ IHS funds are used to purchase services, training, supervision beyond basic supervision provided by a parent or guardian, or other personal care assistance for a ~~children~~, the CDDP must require and document that providers are informed of:

(a) Mandatory reporter responsibility to report suspected child abuse;

(b) Responsibility to immediately notify the ~~child's~~ parent or guardian, or any other person specified by the ~~child's~~ parent or guardian, of any injury, illness, accident, or unusual circumstance involving the child that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical, or emotional well-being, or level of services required;

(c) Limits of payment:

(A) ~~In-home support fund~~ payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the family or any other source.

(B) The provider must bill all third party resources before using ~~in-home support~~ IHS funds.

(d) The provisions of ~~section (6) of this rule regarding sanctions that may be imposed on providers~~ provider termination as described in OAR 411-308-0130;

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

(f) The payment process, including payroll or contractor payment schedules or timelines.

(4) The method and schedule of payment must be specified in written agreements between the CDDP and the ~~child's~~ parent or guardian.

(a) Support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and timekeeping for staff working with more than one eligible child.

(b) The CDDP is specifically prohibited from ~~reimbursement of families-reimbursing a family~~ for expenses or advancing funds to families-a family to obtain services. The CDDP must issue payment, or arrange ~~through a~~ fiscal intermediary ~~services~~ to issue payment, directly to ~~the a~~ qualified provider on behalf of ~~the a~~ family after approved services described in ~~the child's an~~ ISP or Annual Plan have been satisfactorily delivered.

(5) The CDDP must inform families in writing of records and procedures required in OAR 411-308-0030 regarding expenditure of ~~in-home support~~ IHS funds. During development of an ~~child's~~ ISP or Annual Plan, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must delineate responsibility for maintenance of records in written service agreements.

~~(6) SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS, AND GENERAL BUSINESS PROVIDERS.~~

~~(a) A sanction may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with in-home support funds, the provider has:~~

~~(A) Been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;~~

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

~~(C) Surrendered his or her professional license or certificate, or had his or her professional license or certificate suspended, revoked, or otherwise limited;~~

~~(D) Failed to safely and adequately provide the authorized in-home support services, or other similar services in a Department program;~~

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

~~(F) Failed to cooperate with any Department or CDDP investigation or grant access to, or furnish, records or documentation, as requested;~~

~~(G) Billed excessive or fraudulent charges or been convicted of fraud;~~

~~(H) Made false statement concerning conviction of crime or substantiation of abuse;~~

~~(I) Falsified required documentation;~~

~~(J) Failed to comply with the provisions of section (4) of this rule and OAR 411-308-0130; or~~

~~(K) Been suspended or terminated as a provider by the Department or Oregon Health Authority.~~

~~(b) The following sanctions may be imposed on a provider:~~

~~(A) The provider may no longer be paid with in-home support funds; or~~

~~(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the CDDP or the Department, as applicable.~~

~~(c) If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction.~~

~~(d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.~~

~~(A) A provider may appeal a sanction by requesting an administrative review by the Department's director.~~

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

~~(e) A provider may be immediately suspended by the CDDP as a protective service action or in the case of alleged criminal activity that may pose a danger to the child. The suspension may continue until the issues are resolved.~~

~~(f) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or Oregon Health Authority may not be authorized as providers of Medicaid services.~~

Stat. Auth.: ORS 409.050, ~~and~~ 430.662

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

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

(1) Effective July 28, 2009, ~~in-home support IHS~~ funds may not be used to support, in whole or in part, a provider in any capacity ~~having contact with a~~

~~recipient of in-home supports~~ who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

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

(3) ~~In-home support IHS~~ funds may not be used for:

~~(a) Services that:~~

~~(A) Duplicate benefits and services otherwise available to citizens regardless of disability;~~

~~(B) Replace normal parental responsibilities for the child's care, education, recreation, and general supervision;~~

~~(C) Provide financial assistance with food, clothing, shelter, and laundry needs common to children with or without disabilities;~~

~~(D) Replace other governmental or community services available to the child or the child's family; or~~

~~(E) Exceed the actual cost or level of supports that must be provided for the child to be supported in the family home.~~

~~(ba)~~ Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by a recognized child ~~and or~~ consumer safety ~~agency agencies~~;

~~(eb)~~ Services or activities that are carried out in a manner that constitutes abuse of a child;

~~(dc)~~ ~~Notwithstanding abuse as defined in OAR 411-308-0020,~~
sServices from a person who engages in verbal mistreatment and subjects a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(ed) ~~Notwithstanding abuse as defined in OAR 411-308-0020,~~
Services that restrict ~~a child's the~~ freedom of movement of a child by
seclusion in a locked room under any condition;

(fe) Purchase ~~of family or lease of a~~ vehicles;

(gf) Purchase of a service animals or costs associated with the care
of a service animals;

(hg) Health and medical costs that the general public normally must
pay, including but not limited to:

(A) Medical or therapeutic treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements ~~and including, but not limited to~~
vitamins and experimental herbal and dietary treatments; or

(G) ~~Special diet or t~~reatment supplies not related to nutrition,
incontinence, or infection control.

(ih) Ambulance services;

(ji) Legal fees, including, but not limited to, the costs of representation
in educational negotiations, establishment of trusts, or creation of
guardianship;

(kj) Vacation costs ~~or any costs associated with the vacation for~~
transportation, food, shelter, and entertainment that are normally
incurred by a person on vacation, regardless of disability, and are not
strictly required by the need of the child for personal assistance in a
home and community-based setting;

(~~h~~) Services, training, support, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(l) Any purchase that is not generally accepted by the relevant mainstream professional or academic community as an effective means to address an identified support need;

(m) Unless under certain conditions and limits specified in Department guidelines, Employee wages or contractor payments charges for time or services when the a child is not present or available to receive services, including, but not limited to, employee paid time off, hourly "no show" charges, and or contractor travel and preparation hours;

(n) Services, activities, materials, or equipment that are not necessary, not in accordance with the In-Home Expenditure Guidelines, not cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-308-0020;

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

(p) Services provided in a nursing facility, correctional institution, residential setting, or hospital;

(pq) Services, activities, materials, or equipment that the CDDP determines may be reasonably obtained by the a family through alternative resources or natural supports other available means, such as private or public insurance, philanthropic organizations, or other governmental or public services;

(qr) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or

(rs) Purchase of sServices when there is sufficient evidence to believe that the child's a parent or guardian, or the service a provider chosen by the child's a family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the

~~child's an~~ ISP or Annual Plan, refused to ~~cooperate with~~ accept or delegate record keeping required to document use of ~~in-home support-IHS~~ funds, or otherwise knowingly misused public funds associated with in-home support; or

(t) Notwithstanding abuse as defined in ORS 419B.005, services that in the opinion of a services coordinator are characterized by failure to act or neglect that leads to or is in imminent danger of causing physical injury through negligent omission, treatment, or maltreatment of a child such as the failure to provide a child with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of a child by any other person. However, no child may be considered neglected for the sole reason that a family relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050, ~~and~~ 430.662

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

411-308-0120 Supports Purchased with In-Home Support Funds

(1) ~~For an initial or annual ISP, w~~When conditions of purchase are met and provided purchases are not prohibited under OAR 411-308-0110, ~~in-home support-IHS~~ funds may be used to purchase a combination of the following supports based upon the needs of ~~the a~~ child as determined by a services coordinator and consistent with ~~the child's a~~ functional needs assessment, initial or annual ISP, and OSIPM or OHP Plus benefits a child qualifies for available funding:

(a) Community First Choice state plan services. A child who is eligible for OHP Plus and meets the level of care as defined in OAR 411-320-0020 may access Community First Choice state plan services:

(A) ~~Specialized consultation including behavior consultation~~ Behavior support services as described in section (2) of this rule;

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

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

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

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

(E) Relief care as described in section (67) of this rule;

(F) ~~Specialized equipment and supplies~~ Assistive devices as described in section (78) of this rule;

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

(G) Chore services as described in section (810) of this rule;
and

(H) Community transportation as described in section (911) of this rule;
and

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

(b) ~~As a waiver service,~~ Home and community-based waiver services. A child who is eligible for OSIPM and meets the level of care as defined in OAR 411-320-0020 may access Community First Choice state plan services and the following home and community-based waiver services:

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

(B) Employment services as described in section (13) of this rule;

(C) ~~f~~Family training as described in section (4014) of this rule;
;

(D) Environmental safety modifications as described in section (15) of this rule;

(E) Vehicle modifications as described in section (16) of this rule; and

(F) Specialized medical supplies as described in section (17) of this rule.

(c) State Plan personal care services. A Child who is eligible for OHP Plus through Title XXI, has personal care supportive needs, and does not meet the level of care as defined in OAR 411-320-0020 may access State Plan personal care services if meet eligibility criteria as described in OAR chapter 411, division 034.

(2) BEHAVIOR SUPPORT SERVICES. Behavior support services may be authorized to support a primary caregiver in their caregiving role and to respond to specific problems identified by a child, primary caregiver, or a services coordinator. Positive behavior support services are used to allow a child to develop, maintain, or enhance skills to accomplish ADLs, IADLs, and health-related tasks. SPECIALIZED CONSULTATION – BEHAVIOR CONSULTATION. Behavior consultation is only authorized to support a child's primary caregiver in their caregiving role. Behavior consultation is only authorized, as needed, to respond to specific problems identified by a primary caregiver or a services coordinator. Behavior consultants must:

(a) A behavior consultant must

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

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

(B*ii*) The formal or informal responses the ~~child's~~ family or the provider has used in those areas; and

(C*iii*) The unique characteristics of the child's and family that may influence the responses that may work with the child.

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

(Ai) Specific identification of the behaviors or areas of concern;

(Bii) Identification of the settings or events likely to be associated with, or to trigger, the behavior;

(Ciii) Identification of early warning signs of the behavior;

(Div) 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:

(iI) An effort to communicate;

(iiII) The result of a medical condition;

(iiiIII) The result of an environmental cause; or

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

(Eiv) 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

(Fvi) An assessment of current communication strategies.

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

(Ai) When interventions in behavior are necessary, the interventions must be done in accordance with positive

behavioral theory and practice as defined in OAR 411-~~300-0110~~308-0020.

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

(~~C~~ii) Abusive or demeaning interventions must never be used.

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

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

(~~d~~E) Develop emergency and crisis procedures to be used to keep the child and the ~~child's~~ primary caregiver and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to ~~the Oregon Intervention System OIS~~ must be utilized. The use of protective physical intervention must be part of the Behavior Support Plan for the child. When protective physical intervention is required, the protective physical intervention must only be used as a last resort and the provider must be appropriately trained in OIS;

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

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

(b) Behavior support services may include:

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

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

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

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

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

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

(E) An assessment in a school setting;

(F) Attendant care; or

(G) Relief care.

(3) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

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

(F) Teaching and education of the parent and provider and identifying supports that minimize health risks while promoting

the autonomy of a child and self-management of healthcare;
and

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

~~(a) Community nursing services include:~~

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

~~(B) Collateral contact with a services coordinator regarding a child's community health status to assist in monitoring safety and well-being and to address needed changes to the child's ISP; and~~

~~(C) Delegation and training of nursing tasks to a child's primary caregiver and a provider so the caregivers may safely perform health related tasks.~~

(b) Community nursing services exclude direct nursing care.

(c) A Nursing Service Plan must be present when IHS funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP. ~~(c) Community nursing services are not covered by other Medicaid spending authorities.~~

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

(4) ENVIRONMENTAL MODIFICATIONS ~~ACCESSIBILITY ADAPTATIONS~~. ~~Environmental accessibility adaptations are physical adaptations to a child's family home that are necessary to ensure the health, welfare, and safety of the child in the family home due to the child's intellectual or developmental disability or that are necessary to enable the child to~~

~~function with greater independence around the family home and in family activities.~~

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

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

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

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

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

~~(G) Sound and visual monitoring systems;~~

~~(H) Fencing;~~

~~(I)~~G) Installation of ramps, grab-bars, and electric door openers;

~~(J)~~H) Adaptation of kitchen cabinets and sinks;

~~(K)~~I) Widening of doorways;

~~(L)~~J) Handrails;

~~(M)~~K) Modification of bathroom facilities;

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

~~(O)~~M) Installation of non-skid surfaces;

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

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

~~(R) Modifications for the primary vehicle used by the child that are necessary to meet the unique needs of the child and ensure the health, welfare, and safety of the child, such as lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, or other unique modifications to keep the child safe in the vehicle; and~~

(~~SP~~) Adaptations to control lights, heat, stove, etc.

(b) Environmental ~~accessibility adaptations modifications~~ exclude:

(A) Adaptations or improvements to the ~~child's~~ family home that are of general utility ~~and are not for the direct safety, remedial, or long term benefit to the child, such as carpeting, roof repair, and central air conditioning, unless directly related to the assessed health and safety needs of the individual and identified in the ISP of the child;~~

(B) Adaptations that add to the total square footage of the ~~child's~~ family home except for ramps that attach to the home for the purpose of entry or exit;

(C) Adaptations outside of the home; and

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

(c) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks as identified in the ISP for the child.

(d) Environmental modifications are limited to \$5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental modification projects that cumulatively total up to over \$5,000 in a plan year must be submitted to the Department for review.

(e) Environmental modifications must be completed by a state licensed contractor with a minimum of \$1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

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

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

(h) A scope of work as defined in OAR 411-308-0020 must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(i) A services coordinator must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(j) All dwellings must be in good repair and have the appearance of sound structure.

(k) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(l) Environmental modifications must only be completed to the family home.

(m) Upgrades in materials that are not directly related to the assessed health and safety needs of the child are not paid for or permitted.

(n) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(o) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

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

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

~~(e) Environmental accessibility adaptations over \$500 must be completed by a state licensed contractor. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the provider's file prior to payment.~~

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

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

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

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

(a) ADL services include, but are not limited to ~~Attendant care services provided by qualified providers or agencies include:~~

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

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

~~(C) Mobility, transfers, and repositioning - assisting with ambulation or transfers with or without assistive devices, turning a child or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises~~
~~Transfers, comfort, positioning, and assistance with range of motion exercises;~~

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

~~(E) Skin care - Dressing changes;~~

~~(EF) Physical healthcare, including d~~Delegated nursing tasks;

~~(G) Supervision - Providing an environment that is safe and meaningful for the child and interacting with the child to prevent danger to the child and others and maintain skills and behaviors required to live in the child's family home and community;~~

~~(H) Assisting the child with appropriate leisure activities to enhance development in the child's family home and community and provide training and support in personal environmental skills;~~

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

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

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

~~(I) Communication – Assisting the child in communicating using any means used by the child;~~

~~(J) Neurological – Monitoring of seizures, administering medication, and observing status; and~~

~~(K) Accompanying the child and the child's family to health related appointments.~~

(b) IADL services include, but are not limited to, the following services provided solely for the benefit of the child:

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

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

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

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

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

(ii) Support with community participation - assisting a child in acquiring, retaining, and improving skills to use

available community resources, facilities, or businesses;
and

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

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

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

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

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

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

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

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

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

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

(bd) Attendant care services must:

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

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

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

(ee) Attendant care services exclude:

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

(B) Hours solely to allow the a child's primary caregiver to work or attend school;

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

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

(E) Educational and supportive services provided by schools as part of a free and appropriate public education for children and

young adults under the Individuals with Disabilities Education Act;

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

(G) Home schooling.

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

(6) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for a child to acquire, maintain, or enhance independence.

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

(b) Skills training is authorized when:

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

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

(C) Progress towards the anticipated outcome are measured and the measurements are evaluated by a services coordinator no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved within the timeframe outlined in the ISP, the services coordinator must reassess or redefine the use of skills training with the child for that particular goal.

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

(67) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow the primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential but may not exceed 7 consecutive days without permission from the Department. No more than 14 days of relief care in a plan year are allowed without permission from the Department.

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

(A) The family home;

(B) A licensed or certified setting;

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

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

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

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

(B) For more than 7 consecutive overnight stays without permission from the Department;

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

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

(E) To pay for room and board.

~~Relief care 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 child's primary caregiver.~~

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

~~(A) The child's family home;~~

~~(B) A licensed, certified, or otherwise regulated setting;~~

~~(C) A qualified provider's home. If overnight relief care is provided in a qualified provider's home, the services coordinator and the child's parent must document that the home is a safe setting for the child;~~

~~(D) A disability-related or therapeutic recreational camp; or~~

~~(E) The community, during the provision of ADL, IADL, health related tasks, and other supports identified in the child's ISP.~~

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

~~(A) Solely to allow a child's primary caregiver to attend school or work;~~

~~(B) For ongoing services that occur on more than a periodic schedule, such as eight hours a day, five days a week;~~

~~(C) For more than 14 consecutive overnight stays in a calendar month;~~

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

~~(E) For vacation, travel, and lodging expenses; or~~

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

~~(78) ASSISTIVE DEVICES/SPECIALIZED EQUIPMENT AND SUPPLIES. Specialized equipment and supplies include the purchase of devices, aids, controls, supplies, or appliances that are necessary to enable a child to increase the child's abilities to perform and support ADLs and IADLs or to~~

perceive, control, or communicate with the environment in which the child lives. Specialized equipment and supplies must meet applicable standards of manufacture, design, and installation. Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of an assistive device must be limited to the types of equipment that are not excluded under OAR 410-122-0080.

(a) Assistive devices may include the purchase of devices, aids, controls, supplies, or appliances primarily and customarily used to enable a child to increase the ability of the child to perform and support ADLs and IADLs or to perceive, control, or communicate within the family home and community environment in which the child lives.

(b) Assistive devices may be purchased with IHS funds when the intellectual or developmental disability of a child otherwise prevents or limits the independence of the child to assist in areas identified in a functional needs assessment.

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

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

(B) Assistive devices not covered by other Medicaid programs to assist and enhance the independence of a child in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(d) Expenditures for assistive technology are limited to \$5,000 per plan year without Department approval. Any single purchase costing more than \$500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the

child and a determination by the Department of appropriateness and cost-effectiveness.

(e) Devices must be limited to the least costly option necessary to meet the assessed need of a child.

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

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

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

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

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

(h) Assistive devices exclude:

(A) Items that are not necessary or of direct medical benefit to the child or do not address the underlying need for the device;

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

(C) Items available through alternative resources;

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

(E) Toys or outdoor play equipment; and

(F) Equipment and furnishings of general household use.

~~(a) Specialized equipment and supplies include:~~

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

~~Expenditures for electronic devices are limited to \$500 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.~~

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

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

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

~~(C) Assistive devices not covered by other Medicaid programs to assist and enhance a child's independence in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, electrical appliances, or information technology devices.~~

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

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

~~(b) Specialized equipment and supplies may include the cost of a professional consultation, if required to assess, identify, adapt, or fit specialized equipment. The cost of professional consultation may be included in the purchase price of the equipment.~~

~~(c) To be authorized by a services coordinator, specialized equipment and supplies must be --~~

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

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

~~(C) Directly related to a 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 equipment and supplies intended to supplant similar items furnished under OHP or private insurance;~~

~~(C) Items available through a child's family, community, or other governmental resources;~~

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

~~(E) Toys or outdoor play equipment; and~~

~~(F) Equipment and furnishings of general household use.~~

~~(e) Funding for specialized equipment and supplies with an expected life of more than one year is one time funding that is not continued in subsequent plan years. Specialized equipment and supplies may only be included in a child's ISP when all other public and private resources have been exhausted.~~

~~(f) The services coordinator must secure use of specialized equipment or supplies costing more than \$500 through a written agreement between the Department and the child's parent that specifies the time period the item is to be available to the child and the responsibilities of all parties if the item is lost, damaged, or sold within that time period. The Department may immediately recover any specialized equipment or supplies purchased with in-home support funds that are not used according to the child's ISP or according to the written agreement between the Department and the parent.~~

(9) ASSISTIVE TECHNOLOGY. Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, and maximize

independence. Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems, including the expense necessary for the continued operation of the assistive technology.

(a) Expenditures for assistive technology are limited to \$5,000 per plan year without Department approval. Any single purchase costing more than \$500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(b) Payment for ongoing electronic back-up systems or assistive technology costs must be paid to providers each month after services are received.

(A) Ongoing costs do not include electricity or batteries.

(B) Ongoing costs may include minimally necessary data plans and the services of a company to monitor emergency response systems.

(810) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services. in a child's the family home is able of either performing or paying for the services and no other relative, caregiver, landlord, community, volunteer agency, or third-party payer is capable of, or responsible for, providing these services.

(a) Chore services include heavy household chores such as—:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

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

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

(911) COMMUNITY TRANSPORTATION.

(a) Community transportation includes, but is not limited to:

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

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

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

(b) Community transportation may only be authorized when natural supports or volunteer services are not available and one of the following is identified in the ISP for the child:

(A) The child has an assessed need for ADL, IADL, or a health-related task during transportation; or

(B) The child has either an assessed need for ADL, IADL, or a health-related task at the destination or a need for waiver funded services at the destination.

(c) Community transportation must be provided in the most cost-effective manner which meets the needs identified in the ISP for the child.

(d) Community transportation expenses exceeding \$500 per month must be approved by the Department.

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

and documented in the ISP. Personal support workers who use their own personal vehicles for community transportation are reimbursed as described in OAR chapter 411, division 375.

(f) Community transportation excludes:

(A) Medical transportation;

(B) Purchase or lease of a vehicle;

(C) Routine vehicle maintenance and repair, insurance, and fuel;

(D) Ambulance services;

(E) Costs for transporting a person other than the child.

(F) Transportation for a provider to travel to and from the workplace of the provider;

(G) Transportation that is not for the sole benefit of the child;

(H) Transportation to vacation destinations or trips for relaxation purposes;

(I) Transportation provided by family members;

(J) Transportation normally provided by schools;

(K) Transportation normally provided by a primary caregiver for a child of similar age without disabilities;

(L) Reimbursement for out-of-state travel expenses; and

(M) Transportation services that may be obtained through other means, such as OHP or other public or private resources available to the child.

~~Community transportation is provided in order to enable a child to gain access to community services, activities, and resources as specified in the child's ISP. Community transportation excludes:~~

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

(12) TRANSITION COSTS.

(a) Transition costs are limited to a child transitioning to the family home from a nursing facility, ICF/ID, ICF/ID, or acute care hospital.

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

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

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

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

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

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

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

(13) EMPLOYMENT SERVICES. Employment services must be:

(a) Delivered according to OAR 411-345-0025; and

(b) Provided by an employment specialist meeting the requirements described in OAR 411-345-0030.

(1014) FAMILY TRAINING. Family training services are provided to the family of a child to increase the abilities of the family to care for, support, and maintain the child in the family home.

(a) Family training services include:

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

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

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

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

(ii) Conference and workshop costs exclude:

(I) Travel, food, and lodging expenses;

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

(III) Costs for individual family members who are employed to care for the child.

(b) Family training services exclude:

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

(B) Training for a paid provider;

(C) Legal fees;

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

(E) Vocational training for family members; and

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

~~Family training services include the purchase of training, coaching, counseling, and support that increase the abilities of a child's family to care for and maintain the child in the child's family home. Family training services include:~~

~~(a) Instruction about treatment regimens and use of equipment specified in the child's ISP;~~

~~(b) Counseling services that assist the child's family with the stresses of having a child with an intellectual or developmental disability.~~

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

~~(i) Be provided by licensed providers, including but not limited to psychologists licensed under ORS 675.030, professionals licensed to practice medicine under ORS 677.100, social workers licensed under ORS 675.530, or counselors licensed under ORS 675.715;~~

~~(ii) Directly relate to the child's intellectual or developmental disability and the ability of the child's family to care for the child; and~~

~~(iii) Be short-term.~~

~~(B) Counseling services exclude:~~

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

~~(ii) General marriage counseling;~~

~~(iii) Therapy to address the psychopathology of the child's family members;~~

~~(iv) Counseling that addresses stressors not directly attributed to the child;~~

~~(v) Legal consultation;~~

~~(vi) Vocational training for the child's family members; and~~

~~(vii) Training for families to carry out educational activities in lieu of school.~~

~~(c) Registration fees for organized conferences, workshops, and group trainings that offer information, education, training, and materials about the child's intellectual or developmental disability, medical, or health conditions.~~

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

~~(B) Conference, workshop, or group training costs exclude:~~

~~(i) Registration fees in excess of \$500 per family for an individual event;~~

~~(ii) Travel, food, and lodging expenses;~~

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

~~(iv) Costs for individual family members who are employed to care for the child.~~

(15) ENVIRONMENTAL SAFETY MODIFICATIONS

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

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

(c) Environmental safety modifications exclude:

(A) Large gates such as automobile gates;

(B) Costs for paint and stain;

(C) Adaptations or improvements to the family home that are of general utility and are not for the direct safety or long-term benefit to the child or do not address the underlying environmental need for the modification; and

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

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

(e) Environmental safety modifications are limited to \$5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental safety modification projects that cumulatively total up to over \$5,000 in a plan year must be submitted to the Department for review.

(f) Environmental safety modifications must be completed by a state licensed contractor with a minimum of \$1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

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

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

(i) A scope of work as defined in OAR 411-308-0020 must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(j) A services coordinator must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(k) All dwellings must be in good repair and have the appearance of sound structure.

(l) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(m) Environmental modifications must only be completed to the family home.

(n) Upgrades in materials that are not directly related to the health and safety needs of the child are not paid for or permitted.

(o) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(p) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(16) VEHICLE MODIFICATIONS.

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

(b) Vehicle modifications exclude:

(A) Adaptations or improvements to a vehicle that are of general utility and are not of direct medical benefit to a child or do not address the underlying need for the modification;

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

(C) Routine vehicle maintenance and repair.

(c) Vehicle modifications are limited to \$5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate vehicle modification projects that cumulatively total up to over \$5,000 in a plan year must be submitted to the Department for review.

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

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

Stat. Auth.: ORS 409.050, ~~and~~ 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, ~~and~~ 430.662 ~~to~~ ~~430.-~~670

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

~~Independent providers, provider organizations, and general business providers paid with in-home support funds must be qualified. At the discretion of the Department, providers who have previously been terminated or suspended by the Department or Oregon Health Authority~~

~~may not be authorized as providers of service. Providers must meet the following qualifications:~~

(1) PROVIDER QUALIFICATIONS.

(a) PERSONAL SUPPORT WORKERS. A personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(4b) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS. ~~Each~~ An independent provider who is not a personal support worker who is paid as a contractor, or a self-employed person, ~~or an employee of a child's parent or guardian to provide the services listed in OAR 411-308-0120 and selected to provide in-home supports~~ must:

(aA) Be at least 18 years of age;

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

(i) Prior background check approval for another Department provider type is inadequate to meet background check requirements for independent provider enrollment.

(ii) Background check approval is effective for two years from the date an independent provider is contracted with to provide in-home services, except in the following circumstances:

(I) Based on possible criminal activity or other allegations against the independent provider, a new fitness determination is conducted resulting in a change in approval status; or

(II) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the independent provider.

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

(~~e~~D) Be legally eligible to work in the United States;

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

(~~f~~F) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the child's in the ISP or Annual Plan for the child, with such demonstration confirmed in writing by the child's parent or guardian, including:

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

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

(~~C~~iii) Ability to communicate with the childparent; and

(~~D~~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;.

(~~g~~G) Hold current, valid, and unrestricted appropriate professional license or certification where services and

supervision requires specific professional education, training, and skill;

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

(iI) Not be on the ~~Office of Inspector General's~~ list of excluded or debarred providers [maintained by the Office of Inspector General](#) (<http://exclusions.oig.hhs.gov/>); ~~and~~

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

[\(K\) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.](#)

(2c) ~~Subsection (1b)(cC)~~ of this [rule-section](#) does not apply to employees of a parent, employees of a general business provider, or employees of a provider organization, who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(3d) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or the ~~Department's~~ designee [of the Department](#) within 24 hours.

[\(e\) All providers are mandatory reporters and are required to report suspected child abuse to their local Department office or to the police in the manner described in ORS 419B.010.](#)

[\(2\) PROVIDER TERMINATION.](#)

[\(a\) PERSONAL SUPPORT WORKERS. The provider enrollment for a personal support worker is inactivated or terminated as described in OAR 411-375-0070.](#)

(b) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS.

(A) The provider enrollment for an independent provider who is not a personal support worker may be inactivated in the following circumstances:

(i) A provider has not provided any paid in-home services to an individual within the last previous 12 months;

(ii) A provider informs the Department, CDDP, CIIS, or Support Services Brokerage that the provider is no longer providing in-home services in Oregon;

(iii) The background check for a provider results in a closed case pursuant to OAR 407-007-0325;

(iv) Services provided to an individual are being investigated by Adult or Child Protective Services for suspected abuse that poses imminent danger to current or future individuals; or

(v) Provider payments, all or in part, for a provider have been suspended based on a credible allegation of fraud or a conviction of fraud pursuant to federal law under 42 CFR 455.23.

(B) The provider enrollment for an independent provider who is not a personal support worker may be terminated when the Department determines that, at some point after the initial qualification and authorization of the provider to provide supports purchased with IHS funds, the provider has:

(i) Been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

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

(iii) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(iv) Failed to safely and adequately provide the authorized services;

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

(vi) Failed to cooperate with any Department or CDDP investigation or grant access to, or furnish, records or documentation, as requested;

(vii) Billed excessive or fraudulent charges or been convicted of fraud;

(viii) Made a false statement concerning conviction of crime or substantiated abuse;

(ix) Falsified required documentation;

(x) Been suspended or terminated as a provider by the Department or Oregon Health Authority;

(xi) Violated the requirement to maintain a drug-free work place;

(xii) Failed to provide services as required;

(xiii) Failed to provide a tax identification number or social security number that matches the legal name of the independent provider, as verified by the Internal Revenue Service or Social Security Administration; or

(xiv) Has been excluded or debarred by the Office of the Inspector General.

(C) If the CDDP or Department makes a decision to terminate the provider enrollment of an independent provider who is not a personal support worker, the CDDP or Department must issue a written notice.

(i) The written notice must include:

(I) An explanation of the reason for termination of the provider enrollment;

(II) The alleged violation as listed in subsection (A) or (B) of this section;

(III) The appeal rights for the independent provider, including how to file an appeal; and

(IV) The effective date of the termination.

(ii) For terminations based on substantiated protective services allegations, the notice may only contain the limited information allowed by law. In accordance with ORS 124.075, 124.085, 124.090, and OAR 411-020-0030, complainants, witnesses, the name of the alleged victim, and protected health information may not be disclosed.

(D) The provider may appeal a termination within 30 days of the date the termination notice was mailed to the provider. The provider must appeal a termination separately from any appeal of audit findings and overpayments.

(i) A provider of Medicaid services may appeal a termination by requesting an administrator review.

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

(E) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or by the Oregon Health Authority may not be authorized as providers of Medicaid services.

(3) Independent providers, including personal support workers, are not state, CDDP, or Support Services Brokerage employees.

(54) BEHAVIOR CONSULTANTS. Behavior consultants are not personal support workers. Behavior consultants may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists ~~who~~. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior consultation support services, ~~including knowledge and experience in developing plans based on positive behavioral theory and practice as described in OAR 411-308-0120;~~

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

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

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years of experience with individuals who present difficult or dangerous behaviors and at least one year of that experience ~~must include~~ s providing the services of a behavior consultant as described in OAR 411-308-0120.

(45) Nursing consultants have a current Oregon nursing license and submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with state

law-NURSES. A nurse providing community nursing services is not a personal support worker. The nurse must:

(a) Have a current Oregon nursing license;

(b) Be enrolled in the Long-Term Care Community Nursing Program as described in OAR chapter 411, division 048; and

(c) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with Oregon law, including at least one year of experience with individuals with intellectual or developmental disabilities.

(6) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION. A provider organization certified, licensed, and endorsed under OAR chapter 411, division 325 for a 24-hour residential setting, or licensed under OAR chapter 411, division 360 for an adult foster home, or certified and endorsed under OAR chapter 411, division 345 for employment or OAR chapter 411, division 328 for a supported living setting, or OAR 411-340-0170 for support services, may not require additional certification as an organization to provide relief care, attendant care, skills training, community transportation, or behavior support services. Provider organizations must hold any current license or certification required by Oregon law to provide services to children. In addition, all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with in-home support funds must meet the standards for qualification of independent providers described in section (1) of this rule.

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

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

(B) Provide services according to an ISP; and

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

(b) Provider organizations must assure that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with IHS funds meet the standards for independent providers described in this rule.

(7) GENERAL BUSINESS PROVIDERS. General business providers providing services to children paid with IHS funds must hold any current license appropriate to function-operate required by the state of Oregon or federal law or regulation. Services purchased with in-home support IHS funds must be limited to those within the scope of the general business provider's license of the general business provider. ~~Such licenses for general business providers~~ include, but are not limited to:

(a) For a home health agency, a license under ORS 443.015;

(b) For an in-home care agency, a license under ORS 443.315;

(c) For providers of environmental accessibility adaptations modifications involving building modifications or new construction, a current license and bond as a building contractor as required by either OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractor's Board), as applicable;

(d) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of a child, and developing cost-effective plans to make homes safe and accessible;

(e) For public and private transportation providers, a business license, vehicle insurance in compliance with the laws of the Department of Motor Vehicles, and drivers with a valid license to drive.

(ef) For vendors and medical supply companies providing specialized equipment and supplies assistive devices, a current retail business license and, including enrollment if vending medical equipment, be enrolled as Medicaid providers through the Division of Medical Assistance Programs if vending medical equipment; and

(fg) ~~A current business license~~ For providers of personal emergency response systems, a current business license.

Stat. Auth.: ORS 409.050, ~~and~~ 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, ~~and~~ 430.662 ~~to~~ ~~430.~~ 670

411-308-0135 Standards for Employers

(1) EMPLOYER OF RECORD. An employer of record is required when a personal support worker who is not an independent contractor is selected by the parent to provide supports. The Department may not act as the employer of record.

(2) SERVICE AGREEMENT. The employer must create and maintain a service agreement for a personal support worker that is in coordination with the services authorized in the ISP.

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

(4) INTERVENTION. For the purpose of this rule, "Intervention" means the action the Department or the designee of the Department requires when an employer fails to meet the employer responsibilities described in this rule. Intervention includes, but is not limited to:

(a) A documented review of the employer responsibilities described in section (5) of this rule;

(b) Training related to employer responsibilities;

(c) Corrective action taken as a result of a personal support worker filing a complaint with the Department, the designee of the Department, or other agency who may receive labor related complaints;

(d) Identifying an employer representative if a person is not able to meet the employer responsibilities described in section (5) of this rule; or

(e) Identifying another representative if the current employer representative is not able to meet the employer responsibilities described in section (5) of this rule.

(5) EMPLOYER RESPONSIBILITIES.

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

(A) Locate, screen, and hire a qualified personal support worker;

(B) Supervise and train the personal support worker;

(C) Schedule work, leave, and coverage;

(D) Track the hours worked and verify the authorized hours completed by the personal support worker;

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

(F) Discharge an unsatisfactory personal support worker.

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

(A) Personal support worker complaints;

(B) Multiple complaints from a personal support worker requiring intervention from the Department as defined in section (4) of this rule;

(C) Frequent errors on time sheets, mileage logs, or other required documents submitted for payment that results in repeated coaching from the Department;

(D) Complaints to Medicaid Fraud involving the employer; or

(E) Documented observation by the Department of services not being delivered as identified in an ISP.

(c) The Department may require intervention as defined in section (4) of this rule when an employer has demonstrated difficulty meeting the employer responsibilities described in subsection (a) of this section.

(d) A child may not receive in-home support provided by a personal support worker if, after appropriate intervention and assistance, an employer is not able to meet the employer responsibilities described in subsection (a) of this section.

(e) The child may receive in-home support provided by a provider organization or general business provider, when available.

(6) DESIGNATION OF EMPLOYER RESPONSIBILITIES.

(a) A parent not able to meet all of the employer responsibilities described in section (5)(a) of this rule must:

(A) Designate an employer representative in order for the child to receive or continue to receive in-home support provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide in-home support for the child.

(b) A parent able to demonstrate the ability to meet some of the employer responsibilities described in section (5)(a) of this rule must:

(A) Designate an employer representative to fulfill the responsibilities the parent is not able to meet in order for the child to receive or continue to receive in-home support provided by a personal support worker; and

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

(c) When an employer representative is not able to meet the employer responsibilities described in section (5)(a) or the qualifications in section (7)(c) of this rule, the parent must:

(A) Designate a different employer representative in order for the child to receive or continue to receive in-home support provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide in-home support for the child.

(7) EMPLOYER REPRESENTATIVE.

(a) A parent may designate an employer representative to act on behalf of the parent to meet the employer responsibilities described in section (5)(a) of this rule.

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

(A) Track the hours worked and verify the authorized hours completed by the personal support worker; and

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

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

(A) A founded report of child abuse or substantiated abuse;

(B) Participated in billing excessive or fraudulent charges; or

(C) Failed to meet the employer responsibilities in section (5)(a) or (7)(b) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (5)(a) or (7)(b) of this rule.

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

(8) NOTICE.

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

(A) The Department denies, suspends, or terminates an employer from performing the employer responsibilities described in sections (5)(a) or (7)(b) of this rule; and

(B) The Department denies, suspends, or terminates an employer representative from performing the employer responsibilities described in section (5)(a) or (7)(b) of this rule because the employer representative does not meet the qualifications in section (7)(c) of this rule.

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

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

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

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

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

Stat. Auth.: ORS 409.050, 430.662

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

411-308-0140 Quality Assurance

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

Stat. Auth.: ORS 409.050, ~~and~~ 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, ~~and~~ 430.662 ~~to 430.-~~670

411-308-0150 Variances

(1) ~~Variances may be granted to a CDDP if the CDDP~~The Department may grant a variance to these rules:

(a) ~~If the CDDP~~ lacks the resources needed to implement the standards required in these rules;

(b) If implementation of the proposed alternative practice, services, methods, concepts, or procedures shall result in services or systems that meet or exceed the standards in these rules and does not adversely impact the welfare, health, safety, or rights of individuals or violate applicable state or federal laws; or

(c) If there are other extenuating circumstances.

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

(3) The CDDP requesting a variance must submit a written application to the Department that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The proposed A description of the alternative practice, service, method, concept, or procedure proposed, including how the health and safety of individuals receiving services shall be protected to the extent required by these rules;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) If the variance applies to a child's the services for a child, evidence that the variance is consistent with the child's currently authorized ISP or Annual Plan for the child.

(4) The Department may approve or deny the variance request for a variance is approved or denied by the Department. (5) The Department's decision shall be of the Department is sent to the CDDP and to all relevant Department programs or offices within 30 calendar days of from the receipt of the variance request.

(65) The CDDP may appeal request an administrator review of the denial of a variance request by sending a written request for review to the Department's dDirector, whose. The decision of the Director is the final response from the Department.

(76) The Department shall-determines the duration of the variance.

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

Stat. Auth.: ORS 409.050, and 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.-670