



Oregon

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January 26, 2015



To: Christina Hartman
DD Rules and Policy Analyst

From: Kimberly Colkitt-Hallman, Administrative Rules Coordinator
Aging and People with Disabilities and
Developmental Disabilities

Subject: Hearing Officer's Report
*January 21, 2015 Rulemaking Hearing for ODDS - Children's
Intensive In-Home Services (Behavior Program and Medically
Fragile Children's Services)*

The purpose of the hearing was to take public testimony regarding the proposal of the Department of Human Services, Office of Developmental Disability Services (ODDS) to update the Children's Intensive In-Home services (CIIS) rules in OAR chapter 411, division 300 for the CIIS Behavior Program and OAR chapter 411, division 350 for Medically Fragile Children's (MFC) services.

The proposed rules:

- Make permanent temporary rule language that became effective on August 20, 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;
- Incorporate expenditure guidelines;
- Account for changes in service eligibility related to the types of Medicaid eligibility a child may have and incorporate service eligibility requirements related to the transfer of assets in accordance with OAR 461-140-0210 to 461-140-0300;

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- Clarify when a child may be exited from CIIS and reiterate the requirement for a Notification of Planned Action in the instance services are terminated;
- Include a timeframe for when a functional needs assessment and Individual Support Plan (ISP) must be completed and clarify service planning;
- Reflect the completion of the transition period for implementation of the Community First Choice state plan amendment and update the available supports to reflect changes to the proposed Behavioral and Hospital Model Waivers;
- 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 misuse;
- Expand provider types and specify qualifications for personal support workers, independent providers, provider organizations, and general business providers;
- Implement Senate Bill 22 by incorporating the rules for individual rights, complaints, Notification of Planned Action, and hearings adopted in OAR chapter 411, division 318;
- Remove sanctions for providers and include inactivation of provider enrollment for personal support workers and independent providers;
- Reflect new Department terminology and current practice; and
- Correct formatting and punctuation.

Public Comments

Adventist Health, Ray Hobizal, Manager Adventist Health Personal Care – Exhibit #1

The written and oral comments provided by Mr. Hobizal are summarized below. Mr. Hobizal is the manager of Adventist Health Personal Care, which provides services to medically fragile and medically involved children and Long Term Care (LTC) nursing services for the CIIS program. Mr. Hobizal feels his recommendations would put CIIS more "in line" with other programs, in terms of documentation and billing requirements.

In regards to payment for services, the reason Mr. Hobizal is requesting the changes is many providers use the MIIS system and MIIS can do the billing. For those using electronic billing, the change Mr. Hobizal requests

would allow providers to do so and not have to provide all the cumbersome information that is required now. The current rules require providers to send in signed documents by the parents and a lot of other documentation that is scrutinized. Mr. Hobizal says providers, like his organization, are held to a higher standard because they are licensed and it is really easy to do take backs when the provider has overcharged. Mr. Hobizal gave a recent example of where the MIIS system did a take back from him (only to return it later due to a computer error), but said it was really easy and not hard to do.

Mr. Hobizal says it is more productive for staff because it requires staff to not have to do a lot of documentation review. If the staff does have a question on what the provider billed, the staff can request the needed documentation.

Mr. Hobizal's other recommendation falls in line with almost all CMS and K programs that he works with, which is to be eligible for payment the request for payment must be submitted within 12 months of the delivery of the MFC. Mr. Hobizal says this is the only program he is a part of where 6 months is the requirement instead of 12.

Additional written and oral comments provided by Mr. Hobizal are summarized below in Attachment A.

Response: *ODDS considered the comments made by Mr. Hobizal and will continue efforts to streamline paperwork.*

Nursingale, Patty Sadowski, Executive Director – Exhibit #1

Ms. Sadowski came to the hearing hoping it was a place to get clarification on some of the items in the rules and realized during the hearing it was not. She wanted clarification on some items in regards to "cost-effectiveness" and "excess income" which are mentioned in the rules.

Response: *ODDS addressed the concerns of Ms. Sadowski once the hearing had adjourned.*

Written Comments

Oregon IDD Coalition (the Coalition), Leslie Sutton, Policy Analyst – Exhibit #2

The written comments provided by Ms. Sutton on behalf of the IDD Coalition are summarized below.

The IDD Coalition submitted comments in regards to the following parts of the CIIS rules:

1. Behavior consultants conduct assessments, develop Behavior Support Plans, and provide consultation, training and mentoring to families. The rules must accurately reflect the full spectrum of these critical services.
2. Community Transportation must be amended to allow people to access their communities.
3. Employment services for children under age 18 must be available.
4. Employer Related Supports must include assistance developing service agreements and job descriptions for support workers.
5. Transition costs must include children transitioning from a nursing facility, hospital or ICF/IDD.
6. If eligible, children on the CIIS wait lists should be able to access other Medicaid-funded or general fund services.
7. The “Rights of the Child” rule in OAR 411-300-0140 must be reinstated and amended to align with rights granted to adults using the IDD system and the HCBS Settings rule.
8. Rental unit environmental modifications must include the costs to remove the modification when the tenant moves out of the unit, if the landlord wants the modification removed.
9. Make requirements to access assistive devices and home modifications more "simple, responsive and consumer-friendly".
10. Chore Services should be provided when the primary caregiver is responsible for and able to perform or pay for the services.
11. 200 linear feet of fencing is unreasonably short to accommodate family needs.
12. Choice advising must be provided to children and families using Oregon IDD Services.

In regards to behavior consultants, the Coalition says behavior consultants provide a wide array of "critical services to families" which allow families to raise their children in their own homes. Simply "writing a behavior support plan" will not get a family through a plan year. Most families need to consult with the behavior consultant on a regular basis to modify the plan

or ensure the behavior support plan is truly meeting the child and family's needs.

The proposed definition for Behavior consultant does not accurately reflect how families use behavior consultants to support the needs of their children in their homes.

Response: ODDS considered the comments made by the Coalition but did not make any additional changes. Behavior consultant is defined consistently across all ODDS rules and is not intended to limit the ability of the behavior consultant to provide ongoing training related to behavior support needs.

In regards to community transportation, the Coalition states communities thrive when every person can be a valued member of the community. The Coalition says without transportation services, many individuals with IDD cannot access the community and are forced to live segregated lives. The Coalition says without transportation it is not possible for people with disabilities to live, work, and play in their communities. The HCBS rule directs that waiver and K Plan services be provided in settings that are integrated and support full access to the community. The Coalition says this is not possible if Oregon continues to "unreasonably restrict community transportation services" as the rule amendments propose to do.

The Oregon Council on Developmental Disabilities and the Oregon Self Advocacy coalition (OSAC) commented on proposed transportation changes in other ODDS rules and the IDD Coalition is disappointed to see their comments and recommendations ignored in these rules. The IDD Coalition stated the comments and recommendations made by OSAC and the Oregon Council on Developmental Disabilities from November are something they fully support for these rules as well.

Response: ODDS considered the comments made by the Coalition but did not make any additional changes. The comments made by the Coalition during the November public comment period and above specifically relate to adult services and will be addressed in the respective hearing report. With CIIS, community transportation is a parental responsibility.

In regards to employment services, the Coalition feels people succeed in employment when they have relevant work experience as youth. The Coalition says Oregon is an Employment First State that prioritizes

employment over day programs and segregated employment. The Coalition says there is an MOU between the Department of Education, DHS, and the Oregon Council on Developmental Disabilities that works to ensure youth leave school with a minimum wage or above job or a post-secondary education plan. The Coalition states that Oregon must commit to providing employment supports to children under 18. The Coalition pointed to similar comments that were sent in November by the IDD Coalition, Oregon Council on Developmental Disabilities, and OSAC.

Response: ODDS considered the comments made by the Coalition but did not make any additional changes. While ODDS intends to comply with the Governor's Executive Order, employment services for children are not currently included in the Behavioral or Hospital Model Waivers.

The Coalition feels employer related supports must include assistance in developing service agreements and job descriptions for support workers. The Coalitions says finding staff to support a child is difficult and hiring someone can be even more daunting. The Coalition says the Employer Related Supports service provides families with the support they need to hire and manage the staff of their child. The Coalition says the service is incomplete though because it doesn't allow service coordinators to assist families in creating a service agreement and job description for their staff.

Response: Employer related support is defined consistently across all ODDS rules. ODDS noted the comments made by the Coalition for future rule consideration.

In regards to transition costs, the 1915(k) plan regulation directs that transition costs be available for people who meet level of care furnished in a hospital, nursing facility, and intermediate care facility for individuals with intellectual disabilities. The Coalition says the proposed OAR indicates transition costs are only available to individuals with intellectual or developmental disabilities leaving nursing facilities or intermediate care facilities. The Coalition states this excludes people leaving hospitals from receiving transition services, so the Coalition would like this corrected to match the federal regulations.

Response: ODDS considered the comments made by the Coalition but did not make any additional changes. The rule language for transition costs is used consistently across all ODDS rules.

The Coalition says children on the CIIS wait list have "significant and immediate" support needs. The Coalitions says some families use the General Fund Family Support dollars to meet a "fraction" of their actual needs. Others use Medicaid supports to meet these needs. The Coalition says the proposed OAR says children on the wait list can access Medicaid-funded services, but excludes General Fund programs.

Response: ODDS included General Fund programs as suggested by the Coalition (Attached A).

The IDD Coalition feels the personal rights section is critical in any administrative rule. The Coalition says the proposed OAR repeals 411-300-0140 and moves the language to "an obscure subsection of a different rule." The Coalition does not agree with this action. The Coalitions feels parents and professionals need to know the rights of children and will look in an administrative rule for a rule titled "rights of a child". The Coalition feels this is an important section that should not be buried in a subsection of another rule and strongly recommends the Department does not repeal this rule.

The Coalition suggests language be added to the rule about the rights of a child to learn to run their own ISP meeting and direct their own services. The Coalition thinks this language would help a child learn how to choose their own services, providers, and settings, while making informed choices about their lives, which are all things they will be doing as adults. The Coalition feels adding this sort of language would also provide training opportunities to support the child in developing self-determination skills.

The Coalitions says the CIIS rules do not apply the standard "individual rights" rules in OAR 411-320-0060. The Children's In-Home Support rules apply individual rights, so the Coalition feels CIIS should too. The Coalition also recommend the Department add language in the individual rights section that relates to the new HCBS rules found at 42 CFR 441.530.

Response: ODDS has chosen to highlight the rights of individuals by creating rules to address individual rights. In addition, the rights are reviewed with the individuals and their families up front and annually or as requested. Language to comply with HCBS will be reflected in a future rulemaking.

The Coalitions says if a tenant needs an environmental modification to use a rental unit, the landlord must approve the modification before it is installed and the landlord has the right to ask the tenant to remove the modification when the tenant moves out. The Coalition points out that the rules allow modifications to rental units, but prohibit ODDS from paying to remove the modification. This Coalition feels this means landlords may not agree to modifications because it cannot be removed when the tenant moves out.

The Coalition says if a landlord does not agree to a modification, the unit may not be accessible for the individual and that person will need to find housing elsewhere. The Coalition says it is "well-documented" there is a shortage of accessible and affordable units in Oregon. The Coalition says "ODDS is creating a barrier to housing by not paying to remove the environmental modification at the request of the landlord when the tenant moves out." The Coalition asks the Department to remove this section of the rule.

Response: ODDS considered the comments made by the Coalition but did not make any additional changes. The comments made by the Coalition mirror the comments received during the November public comment period. Comments will be addressed in the respective hearing report.

The Coalition says assistive devices, assistive technology, environmental safety supports, and home modifications are critical services for children to stay in their family homes and be members of their communities. Coalition members state they have struggled to access these services in a timely manner for varying reasons. The IDD Coalition recommends the Department make the process to request and access services more simple, responsive, and consumer-friendly.

Response: ODDS considered the comments made by the Coalition and will continue efforts to ensure a simple, responsive, and consumer-friendly process to request and access services.

The Coalition says that under 1915(c) and 1915(k) regulations, Oregonians receiving IDD services have the right to make informed choices, choose services from a variety of options and settings (including non-disability settings), and decide who provides those services. The Coalition feels the CIIS rules do not support "a mechanism or process" that will assure

informed and unbiased choice advising so children and their families can choose case management entities, services, and settings. The Coalition asks the Department to amend the CIIS rules to include these procedures and comply with the federal rule.

Response: *ODDS noted the comments made by the Coalition for future rule consideration. ODDS will continue to adhere to the K Plan requirements for choice advising.*

Additional written comments provided by Ms. Sutton on behalf of the IDD Coalition are summarized below in Attachment A.

The public comment period closed at 5 p.m. on January 23, 2015.

ATTACHMENT A

Rule Number and Proposed Rule Language	Comment	Department Response
411-300-0110 Definitions		
<p>(69) "Behavior Consultant" means a contractor with specialized skills as described in OAR 411-300-0170 who conducts functional assessments and develops a Behavior Support Plan.</p>	<p>IDD Coalition - Would like language changed to read "Behavior Consultant" means a contractor with specialized skills as described in OAR 411-300-0170 who conducts functional assessments, develops and modifies a Behavior Support Plan and provides consultation, training, and mentoring to a family and paid staff."</p>	<p>ODDS noted the comments made by the Coalition for future rule consideration. The role of the behavior consultant is defined more broadly in the Expenditure Guidelines.</p>
<p>(28) "Employer-Related Supports" mean the activities that assist a family with directing and supervising provision of services described in the ISP for a child. Employer-related supports may include, but are not limited to:</p> <p>(a) Education about employer responsibilities;</p> <p>(b) Orientation to basic wage and hour issues;</p> <p>(c) Use of common employer-related tools such as service agreements;</p> <p>and</p> <p>(d) Fiscal intermediary services.</p>	<p>IDD Coalition - Please amend this section to read "Drafting assistance and use of common employer-related tools such as service agreements;"</p>	<p>Employer related support is defined consistently across all ODDS rules. ODDS noted the comments made by the Coalition for future rule consideration.</p>

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<p>(74) "Transition Costs" mean the expenses described in OAR 411-300-0150 required for a child to make the transition to the family home from a nursing facility or intermediate care facility for individuals with intellectual or developmental disabilities.</p>	<p>IDD Coalition - Feel the language should read "Transition Costs" mean the expenses described in OAR 411-300-0150 required for a child to make the transition to the family home from a hospital, nursing facility, or intermediate care facility for individuals with intellectual or developmental disabilities."</p>	<p>ODDS considered the comments made by the Coalition but did not make any additional changes. The rule language for transition costs is used consistently across all ODDS rules.</p>
<p>411-300-0120 Eligibility for CIIS</p>		
<p>(56) WAIT LIST. If the allowable numbers maximum number of children allowed on the ICF/MR-ID Behavioral Model Waiver are enrolled and being served, are already receiving services, the Department may place a child eligible for CIIS on a wait list. A child on the CIIS-wait list may access other Medicaid-funded services for which the child is determined eligible waiver, state plan personal care, or Community First Choice state plan services as determined eligible through the CDDP.</p>	<p>IDD Coalition - Asks the Department to change the language to read "a child on the CIIS wait list may access other Medicaid-funded services or General Fund services for which the child is determined eligible through the CDDP."</p>	<p>ODDS made changes as suggested by the IDD Coalition. <i>(6) WAIT LIST. If the maximum number of children allowed on the ICF/ID Behavioral Model Waiver are enrolled and being served, the Department may place a child eligible for CIIS on a wait list. A child on the wait list may access other Medicaid-funded services or General Fund services for which the child is determined eligible through the CDDP.</i></p>
<p>411-300-0150 Scope of CIIS and Limitations of Children's Intensive In-Home Services</p>		
<p>(4013) CHORE SERVICES. Chore services may be provided only in situations where no one else is</p>	<p>IDD Coalition - The new "or" changes the meaning of the rule to only allow chore services when no one else is responsible;</p>	<p>ODDS considered the comments made by the Coalition but did not make any additional changes. The rule language for</p>

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<p>responsible or able to perform or pay for the services.</p>	<p>or no one else is able to perform or pay for the services. The Coalition feels this makes it impossible for people to access these services without first asking friends and relatives if they can afford to pay for chore services for the person, even if friends or relatives are under no obligation to pay for such things. The Coalition feels the rule should focus on the primary caregiver's responsibility and ability to perform or pay for the services. The Coalition asks the Department change the language "no one else" to "primary caregiver". And the "or" to an "and" to better reflect the rules intent. The Coalition says the new language should read "where the primary caregiver is responsible and able to perform or pay for the services."</p>	<p>chore services is used consistently across all ODDS rules. K Plan services do not supplant the responsibilities of a parent or landlord.</p>
<p>(17) ENVIRONMENTAL SAFETY MODIFICATIONS. (b) Fencing may not exceed 200 linear feet without approval from the Department</p>	<p>IDD Coalition - The Coalition feels this is a "critical service" that allows children to live in their family home, however, the limit of 200 linear feet is not enough as many Oregon families have fencing requirements that exceed 200 linear feet. The Coalition feels a more reasonable limit would be 400 linear feet with exceptions available as needed.</p>	<p>ODDS considered the comments made by the Coalition but did not make any additional changes. The limit is based on a typical ranch style home. An exception to the limit may be requested.</p>

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Rule Number and Proposed Rule Language	Comment	Department Response
411-350-0100 MFC Documentation Needs for Medically Fragile Children's Services		
<p>(1) Original, accurate <u>Accurate</u> timesheets of MFC services must be dated and signed by the provider and the child's primary caregiver <u>parent or guardian of the child</u> after the services are provided. and Timesheets must be maintained and submitted to the Department with any request for payment for services.</p> <p>(2) Requests for payment for MFC services must:</p> <p>(a) Include an original copy of the billing form indicating prior authorization for the services;</p> <p>(b) Be signed by the provider or billing provider, acknowledging agreement with the terms and condition of the billing form and attesting that the hours were delivered as billed; and</p> <p>(c) Be signed by the child's primary caregiver <u>parent or guardian of the child</u> after the services were delivered, verifying that the services were delivered as billed.</p>	<p>Hobizal - (1) - feels it should read: "(1) Accurate timesheets for MFC services must be kept by the provider and available upon request of the Department. Time cards shall contain the following information:</p> <ul style="list-style-type: none"> a. Date of service, b. hours/units provided, c. signature of the parent or child's guardian, d. name of the person providing service, e. Title or licensure of person providing care. <p>(2) - Feel it should read "(2) request for Payment from the MFC must include:</p> <ul style="list-style-type: none"> a. invoice that includes the following <ul style="list-style-type: none"> i. Date of service ii. Units/hours of service iii. Level of service iv. Child's name b. In the case of paper claim, the claim must include the prior authorization for services billed. 	<p>ODDS considered the comments made by Mr. Hobizal and will continue efforts to streamline paperwork. The standards apply for the purposes of program integrity across provider types.</p>
411-350-0110 Payment for Medically Fragile Children's Services <u>MFC Services</u>		
(4125) In order to be eligible for	Hobizal - Change six months to 12	ODDS made changes as suggested by

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<p>payment, requests for payments must be submitted to the Department within six months of the delivery of MFC services.</p>	<p>months.</p>	<p>Mr. Hobizal. <i>(25) In order to be eligible for payment, requests for payments must be submitted to the Department within 12 months of the delivery of MFC services.</i></p>
<p>(2426) Payment for services provided to more than one child in the same setting at the same time may not exceed the maximum hourly rate for one child without prior written authorization by the MFCU Supervisor.</p>	<p>Hobizal - Change to say "Payment for services provided to more than one child in the same setting at the same time will be paid at a minimum of 1.5 times of the hourly rate for one child. Rates beyond this must have prior written authorization by the MFCU Supervisor."</p>	<p>ODDS removed section (26). The payment rule language applied to the Division of Medical Assistance Program and is outside the scope of ODDS rules.</p>