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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 411
DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES AND DEVELOPMENTAL DISABILITIES

FILED

08/28/2024 1:42 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: APD: Adopting eligibility criteria rules for Oregon Project Independence-Medicaid (OPI-M)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/25/2024 5:00 PM

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

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Filed By:
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HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/22/2024

TIME: 9:00 AM - 10:00 AM

OFFICER: Staff

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-669-254-5252

CONFERENCE ID: 1605329680

SPECIAL INSTRUCTIONS:

This rule hearing is for people to provide comments about the proposed adoptions of rules in OAR chapter 411, divisions 14 and 16 related to Oregon Project Independence-Medicaid. If you wish to attend the rule hearing, please join no later than 15 minutes after the hearing has started. The rule hearing will close after 30 minutes if no one attends or wants to provide comments.

If you wish to provide comments about the proposed rules, please register in advance at the following link:

https://www.zoomgov.com/meeting/register/vJltcuqqpz0iGrixN4a-ZKt5XJA_YEpx4Yo

After registering, you will receive a confirmation email containing information about joining the rule hearing. If you need help signing up, please call the APD Rules Coordinator, Kristina Krause, at 503-339-6104 or send an email directly to Kristina.R.Krause@odhs.oregon.gov.

Everyone has a right to know about and use ODHS programs and services. ODHS supplies free help. Some examples of the free help ODHS can supply are sign language and spoken language interpreters, written materials in other languages, braille, large print, audio, and other formats. If you need clarification on these rules, help, or have questions, please contact Naomi Sacks at 503-385-7168, or by email at Naomi.E.Sacks@odhs.oregon.gov at least five business

days before the meeting. ODHS accepts calls from all forms of relay service.

NEED FOR THE RULE(S)

Oregon's Department of Human Services Office of Aging and People with Disabilities (APD) was approved for a federal demonstration waiver creating a new program, Oregon Project Independence- Medicaid (OPI-M) February 13, 2024. Temporary rules were effective May 31, 2024, and expire November 26, 2024. These permanent rules are necessary to continue the program throughout the waiver demonstration period and beyond if the demonstration is successful.

The OPI-M program was designed to draw federal funding to support expanding access to in-home services for people with caregiving needs. The intent was to build on the existing state funded Oregon Project Independence (OPI) program which provides limited in-home services to keep individuals in their own homes, helping them to maintain their health, safety and independence while preventing the need for more extensive, costly care and the need for full Medicaid services.

The OPI-M program seeks to accomplish this goal by reducing Medicaid access barriers allowing people with higher incomes and greater resources to qualify, eliminating estate claims and cost shares, and allowing more services and new caregiver support benefits than either the OPI program or traditional Medicaid long term services and supports.

Along with the new OAR chapter 411, division 016 rules which cover OPI-M program service planning and services, these rules are needed to provide structure for the program including defining general, financial and service eligibility for OPI-M and the scope and role of eligibility case management including financial and service assessments. The rules also help ensure compliance with the federal waiver allowing APD to run the program.

While there was no specific legislation that created the program, exploring a way to better sustain the existing OPI program was required in a budget note to House Bill 5026 of the 2019 legislative session. The budget note required APD and the Oregon Health Authority (OHA) to convene an advisory group to explore "...opportunities to obtain federal funding for the Oregon Project Independence and family caregiver respite programs,..." and requiring a report back to the House and Senate Human Services Committees by December 2020, and the report backs in 2021 to the House and Senate Committees (extension granted because of the pandemic) in which the committees did not object to the design or the intent to apply for the federal waiver. Links to the budget notes and Committee reports are below.

The OPI-M program is needed to address demographic shifts that reveal Oregon's rapidly growing population of older adults and an increasing demand for affordable long-term services and supports. OPI-M, by reducing barriers to services and providing an extensive array of services and supports (including new supports for unpaid caregivers), allows Oregon to leverage federal dollars to better meet Oregonians' needs and realize the vision of Oregon Revised Statute 410 for older adults and people with disabilities to live lives of health, honor, dignity and maximum freedom and independence.

The rules are needed to operate the program and be in compliance with the federal waiver.

Other changes may be made to OAR chapter 411, division 014 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure, and clarity of the rule.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon Project Independence -Medicaid Waiver website

<https://www.oregon.gov/odhs/providers-partners/seniors-disabilities/Pages/1115-demonstration-waiver.aspx>

Oregon 1115 Waiver Standard Terms & Conditions

<https://www.oregon.gov/odhs/providers-partners/seniors-disabilities/Documents/opi-standard-terms-conditions.pdf>

Budget Note: HB 5026 (2019), page 13:

<https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureAnalysisDocument/52097>

House Human Services Report back, February 3, 2021:

<https://olis.oregonlegislature.gov/liz/2021R1/Committees/HHS/2021-02-03-15-15/Agenda>

Senate Human Services Report back, April 20, 2021:

<https://olis.oregonlegislature.gov/liz/2021R1/Committees/SHSMHR/2021-04-20-15-15/Agenda>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

OPI-M is expected to have a positive effect on communities that have been impacted by racism and other forms of social discrimination and oppression. We believe the programs will offer many significant advantages for communities of color, Tribes in Oregon, immigrant communities, and the LGBTQIA2S+ community. Some positive impacts include:

- Consumers are served in their homes. Data show that in Medicaid LTSS, communities of color access in-home services at a higher rate than other populations in Oregon.
- Consumers participating in OPI-M will not be subject to estate recovery. This may have a positive impact on mitigating institutionalized and historical gaps in household wealth experienced by communities of color in Oregon and the United States. The program will not contribute to intergenerational poverty.
- Consumers supported by family or other unpaid caregivers have access to services to sustain this caregiver relationship. This would be impactful for intergenerational families who are more prevalent among communities of color, immigrant communities, and rural communities than the overall population.
- Original OPI and the OAA family caregiver programs will be preserved, and these programs can serve consumers who otherwise are not eligible for federally matched programs under Medicaid authority because of citizenship or legal residency requirements.

As per the Special Terms and Conditions (STCs) of the waiver with the Centers for Medicare and Medicaid Services (CMS), we will periodically review the demographics of consumers utilizing these services. We will also review the capacity indicators we have for culturally and linguistically responsive services, and we will have quality indicators which also include consumer survey data (through NCI-AD) to measure consumer satisfaction and the consumer's perspective on the quality of services and supports.

As mentioned above, we are designing the policies for these new programs informed by the data we have on impacted communities. Impacted communities are more likely than the overall population to access in-home services, be negatively impacted by estate recovery, and live in intergenerational families. As we implement these programs, we will use program data (utilization data, analysis of outreach and communication, survey data) to check these assumptions of the program design that would benefit affected communities more positively than Medicaid LTSS and other existing programs. If the data show continued trends of adverse impact, we will use the findings and the input from impacted communities to modify and change the policies and rules of these programs as input and as data indicate.

As the program just opened on June 1, 2024, with a rolling implementation starting with individuals currently underserved, we do not yet have data to include in this statement. Full public opening is expected in March 2025. We

will be collecting and monitoring over time.

One group of the public may be negatively impacted by OPI-M. Older adults and people with disabilities who are non-citizens will not be eligible for OPI-M as OPI-M is funded in part through Medicaid and citizenship is required for Medicaid eligibility. The existing OPI program will continue with a very reduced budget and can serve non-citizens. Since much of the OPI budget will be shifted to cover the state share costs for OPI-M, there will be less funding available to support people who only qualify for OPI, including non-citizens. APD plans to mitigate this impact by prioritizing non-citizens in the use of OPI funding.

FISCAL AND ECONOMIC IMPACT:

The Fiscal and Economic Impact is stated below in the Department's statement of Cost of Compliance.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

State Agencies: The Department estimates that there will be a fiscal and economic impact on the Oregon Department of Human Services (ODHS), Office of Aging and People with Disabilities (APD), and a minor fiscal and economic impact on the Oregon Health Authority (OHA).

For APD, the impact includes costs to implement and administer the services and supports for Oregon Project Independence- Medicaid (OPI-M). Costs include:

- Staffing at local offices for eligibility determination for the program;
- Staffing and support in Central Office for financial eligibility determination;
- Central Office staffing for program design and implementation, including rule making and coordination, training, operations and program guidance, systems design and changes, and program reporting and evaluation activities;
- Costs associated with workload for approval of certain services requiring Central Office or local APD office approval;
- Program costs for production and distribution of materials for staff support, consumer information, and general public information; and
- Possible ongoing staffing costs for service case management depending on workload analysis as OPI-M is implemented.

For OHA, there is a minor impact for costs associated with program administration with the federal Centers for Medicare and Medicaid Services (CMS) as the single state Medicaid agency.

Regarding this fiscal and economic impact to State Agencies, OPI-M is an 1115 Medicaid Demonstration that is budget neutral, and the costs associated with the program will be paid with approximately 60 percent of federal funds and 40 percent state matching funds.

Units of Local Government: The Department estimates there will be a fiscal and economic impact on local Area

Agencies on Aging (AAAs) and other local government partners within the Aging and Disability Resource Connections network. This impact includes:

- Staffing for Type B Transfer AAAs for both eligibility determination and service case management for consumers in the OPI-M program;
- Staffing for workload associated with managing intakes of applications;
- Staffing for Type A AAAs for ongoing service case management for consumers determined eligible by APD;
- Staffing to cover workload associated with provider payment processing;
- Costs associated with approval of certain services;
- Administrative costs associated with workload for reporting, record keeping, quality assurance and compliance;
- ADRC costs associated with increased workload related to consumer intakes, information, and referrals.

Regarding this fiscal and economic impact to Units of Local Government, OPI-M is an 1115 Medicaid Demonstration that is budget neutral, and the costs associated with the program will be paid with approximately 60 percent of federal funds and 40 percent state matching funds.

Consumers: The Department estimates no fiscal or economic impact on most consumers except non-citizens. As described above, non-citizens will not qualify for OPI-M but may access services through OPI. OPI has a more limited budget so may have a wait list, has fewer types of services, has less service available per individual and has a cost share all of which could drive costs up for non-citizens since they are unable to access OPI-M.

Providers: The Department estimates a positive fiscal or economic impact on providers attributed to the increasing services and supports provided by OPI-M to consumers.

Public: The Department estimates there will be no fiscal or economic impact on the public.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

There is no estimate on the number of small businesses subject to these rules at this time. Small businesses affected by these rules include In-Home Care Agencies, Home Delivered Meals providers, Adult Day Services providers, vendors for Chore Services, Home Modifications, Assistive Technologies, and Community Transportation, as well as providers for health and wellness programs, unpaid caregiver training and supports, and other services.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

The proposed changes impact providers as described above in the Department's statement of cost of compliance – there is a minimal impact on reporting, recordkeeping, and administrative activities as the OPI-M program does not provide additional activities from other existing programs in which small business providers participate.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The proposed changes impact providers as described above in the Department's statement of cost of compliance, with no minimal fiscal or economic impact to small businesses, but an estimated positive fiscal and economic impact by the

increase of consumers that these providers serve.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Several small businesses, or representatives of a small business, as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

411-014-0000, 411-014-0005, 411-014-0020, 411-014-0025, 411-014-0030, 411-014-0035, 411-014-0040

ADOPT: 411-014-0000

RULE SUMMARY: Establishes that the rules are intended to define eligibility requirements for the Oregon Project Independence-Medicaid program.

CHANGES TO RULE:

411-014-0000

Purpose

The purpose of these rules is to define the eligibility requirements for the Oregon Project Independence-Medicaid (OPI-M) Program.

Statutory/Other Authority: ORS 410.070

Statutes/Other Implemented: ORS 410.070

RULE SUMMARY: Created to list the applicable definitions for the OPI-M rules.

CHANGES TO RULE:

411-014-0005

Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 014:¶

- (1) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for continued well-being, which are essential for health and safety and defined in OAR 411-015-0006. Activities include bathing and personal hygiene, cognition, dressing and grooming, eating, elimination, and mobility.¶
- (2) "Adult" means any person at least 18 years of age.¶
- (3) "Alternative Service Resources" means other possible resources for the provision of services to meet an individual's needs. Alternative service resources include, but are not limited to, natural supports, risk intervention services, Veterans programs or other community supports. Alternative service resources are not paid by Medicaid.¶
- (4) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to older adults and adults with disabilities in a planning and service area. The term Area Agency on Aging (AAA) is inclusive of both Type A and Type B AAAs as defined in ORS 410.040 to 410.300.¶
 - (a) "Type A Area Agency on Aging" means an Area Agency on Aging for which either the local government or the area agency board does not agree to accept local administrative responsibility for Title XIX Medicaid except OPI-M; and that provides a service to adults.¶
 - (b) "Type B Area Agency on Aging" means an Area Agency on Aging:¶
 - (A) For which the local government agrees to accept local administrative responsibility for Title XIX Medicaid;¶
 - (B) That provides a service to older adults or to older adults and persons with disabilities who require services similar to those required by older adults; and¶
 - (C) Are one of two models of Type B AAAs - Type B Contract or Type B Transfer:¶
 - (i) Type B Contract- Staff are employed by the AAA and only administer Older Americans Act, Oregon Project Independence and Oregon Project Independence Medicaid services case management services.¶
 - (ii) Type B Transfer- Staff are employed by the AAA and administer all of the following programs: Medicaid, financial services, Supplemental Nutrition Assistance Program, adult protective services, regulatory programs, Older Americans Act, Oregon Project Independence and all Oregon Project Independence-Medicaid services.¶
- (5) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, instrument of technology, service animal, general household items, or furniture used to assist and enhance an individual's independence in performing any activity of daily living.¶
- (6) "Client Assessment and Planning System (CA/PS)" means:¶
 - (a) The single-entry data system used for -¶
 - (A) Completing a comprehensive and holistic assessment;¶
 - (B) Surveying an individual's physical, mental, and social functioning; and¶
 - (C) Identifying risk factors, individual choices and preferences, and the status of service needs.¶
 - (b) The CA/PS documents the level of need and calculates the individual's service priority level in accordance with these rules and requires that the individual or the individual's representative participate in service planning. ¶
- (7) "Conflict-free Case Management" means that assessment and coordination of services are separate from the delivery of services, with the goal to limit any conscious or unconscious bias that a case manager or agency may have, and ultimately promote the individual's choice and independence.¶
- (8) "Department" means the Oregon Department of Human Services (ODHS).¶
- (9) "Disability" means people aged 18-59 meeting the criteria for disability as a basis of need in OAR 461-125-0370.¶
- (10) "Eligibility Case Manager" means an employee of the Department or Type B Transfer Area Agency on Aging who assesses the financial eligibility and service eligibility of individuals and determines Oregon Project Independence-Medicaid. ¶
- (11) "Family Caregiver Support Program (FCSP)" means the Title III E Older Americans Act funded program to assist family caregivers as described in the Family Caregiver Support Program Standards.¶
- (12) "Functional Impairment" means an individual's pattern of mental and physical limitations that restricts the individual's ability to perform activities of daily living and instrumental activities of daily living without the assistance of another person.¶
- (13) "Health and Safety" means the essential actions necessary to meet an individual's health care, food, shelter,

clothing, personal hygiene, and other care needs without which serious physical injury or illness is likely to occur that would result in hospitalization, death or permanent disability.

(14) "Home" or "In-Home" means a setting that exhibits the characteristics described in OAR 411-030-0033.

(15) "Individual" means an older adult or an adult with a disability applying for or eligible for services. The term "individual" is synonymous with "consumer" or "client".

(16) "Implementation Phase" means the initial period where the Department will prioritize individuals at-risk of institutionalization who have been unable to access Oregon Project Independence or whose needs are not being met by Oregon Project Independence. The implementation phase will conclude no later than February 28, 2025.

(17) "Instrumental Activities of Daily Living (IADL)" means those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in IADL are identified in OAR 411-015-0007.

(18) "Medicare Savings Programs" means the Qualified Medicare Beneficiary (QMB) and Supplemental Low Income Medicare Beneficiary Programs (SMB & SLMB) in OAR chapter 461.

(19) "Mental or Emotional Disorder" means:

(a) A schizophrenic, mood, paranoid, panic, or other anxiety disorder;

(b) A somatoform, personality, dissociative, factitious, eating, sleeping, impulse control, or adjustment disorder; or

(c) Other psychotic disorders as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual.

(20) "Natural Supports" or "Natural Support System" means resources and supports (e.g., relatives, friends, significant others, neighbors, roommates, or the community) who are willing to voluntarily provide services to an individual without the expectation of compensation. Natural Supports are identified in collaboration with the individual and the potential natural support. The Natural Support is required to have the skills, knowledge, and ability to provide the needed services and supports.

(21) "Oregon Project Independence- Medicaid (OPI-M)" means the services approved and funded by the Centers for Medicare and Medicaid Services (CMS) for eligible individuals in accordance with the 1115 demonstration waiver for the Oregon Project Independence-Medicaid program and including the services defined in these rules.

(22) "Older Adult" means any person at least 60 years of age.

(23) "Oregon Supplemental Income Program Medical" (OSIPM) means medical coverage for individuals who are 65 years of age or older, who are blind, or who have a disability as described in OAR chapter 461.

(24) "Program consultation" means presenting service options, resources, and alternatives to the individual to assist the individual in making informed choices and decisions about programs. This includes options available through Medicaid long term services and support, OPI-M or other state funded programs.

(25) "Representative" is the person appointed by the individual or a person with longstanding involvement in assuring the individual's health, safety and welfare. For the purposes of these rules, representative also includes guardians, legal representatives and designated representatives.

(26) "Services Case Manager" means an employee of a AAA or the Department who is providing OPI-M conflict-free case management. The Services Case Manager provides person-centered service planning for and with eligible individuals. This includes developing, authorizing and implementing an individual's service plan and monitoring service provision as described in OAR chapter 411, division 016.

(27) "Substance Use Disorder" means disorders related to the taking of a drug or toxin, including alcohol.

(a) Substance use disorders include:

(A) Substance dependency and substance abuse;

(B) Alcohol dependency and alcohol abuse; and

(C) Substance induced disorders and alcohol induced disorders as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual.

(b) Substance use disorders are not considered physical disabilities.

Dementia or other long term physical or health impairments resulting from substance abuse may be considered physical disabilities.

(28) "Title XIX Medicaid" means a joint federal and state funded program for medical assistance established by Title XIX of the Social Security Act as amended and administered in Oregon.

(29) "These Rules" means the rules in OAR chapter 411, division 014.

Statutory/Other Authority: ORS 410.070

Statutes/Other Implemented: ORS 410.060, 410.070, 414.065

RULE SUMMARY: Defines eligibility criteria for the OPI-M program including age, disability, functional impairment and residential setting. Requires disability determination for people with disabilities aged 18-59. Defines medical and Supplemental Nutrition Assistance programs that consumers may and may not have simultaneously with OPI-M. Declares that OPI-M services may supplant but not replace natural supports.

CHANGES TO RULE:

411-014-0020

Eligibility and Limitations for Oregon Project Independence-Medicaid

(1) To be eligible for Oregon Project Independence- Medicaid services, an individual must:

(a) Be age 18 or older;

(b) If aged 18-59, meet the criteria for disability in OAR 461-125-0370 used for the OSIPM;

(c) Meet financial eligibility criteria in OAR chapter 411, division 014 and the OSIPM requirements for individuals in non-standard living arrangements in OAR chapter 461, all divisions unless otherwise covered in OAR 411-014-0025;

(d) Meet the functional impairment level within the service priority levels (1) to (18) as defined in OAR 411-015-0010; and

(e) Reside in an In-home setting as defined in OAR 411-030-0033 and not reside in any of the settings in OAR 411-030-0040(7).

(2) During the implementation phase of Oregon Project Independence-Medicaid, the Department will prioritize individuals at-risk of institutionalization who have been unable to access Oregon Project Independence or whose needs are not being met by Oregon Project Independence.

(3) Individuals under 60 years of age with a diagnosis of an intellectual or developmental disability are not eligible for OPI-M.

(4) Individuals under 60 years of age who have a diagnosis of mental or emotional disorder or substance use disorder are not eligible for OPI-M unless all of the following are met:

(a) The individual has a medical, non-psychiatric diagnosis or physical disability;

(b) The individual's need for services is based on their medical, non-psychiatric diagnosis, or physical disability; and

(c) The individual provides supporting documentation demonstrating that their need for services is based on the medical, non-psychiatric diagnosis, or physical disability. The Department authorizes documentation sources through approved and published policy transmittals.

(5) Individuals receiving any of the following programs or services through the Department are not eligible for OPI-M services:

(a) 1915(i), 1915(j), or 1915(k) state plan services as defined in Oregon's Medicaid State Plan including but not limited to:

(A) Spousal Pay services as defined in OAR 411-030-0080;

(B) The Independent Choices Program defined in OAR 411-030-0100; and

(C) Shift services as defined in OAR 411-030-0068.

(b) Waivered services under any Oregon 1915(c) waiver;

(c) State Plan Personal Care Services as defined in OAR chapter 411, division 034;

(d) Healthier Oregon Program as defined in OAR 461-135-1080;

(e) Oregon Project Independence as defined in OAR chapter 411, division 032 or any duplicative Older Americans Act funded services;

(6) Individuals receiving the OSIPM under the following may be eligible to receive OPI-M services if they meet all other OPI-M program eligibility criteria:

(a) OAR 461-135-0010(2) Assumed, Continuous and Protected Eligibility: OSIPM, QMB;

(b) OAR 461-135-0830 Eligibility for Disabled Adult Children; OSIPM;

(c) OAR 461-135-0780 Pickle Amendment Clients; OSIPM.

(7) Individuals may receive both the Supplemental Nutrition Assistance Program and OPI-M.

(8) OPI-M services are not intended to replace natural support systems. Paid support is provided if a natural support is unwilling or unable to provide identified services or to supplement unmet needs that the natural support cannot meet.

Statutory/Other Authority: ORS 410.070

Statutes/Other Implemented: ORS 410.060, 410.070, 414.065

ADOPT: 411-014-0025

RULE SUMMARY: Defines financial eligibility requirements including income and asset limits for OPI-M, treatment of trusts and transfer of assets. Exempts OPI-M recipients from estate claims and consumer liability for OPI-M benefits. Allows for continuous financial eligibility through a 24-month period and specifies exceptions when eligibility may be closed before 24-months.

CHANGES TO RULE:

411-014-0025

Financial Eligibility for OPI-M

(1) The income and resource methodology for OSIPM outlined in OAR chapter 461 is used to determine financial eligibility for the OPI-M except as follows:¶

(a) In OPI-M an individual must have adjusted income (see OAR 461-001-0000) that is equal to or less than 400 percent of the federal poverty level for a family of one and may not be exceeded through qualifying trusts as specified in OAR 461-145-0540(9)(c).¶

(b) For an individual, the resource limit is calculated using the basic statutory daily nursing facility rate as described in OAR 411-070-0075(1) multiplied by 30.4 (average days per month) multiplied by six (6) months. ¶

(c) At initial eligibility, the resources of the spouse (see OAR 461-001-0000) are considered and the provisions of OAR 461-160-0580(2)(f)(A) apply, except that the individual's resource limit is calculated in accordance with subsection (b) of this section.¶

(d) Individuals are subject to the rules regarding both of the following:¶

(A) The transfer of assets as set forth in OAR 461-140-0210 to 461-140-0300 except in OAR 461-140-0250 (2)(a)(A)(ii) the resource limit is the current OPI-M resource limit in OAR 411-014-0025(1)(b), not the OSIPM resource limit.¶

(B) The home equity value limits as set forth in OAR 461-145-0220.¶

(2) No payments or benefits paid under OPI-M shall be subject to the estate recovery program, including, without limitation, under OARs 461-135-0835, 461-135-0837, and 461-135-0845. Trustees of Medicaid-qualifying trusts (OARs 461-145-0540(10)(a), 461-145-0540(10)(c), or 461-145-0540(11)) need not repay these benefits under those trusts' required payback clauses. Notwithstanding the exclusion of OPI-M services from estate recovery, an individual must still comply with OAR 461-145-0022 Annuities: OSIPM.¶

(3) OPI-M recipients are not subject to a liability as described in OAR 461-160-0620. ¶

(4) Periodic redeterminations of eligibility required in OAR 461-115-0430 are required every 24 months for people receiving OPI-M services. ¶

(5) Notwithstanding OAR 411-014-0025(4) if one of the following circumstances occur during an individual's period of continuous OPI-M eligibility, OPI-M eligibility may be redetermined or terminated:¶

(a) The individual becomes pregnant or otherwise eligible for Medicaid or CHIP; ¶

(b) The individual is no longer an Oregon resident; ¶

(c) The individual requests termination of eligibility; ¶

(d) the individual dies; or ¶

(e) The agency determines that eligibility was erroneously granted at the most recent determination, redetermination, or renewal of eligibility because of agency error or fraud, abuse, or perjury attributed to the individual.

Statutory/Other Authority: ORS 409.050, 410.060, 410.070, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 410.060, 410.070, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685

ADOPT: 411-014-0030

RULE SUMMARY: Defines the responsibilities of OPI-M eligibility case managers including eligibility determinations, verification of eligibility requirements, information sharing, referrals, informing individuals of grievance processes and hearing rights and using person-centered planning processes. Gives 5 business day timeframe for responding to communication.

CHANGES TO RULE:

411-014-0030

Scope of OPI-M Eligibility Case Management

(1) Eligibility Case Managers are responsible for:

(a) Eligibility related, consultation, and referral tasks including:

(A) Service eligibility assessments and service eligibility determinations as described OAR 411-014-0040;

(i) Initial eligibility determinations must be conducted within 45 days of the date of request;

(ii) Redeterminations must be completed every two years.

(B) Initial financial eligibility determinations and re-determinations as required by OAR 461-135-0010(3) including income and asset verifications and notice of eligibility.

(C) Verifying all other eligibility requirements in OAR 411-014-0020 for OPI-M are met;

(D) Program consultation, presenting options, resources, and alternatives to an individual to assist the individual in making informed choices about program selection; and

(E) Referrals for program coordination and communication with the Services Case Manager when OPI-M is chosen by the individual.

(b) Assisting individuals to make informed decisions by providing complete and unbiased information.

(c) Person-centered planning processes and ensuring the processes:

(A) Are driven by the individual;

(B) Include people chosen by the individual;

(C) Consider the program options that best meet the identified needs;

(D) Reflect the cultural considerations of the individual; and

(E) Use the language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and, as applicable, representative of the individual.

(d) Informing individuals of grievance and hearing rights and follow grievance and hearing processes.

(2) Type B transfer AAA staff serving as OPI-M Eligibility Case Managers may also serve as Services Case Managers.

(3) ODHS Eligibility case managers must respond to OPI-M communication from AAAs within five business days. Responses to communication from eligible individuals and their representatives must also occur within five business days.

Statutory/Other Authority: ORS 410.070

Statutes/Other Implemented: ORS 410.060, 410.070, 414.065

ADOPT: 411-014-0035

RULE SUMMARY: Mandates that OPI-M eligibility case managers must meet the same qualifications as case managers in OAR chapter 411, division 028 for Case Management Services for Older Adults and Adults with Disabilities.

CHANGES TO RULE:

411-014-0035

Qualified Case Manager

Eligibility case managers must meet the qualifications in OAR 411-028-0040.

Statutory/Other Authority: ORS 410.070

Statutes/Other Implemented: ORS 410.060, 410.070, 414.065

ADOPT: 411-014-0040

RULE SUMMARY: Sets the same standard for assessments as the other Title XIX Medicaid long term services and supports benefits. It also allows case managers focused on service planning to attend the service eligibility assessment if the consumer agrees. Allows for continuous service eligibility through a 24-month period.

CHANGES TO RULE:

411-014-0040

Assessments

(1) Assessments must be conducted by eligibility case managers and in accordance with OAR 411-015-0008 except that the service eligibility assessment and determination is made every 24-months in accordance with the continuous eligibility standard in OPI-M.¶

(2) The Services Case Manager may attend the assessment conducted by the Eligibility Case Manager if the individual approves.

Statutory/Other Authority: ORS 410.070

Statutes/Other Implemented: ORS 410.060, 410.070, 414.065