

Mike McCormick

Authorized Signature

Number: APD-PT-14-003

Issue Date: 1/28/2014

Topic: Long Term Care

Transmitting (check the box that best applies):

- New policy
 Policy change
 Policy clarification
 Executive letter
 Administrative Rule
 Manual update
 Other: _____

Applies to (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> All DHS employees | <input type="checkbox"/> County DD Program Managers |
| <input checked="" type="checkbox"/> Area Agencies on Aging | <input type="checkbox"/> County Mental Health Directors |
| <input checked="" type="checkbox"/> Aging and People with Disabilities | <input type="checkbox"/> Health Services |
| <input type="checkbox"/> Children, Adults and Families | <input type="checkbox"/> Other (please specify): |

Policy/rule title:	Change in the application of the spousal pay program for legally married same-sex individuals		
Policy/rule number(s):	Chapter 411, Division 030 Chapter 461, Division 001	Release no:	
Effective date:	Immediately	Expiration:	
References:			
Web Address:	http://apps.state.or.us/caf/arm/A/461-001-0000.htm http://www.dhs.state.or.us/policy/spd/rules/411_030.pdf		

Discussion/interpretation: In response to Oregon Administrative Rule (OAR) [461-001-0000](#) amendments to the definition of “legally married” and “marriage”, OAR [411-030-0080](#) Spousal Pay Program service eligibility criteria will now be applied based on the change to this rule. It was not necessary to amend the Spousal Pay Program rule, only the application of the rule.

[OAR 461-001-0000](#) definitions now include same-sex couples who were married in jurisdictions where such marriages are legal. For a detailed description of this amendment, please review this rule and the recent policy transmittal, [APD-PT-13-026](#).

The purpose of the Spousal Pay Program is to allow a “legally married” spouse to provide

Medicaid K-option in-home services to individuals eligible through the Spousal Pay Program.

Previous to the amendment of OAR 461-001-0000, the Spousal Pay Program did not allow for legally married same-sex couples to participate in this program. If the couple meets the definition of “legally married” in OAR 461-001-0000, as well as the Spousal Pay Program eligibility criteria in OAR 411-030-0080, the HCW/spouse of the individual may provide this care through the Spousal Pay Program.

1. How does an individual qualify for the Spousal Pay Program?

In addition to meeting all K-option eligibility requirements, to be in the Spousal Pay Program, the individual must meet all criteria in OAR 411-030-0080, including:

- Must be legally married to the spouse providing the care;
 - Meet all eligibility requirements for in-home services as described in OAR 411-030-0040;
 - Require full assistance in at least 4 of the 6 ADLs described in OAR chapter 411, division 015;
 - Would otherwise require nursing facility services without in-home services;
 - Have a medically-diagnosed, progressive, debilitating condition that limits ADL care; or has a spinal cord injury or similar disability with a permanent impairment of the ability to perform ADLs;
 - Have needs that exceed in both extent and duration the usual and customary services rendered by one spouse to another;
 - Spouse demonstrates the capability and health to provide the services and provides the principal services, including the majority of service plan hours, for which payment has been authorized;
 - Spouse meets all requirements for enrollment as a homecare worker (HCW) in the Consumer-Employed Provider Program described in OAR 411-031-0040;
- and*
- All spousal pay requests must be reviewed for approval by Darwin Frankenhoff of APD Central Office at intake and annually upon re-assessment.

2. Do current service individuals legally married to their same-sex HCW/spouse need to change from K-option in-home services to the Spousal Pay Program?

- Please do not make any changes or take actions until the individual’s next reassessment or if requested by the individual.
 - At their next reassessment:
 - Change to the Spousal Pay Program as long as the individual meets the criteria outlined in #1 above and is interested in the Spousal Pay Program.
- or*
- Another option the individual may wish to consider is the Independent Choices Program (ICP), as this program allows the eligible individual to hire whomever they choose.

3. What do we do with new intakes for individual who want in-home services provided by their legal same-sex spouse?

- Offer either ICP or spousal pay services for individuals that meet the criteria for the spousal pay program.
 - Remember to have all spousal pay requests reviewed for approval by APD Central Office as described in #1 above.

or

- For individuals that do not meet the spousal pay criteria, the 2 options discussed in # 4 below are offered to the individual.

4. What happens after the next reassessment if the individual doesn't meet the Spousal Pay Program eligibility criteria in #1 above or is eligible, but not interested in spousal pay? For example, the individual doesn't require full assist in at least 4 of the 6 ADLs?

The individual has the following two options available:

- The individual may hire a HCW or use an in-home agency, other than his/her spouse to provide care through the K-option in-home services program.

or

- If ICP eligible, the individual can elect to receive in-home services through the Independent Choices Program (ICP) as described in [OAR 411-030-0100](#) and may hire his/her spouse to provide their care.

5. After an individual receiving on-going K-option in-home services is determined spousal pay eligible (based on the reassessment results), does the HCW/spouse of a legally married same-sex couple qualify to receive the same level of payment as when previously providing care as a HCW to their spouse?

- Yes. According to [OAR 411-030-0080](#)(4)(d), homecare workers (HCW) who marry their consumer-employer retain the same standard of compensation, if their employer meets the spousal pay eligibility criteria. For same-sex couples legally married in another state retain the same compensation as long as the marriage occurred following enrollment into the spousal pay program.

Implementation/transition instructions: Follow the criteria as outlined in this transmittal.

Local/branch action required: Follow the criteria as outlined in this transmittal.

Central office action required: Provide technical support as needed.

Field/stakeholder review: Yes No

If yes, reviewed by: APD Policy Workgroup and Operations Committee

Filing Instructions:

If you have any questions about this policy, contact:

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