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Authorized Signature

Number: APD-PT-14-030

Issue Date: 9/15/2014

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

Policy/rule title:	Disqualifying transfers and Resource Assessments		
Policy/rule number(s):	OAR 411-015-0010; 411-015-0100; 411-030-0040; 411-325-0390; 411-328-0790; 411-330-0110; 411-340-0130; 411-360-0190; 461-140-0210 through 0300; 461-160-0620; 461-160-0580	Release no:	
Effective date:	10-1-14	Expiration:	
References:			
Web Address:			

Discussion/interpretation: Recent federal policy changes related to MAGI-based long-term care require the Department to make the following changes when evaluating MAGI Medicaid recipients for long term care services:

1. Transfers of Assets

The Centers for Medicare & Medicaid Services (CMS) has provided specific guidance requiring that any individual applying for or receiving long-term care services under MAGI Medicaid be subject to OSIPM transfer of asset rules if it appears likely that the individual's long-term care eligibility will be based on OSIPM instead of MAGI in the

future. Future eligibility might change from MAGI Medicaid to OSIPM if, for example, an individual begins receiving Medicare* or reaches age 65 and is no longer eligible for MAGI Medicaid.

When a MAGI Medicaid recipient needs long-term care services, it will be necessary to determine if there has been a transfer of assets for less than fair market value during the look-back period (that is, any point on or after the date 60 months prior to the date of request for MAGI long-term care services). If a transfer occurred during the look-back period and is determined to be disqualifying, MAGI Medicaid is retained, **but the MAGI Medicaid recipient would be ineligible to receive long-term care services under MAGI or OSIPM during their disqualification period.**

**A MAGI Medicaid applicant/recipient must apply for any benefits to which he or she may be entitled, including SSDI, to be eligible for MAGI Medicaid. If determined eligible for SSDI, the individual will likely be subject to the eligibility requirements for OSIPM when he or she becomes eligible for Medicare 24 months after SSDI benefits begin.*

2. Resource Assessments

Because MAGI-based long-term care consumers might require OSIPM-based long-term care at some point in the future, we must implement a process to anticipate and prepare for the eventuality that legally married individuals will need to have a resource assessment completed at the time of transitioning from MAGI-based Medicaid to OSIPM LTC. The legally married couple may need to spend down, and may need to transfer to the community spouse resources equal to the community spouse's resource allowance (if those resources are not already in that spouse's name) within 90 days of the opening of their OSIPM LTC case. OAR 461-160-0580(3). The continuous period of care has likely already begun; and we are in a position to anticipate both the need for a resource assessment and a diminishing ability to provide the needed information to us.

Implementation/transition instructions:

1. Transfers of Assets:

Effective October 1, 2014, the same rules that are currently in place (see OAR 461-140-0210 to 461-140-0300) regarding transfer of asset penalties for OSIPM long-term care services apply to MAGI Medicaid long-term care services, including the presumption that an asset transferred for less than fair market value was transferred for the purposes of qualifying for long-term care services either now or in the future. An individual must present convincing evidence to rebut this presumption.

MAGI Medicaid recipients who are determined to meet long-term care service eligibility requirements (e.g., service priority level) are already required to submit a signed SDS 0539A. Section 5 (Income – certain annuities, income from property sales, income from loans, income from promissory notes, etc., could indicate a disqualifying transfer), section 7 (Resources – certain sales contracts and trust funds could indicate a

disqualifying transfer), section 8 (Property – life estates could indicate a disqualifying transfer), and section 9 (Property transfer) must be completed. Use the information from these sections to assist in determining if there is a disqualifying transfer.

If it is determined that there has been a disqualifying transfer, the consumer must be given written notice regarding the disqualification from long-term care services. Use the SDS 540T for this purpose. Narrate in Oregon ACCESS the details of the denial, including start and end dates. Do not create a CM case.

Examples of transfers for less than fair market value that would not be disqualifying:

- A healthy individual, age 50, transfers assets. The individual is later in a car accident (or is subject to some other catastrophic event that could not have been anticipated) that precipitated the need for long-term care services.
- An individual needs long-term care services, but is not anticipated to lose eligibility for MAGI Medicaid during the period of time during which they need long-term care services. This would happen when an individual's disability is expected to last less than 29 months **and** they will not reach age 65 before the disability ends. The individual's eligibility under MAGI Medicaid would not be anticipated to end since they are not expected to become Medicare eligible during the duration of their disability.

Examples of transfers for less than fair market value that might be disqualifying:

- An individual, age 40, applies for MAGI Medicaid and long-term care services. She is currently receiving SSDI, but is in the two-year wait for Medicare. Just prior to applying for MAGI, she transferred significant liquid assets and her home to her non-disabled child.
- An individual is in an accident, determined eligible for MAGI Medicaid, and placed in a nursing facility with a prognosis of a long-term stay. The individual then transfers their home to their non-disabled child.

Important notes:

- A categorical exemption for MAGI-based individuals (e.g., the position that, because there is no asset test for MAGI, a transfer cannot have been to establish eligibility) is not permitted.
- As with OSIPM, there are certain transfers that are permitted even though they may not be fair market value transactions (such as the transfer of an asset to a spouse or disabled child).
- Remember to disqualify only the long-term care; the individual retains non-service MAGI Medicaid.

2. Resource Assessments:

We should afford the individual the opportunity to provide the information required to complete the resource assessment if it appears likely that the individual's long-term care eligibility will be based on OSIPM instead of MAGI in the future. It should be stressed to the individual that, if information is lost or becomes more difficult to gather and provide to the Department, this will negatively affect the individual (and by extension the community spouse). This risk should be made clear to the individual. The individual should be encouraged to present the needed information to the Department right away, rather than to risk the loss of information, the fading of memories, over time.

Pend for the SDS 0539A as necessary. Send from the form server SDS 3401 with *Cover Letter* [SDS 3405](#), and narrate that you have done so. A copy of the new *Cover Letter* [SDS 3405](#) is attached.

If you receive the documents back, compute the resource assessment in the same manner as you would in an OSIPM case (e.g., annuities, promissory notes, life estate interests, and trusts are treated the same), and send the SDS 3401.

Retain in the file all the information received from the individual, in case a future application for OSIPM LTC is received or a hearing is sought.

To complete the resource assessment accurately, it will be necessary to complete all sections of the SDS 0539A related to income and resources for both the consumer and their spouse. One of the potential resource allowance calculations involves an additional resource allowance based on the difference between the amount of income available to the community spouse versus the maintenance needs allowance; see OAR 461-160-0580(2)(c)(D).

Important note:

It is the individual's burden to present the needed information, and to establish any alleged need for additional resources. If the individual fails to provide the information and verifications needed for the Department to perform the Resource Assessment, and the individual is later unable to provide the verifiable information as to the countable resources at the beginning of the continuous period of care, the Department will be compelled to attribute to the community spouse a resource allocation of zero.

Training/communication plan: Review transmittal with staff. Contact central office for technical assistance.

Local/branch action required: Implement policy effective 10/01/2014.

Central office action required: Provide technical support as needed.

Field/stakeholder review: Yes No

If yes, reviewed by:

Filing Instructions:

If you have any questions about this policy, contact:

Contact(s):	Bill Brautigam and Michael Avery		
Phone:	503 947-5204 / 503 947-6410	Fax:	503 947-5357
E-mail:	Bill.h.brautigam@state.or.us ; Michael.G.Avery@state.or.us		

Branch:	Prime number:	Worker ID:
Consumer's name:		

Resource Assessment Information

You receive Modified Adjusted Gross Income (MAGI)-based long-term care services. If you are not eligible for MAGI Medicaid in the future, you may be able to apply for Oregon Supplemental Income Program Medical (OSIPM). This Medicaid program helps Oregon seniors and individuals with long-term disabilities.

How might this Resource Assessment affect you?

We must gather more information for any legally-married individual applying for OSIPM Long-Term Care than for unmarried individuals or for individuals applying for MAGI Long-Term Care. This applies even if you and your spouse do not live together. The information goes into a resource assessment. The assessment generally determines the couple's combined countable resources when the continuous period of care began. This period usually starts when long-term care services begin.

OSIPM considers the couple's combined countable resources to be available equally to both of them. The spouse of the applicant can retain a certain dollar amount in resources and the applicant can be eligible for OSIPM Medicaid. We calculate the resources each spouse can retain.

Once you become eligible for OSIPM Long-Term Care, you must transfer any necessary resource allowance into your spouse's name within a set time period.

What can you do now?

It is best to start gathering information for the resource assessment when long-term care services begin. You must complete the SDS 0539A application form in order to receive long-term care services. We also strongly encourage you to complete and return the SDS 3401 Resource Assessment in order to complete the resource assessment. If you wait to do this and later cannot establish what your resources were when the continuous period

of care began, you may not get full benefits. For example, we may not be able to attribute any resources to your spouse if you cannot prove he or she is entitled to a higher sum. Therefore, please fill out the enclosed forms and return them as soon as possible.

Return completed forms to: _____

Phone: _____

Please contact us with any questions.