

TEMPORARY FILING
INCLUDING STATEMENT OF NEED & JUSTIFICATION
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Oregon Department of Human Services (ODHS) Aging and People with Disabilities (APD)		411
Agency and Division Name		Administrative Rules Chapter Number
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FILING CAPTION

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

APD: Adopting Eligibility Criteria Rules for Oregon Project Independence-Medicaid (OPI-M)

Agency Approved Date: [04/26/2024]

Effective Date: [05/31/2024] through [11/26/2024]

RULEMAKING ACTION

List each rule number separately (000-000-0000). Attach clean text for each rule at the end of the filing

ADOPT:

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

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Oregon Department of Human Services (ODHS), Aging and People with Disabilities Program (APD) is immediately adopting rules in OAR chapter 411, division 014 that establishes the Oregon Project Independence-Medicaid (OPI-M) program eligibility rules. The rules are summarized below.

Adopt: OAR 411-014-0000

Rule Title: Purpose

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

Adopt: OAR 411-014-0005

Rule Title: Definitions

Rule Summary: Created to list the applicable definitions for the OPI-M rules.

Adopt: OAR 411-014-0020

Rule Title: Eligibility and Limitations for Oregon Project Independence-Medicaid

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.

Adopt: OAR 411-014-0025

Rule Title: Financial Eligibility for OPI-M

Rule Summary: Defines financial eligibility requirements including income and asset limits for OPI-M and treatment of trusts. Exempts OPI-M recipients from estate claims and consumer liability for OPI-M benefits.

Adopt: OAR 411-014-0030

Rule Title: Scope of OPI-M Eligibility Case Management

Rule Summary: Defines the responsibilities of OPI-M eligibility case managers including eligibility determinations, verification of eligibility requirements, information sharing, referrals, and using person-centered planning processes.

Adopt: OAR 411-014-0035

Rule Title: Qualified Case Manager

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.

Adopt: OAR 411-014-0040

Rule Title: Assessments

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.

STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

The Oregon Department of Human Services, Aging and People with Disabilities Program needs to adopt rules to operationalize a federal demonstration waiver that creates a new In-Home services program, Oregon Project Independence-Medicaid (OPI-M). The implementation of the waiver and operation of the program require these rules to be in place.

Justification of Temporary Filing:

Failure to act promptly and immediately adopt OAR chapter 411, division 014 will result in serious prejudice to the public interest, including people who have been waitlisted for extended periods of time for Oregon Project Independence (OPI) services, people who are currently underserved by OPI and others who have caregiving needs but do not qualify for current services and supports. In addition, caregivers may be unable to access supports that would enable them to maintain caregiving relationships. Lastly, it will cost the state more if rules are not enacted promptly as APD will not have access to federal funds until the waiver is operationalized through program implementation.

Consumers will suffer consequences from any delays. Some have been on waiting lists for services for extended periods of time and experience health declines without the necessary supports that OPI-M can provide.

Caregivers may also suffer from delays as this program supports them in learning enhanced caregiving skills and reduce caregiving stress. Supports are often faced with challenges in maintaining their health and ability to continue assisting. Caregiver burnout and turnover rates are high and this

program will help to sustain caregiving relationships. Delay may mean the loss of unpaid caregivers or that they do not have access to supports to develop skills to handle more complex care.

Failing to immediately adopt these rules promptly also has financial consequences. Delays will mean that the state cannot operationalize the federally approved waiver and serve individuals using federal matching funds.

Lastly, OPI-M is based on a federal demonstration waiver program that is time limited. APD needs these rules effective immediately to make full use of the limited five (5) year waiver period and be able to meet demonstration waiver deadlines.

By immediately making OAR chapter 411, division 014 rules effective, the program can open, begin serving consumers who are underserved, support caregivers with needed benefits, provide access to federal funding, and allow APD to begin work to meet federal deadlines.

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>

/s/ Nakeshia Knight-Coyle, Director, Aging and People with Disabilities

04/26/2024

Signature

Date

**OREGON DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 14**

OREGON PROJECT INDEPENDENCE-MEDICAID (OPI-M) ELIGIBILITY

411-014-0000 Purpose

(Temporary effective 05/31/2024 through 11/26/2024)

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-014-0005 Definitions

(Temporary effective 05/31/2024 through 11/26/2024)

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.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.060, 410.070, 414.065

411-014-0020 Eligibility and Limitations for Oregon Project Independence- Medicaid

(Temporary effective 05/31/2024 through 11/26/2024)

(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; OSPIM;

(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.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.060, 410.070, 414.065

411-014-0025 Financial Eligibility for OPI-M

(Temporary effective 05/31/2024 through 11/26/2024)

(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.

(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.

Stat. Auth.: ORS 409.050, 410.060, 410.070, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685

Stats Implemented: ORS 409.010, 410.060, 410.070, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685

411-014-0030 Scope of OPI-M Eligibility Case Management
(Temporary effective 05/31/2024 through 11/26/2024)

(1) Eligibility Case Managers are responsible for:

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

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

(B) 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.

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

(3) 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.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.060, 410.070, 414.065

411-014-0035 Qualified Case Manager

(Temporary effective 05/31/2024 through 11/26/2024)

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.060, 410.070, 414.065

411-014-0040 Assessments

(Temporary effective 05/31/2024 through 11/26/2024)

(1) Assessments must be conducted by eligibility case managers and in accordance with OAR 411-015-0008.

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.060, 410.070, 414.065