# AN INTRODUCTION TO LONG TERM CARE AND MEDICAID IN OREGON

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**Penny L. Davis, The Elder Law Firm**
**Portland, Oregon**

The phrase "long term care" is used to describe the help provided to people who are not able to live independently due to chronic medical problems or severe disabilities. The need for long term care increases with age. More than half of the people age 85 or older report difficulty performing basic activities of daily living (ADLs), such as preparing meals, shopping, doing housework, bathing, dressing, eating, getting around the house, managing money, and taking medication. Nationally, 4.5% of people age 65 and older live in nursing homes. For people age 85 and older, the figure is 18.2%.

Most long term care is provided informally by family members and friends and through community programs, such as Meals on Wheels. In-home services can range from respite care to visits by home health nurses to housekeeping to 24 hour care, and the costs vary according to the time spent and the type of services. In 2003, the average hourly charge for a home health aide in Oregon was about $18.00. For more information about in-home care and the responsibilities of people who employ in-home caregivers, see the Winter 2003 issue of the Elder Law Section newsletter, which can be downloaded from the section's web page at www.osbar.org.

Oregon has been a leader in developing alternatives to nursing home care. Adult foster homes care for five or fewer residents in a home-like environment. Residential care facilities (RCFs) offer room, board, care, and services for six or more residents, with 24 hour coverage. Assisted living facilities (ALFs) have six or more private apartments and provide several levels of service with 24 hour coverage. A survey done in 2003 found that ALFs charged between $1,800 and $2,800 per month. Nursing facilities (sometimes called nursing homes, convalescent centers, or rehabilitation centers) provide regular nursing services as well as personal care and assistance with ADLs. In 2003, nursing home costs varied from $3,100 to more than $10,000 per month, with the higher amounts being charged for private rooms and for the more intensive "skilled nursing facility" or "SNF" care typically needed by people recently discharged from hospitals. Adult foster homes, residential care facilities, assisted living facilities, and nursing facilities are licensed by the state Department of Human Services Seniors and People with Disabilities (SPD) office. Note: In some counties, the county licenses adult foster homes. Information on choosing a facility is available on the SPD web site, www.dhs.state.or.us/seniors.

**Medicaid.** People who do not have the income or resources to pay for expensive long term care turn to Medicaid, which is a complex federal-state program with ties to other government public assistance programs, such as Supplemental Security Income (SSI). The primary federal statute is 42 USC §1396, and the regulations appear at 42 CFR 430.0 et seq. This article provides an introduction to some of the issues clients may encounter in the Oregon Medicaid program. It is important for lawyers who practice in this area to remain current because the eligibility requirements and the services covered by Medicaid change from time to

time and vary from state to state. Some of the figures discussed below are updated periodically on a chart which appears in the Elder Law Section newsletter and on the section's web page.

About half of the people in Oregon care facilities rely on Medicaid assistance to help pay for their care. People who receive SSI benefits automatically qualify for Medicaid. Other people who are elderly (age 65 and older) or who have disabilities have to apply for Medicaid through the local Area Agency on Aging office or SPD branch office. The locations for local offices can be found on the SPD web site.

The Oregon Medicaid program covers the full range of long term care services. Many (but not all) care facilities have contracts with the state and accept Medicaid reimbursement. Medicaid also pays for the Medicare Part B premium, prescription drugs, doctor visits, hospital stays, medical transportation, durable medical equipment, medical supplies, eyeglasses, dental care, hearing aids, and mental health services. The state statutes are ORS 414.018 et seq, the financial eligibility rules are found in OAR chapter 461, the rules on coverage begin in OAR chapter 410, division 120, and the care facility requirements and service priority levels for long term care appear in OAR chapter 411. The acronym used for Medicaid for the elderly and people with disabilities in some of the rules is "OSIPM," which stands for "Oregon Supplemental Income Program Medical."

**Income Limit.** An individual will not be eligible for Medicaid assistance for long term care services if his or her income (gross income, before any deductions for the Medicare Part B premium, taxes, union dues, etc.) is over $1,737 per month (in 2005). That amount changes in January of each year, and is 300% of the SSI federal benefit rate. OAR 461-155-0250(1). Since the average cost of nursing home care is over $4,700 per month, the income limit poses significant problems. The most common solution is to create a Medicaid income cap trust to receive and administer the income. The materials from the 2003 OSB CLE program *Elder Law Essentials* include a sample form for an income cap trust.

**Post-Eligibility Treatment of Income.** After the individual begins receiving Medicaid assistance, most of his or her income has to be used to pay for care. OAR 461-160-0620. Medicaid recipients are allowed to keep a small personal needs allowance to cover clothing, stamps, snacks, cigarettes, transportation, and other personal items. The amount ranges from $30 per month for most nursing home residents, to $122 per month (in 2005) for a resident of a community-based care facility, to $580.70 per month (in 2005) for someone who gets in-home services and who has expenses for groceries, mortgage or rent, property taxes, and utilities. If the individual lives in a community-based care facility, he or she will have to pay $458.70 per month (in 2005) for the room and board charges. OAR 461-155-0270.

**Resource Limit for Individuals.** The resource limit for a single individual is $2,000. OAR 461-160-0015(8). Certain assets, including the person's home, household goods, one car or truck, and a funeral or burial plan (within set limits) are generally exempt and are not counted in determining eligibility. Most assets, such as bank accounts, stocks, bonds, IRAs, other vehicles and real property, are counted and have to be spent before the person will qualify for

Medicaid assistance. The rules for specific assets are in OAR chapter 461, section 145.

**Resource Limits for Married Couples.** When a married person applies for Medicaid assistance, the property and resources belonging to either spouse or to both spouses are counted. OAR 461-160-0580. The non-exempt resources are valued at the beginning of the ill spouse's continuous period of care. The resource limit for the ill spouse is $2,000, the same as for a single individual. However, the spouse who does not need care (also called the community spouse) can keep the largest of the following amounts of non-exempt resources (in 2005):

- $19,020;
- Half of the non-exempt assets, up to a maximum of $95,100; or
- The amount set by court order or administrative hearing.

Options available for avoiding spousal impoverishment include planning the spenddown; transferring exempt assets and non-exempt assets to the community spouse; using non-exempt assets to provide income for the community spouse; and petitioning the court for a support order awarding additional assets to the community spouse.

**Community Spouse Income Allowance.** Although the resources that belong to a married couple are counted together in the application process, each spouse's income is counted separately. OAR 461-160-0600(2). The community spouse can receive an allowance from the ill spouse's income to bring the community spouse's monthly income up to a standard of $1,561 (as of July 1, 2004). OAR 461-160-0620(5). The standard is raised (up to a maximum of $2,377) if the community spouse's shelter costs exceed $468 per month. If the standard is not enough, the community spouse can petition the court for additional support or for a larger share of the couple's resources. However, the allowance is limited to the amount available from the ill spouse's income after the personal needs allowance and any room and board charges have been paid.

**Impact of Gifts and Transfers.** If the individual or his or her spouse gives money or property away, or transfers anything for less than fair market value, within three years before applying for Medicaid, he or she will not be eligible for a period of time based on the value of whatever was given away. OAR 461-140-0210 et seq. If the transfer was to a trust or from a trust, the "look back" period is five years instead of three years. The amount that was given away is divided by the average monthly cost of care (currently set at $4,700 in Oregon). OAR 461-140-0296. The result is the number of months of ineligibility. The period of ineligibility begins with the month in which the gift was made. There are some gifts and transfers for less than fair market value which do not result in a period of ineligibility. For example, there is no penalty if the person transfers assets to his or her spouse.

**Service Priority Levels.** When someone applies for Medicaid for long term care services in Oregon, the person's care needs and abilities to do the activities of daily living are evaluated and a service priority level is assigned. OAR 411-015-0000 et seq. Medicaid assistance is currently available to people in service priority levels 1 through 13.

**Estate Recovery and Liens.** The state has a claim against the estate of the Medicaid

recipient for the amount of Medicaid assistance paid after age 55. ORS 414.105. For the purpose of this claim, the estate is defined as any interest in money or property that the Medicaid recipient has at the time of his or her death, so it includes joint accounts and other assets which do not have to go through probate. The state's claim has a higher priority than claims of general creditors. ORS 115.125(1). The state cannot collect its claim while there is a surviving spouse or a minor or disabled child. However, the state can make a claim against the estate of the surviving spouse up to the amount that the surviving spouse received when the Medicaid recipient died. Oregon does not have the authority to file liens against real or personal property to recover Medicaid assistance.

**Conclusion.** Private resources and the Medicaid program are the main sources of payment for long term care. Medicare, long term care insurance, and VA Aid and Attendance pensions can play a role for some clients. However, an elder law attorney who understands the Medicaid eligibility requirements will be able to provide valuable counsel to clients with limited assets who are facing the need for long term care.

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