

Limits on Estate Claims

- (1) The Estate Administration Unit is designated and authorized to administer the estate recovery program for the Oregon Health Authority and the Department of Human Services, and to present and file claims for payment. The Manager and Assistant Manager of the Estate Administration Unit, Estate Administrators, Assistant Estate Administrators, and Accounts Receivable Specialist are authorized to present, file, and resolve claims for the Estate Administration Unit. The Manager or Assistant Manager may designate other individuals to present, file, or resolve claims. This rule sets out some of these claims.
- (2) For the Oregon Supplemental Income Program (OSIP) (see OAR [461-101-0010](#)):
 - (a) The amount of any payments or benefits, including an *overpayment* (see OAR [461-195-0501](#)), are a claim against the *probate estate* (see OAR [461-135-0832](#)) of any deceased recipient.
 - (b) The claim for correctly paid payments or benefits under OSIP are deferred until the death of the *spouse* (see OAR [461-001-0000](#)) or *registered domestic partner* (see OAR [461-135-0832](#)), if any, of the deceased recipient.
 - (c) If the deceased recipient has no *probate estate*, the enforcement of the claim has been deferred, or there are insufficient resources in the *probate estate* to pay the claim in full, the *probate estate* of the *spouse* or *registered domestic partner* of the deceased recipient, if any, is charged for any payments or benefits paid under OSIP to the deceased recipient, the *spouse*, or *registered domestic partner*.
 - (d) A claim for correctly paid payments or benefits under OSIP is deferred until the time that there is no *child under age 21* (see OAR [461-135-0832](#)), *child with a disability* (see OAR [461-135-0832](#)), or *child with a visual impairment* (see OAR [461-135-0832](#)).

- (e) Transfers of real or personal property without adequate consideration, by recipients of payments or benefits under OSIP, are voidable and may be set aside under ORS 411.620.
 - (f) Except when there is a surviving *spouse* or *registered domestic partner*, or a surviving *child under age 21*, a *child with a disability*, or a *child with a visual impairment*, the amount of any payments or benefits provided is a claim against the *estate* (see OAR [461-135-0832](#)) in any conservatorship proceedings and may be paid pursuant to ORS 125.495.
- (3) For *General Assistance* (see OAR [461-135-0832](#)):
- (a) The amounts of any payments or benefits, including overpayments, are a claim against the *probate estate* of any deceased recipient. The amount includes the state's monthly contribution, paid prior to January 1, 2014, to the federal government for the recipient's Medicare Part D prescription drug coverage. Effective July 1, 2016, any correctly paid benefits under Oregon Laws 2016, chapter 93, section 1 are excluded, except that an *overpayment* of benefits under Oregon Laws 2016, chapter 93, section 1 is included in a claim against the *probate estate*.
 - (b) The claim for correctly paid payments or benefits under the *General Assistance* program is deferred until the death of the *spouse* or *registered domestic partner*, if any, of the deceased recipient.
 - (c) If the deceased recipient has no *probate estate*, the enforcement of the claim has been deferred, or there are insufficient resources in the *probate estate* to pay the claim in full, then the *probate estate* of the *spouse* or *registered domestic partner* of the deceased recipient, if any, is charged for any payments or benefits to the deceased recipient, the *spouse*, or *registered domestic partner*.
 - (d) A claim for correctly paid payments or benefits under *General Assistance* is deferred until the time that there is no *child under age 21*, *child with a disability*, or *child with a visual impairment*.

- (e) Except when there is a surviving *spouse* or *registered domestic partner*, or a surviving *child under age 21*, a *child with a disability*, or *child with a visual impairment*, the amount of any assistance paid is a claim against the *estate* in any conservatorship proceedings and may be paid pursuant to ORS 125.495.
- (4) For *Medical Assistance* (MA, as defined in OAR [461-135-0832](#)):
- (a) In determining the extent of the *estate* resources subject to the claim of the Department for correctly paid benefits, except as provided in subsection (b) of this section, the Department must disregard resources in an amount equal to the *value* (see OAR [461-135-0832](#)) of resources excluded in the most recent eligibility determination under OAR [461-160-0855](#), based on payments received under a *qualified partnership policy* (see OAR [461-001-0000](#)). The disregard of resources specific to the estate recovery claim applies to MA benefits received after the effective date of the MA eligibility determination in which a *qualified partnership policy* was considered and approved. The amount of any MA incurred in a prior MA eligibility period where *qualified partnership policy* benefits were not considered is not subject to the estate resource disregard.
 - (b) There is no disregard of resources under subsection (a) of this section if the recipient, or the *spouse* of the recipient, at any time transferred the *value* of the *qualified partnership policy* excluded resource amount to another individual for less than fair market value prior to the death of the recipient or the recipient's *spouse*, or exhausted the disregarded resource amount by purchasing things of *value* to the recipient or the recipient's *spouse* while either was living.
 - (c) The amount of any incorrectly paid payments or benefits, excluding an administrative error *overpayment*, are a claim, against the *probate estate* of any deceased recipient.
 - (d) The claim for correctly paid payments or benefits under MA is deferred until the death of the surviving *spouse*, if any, of the deceased recipient. After the death of a surviving *spouse*, the deferred claim of the deceased recipient is a claim against the

following *assets* (see OAR [461-135-0832](#)) or their proceeds in the *estate* of the *spouse*. The Department has a claim against the *estate* of the *spouse* for *medical assistance* (see OAR [461-135-0832](#)) paid to the recipient, but only to the extent that the *spouse* received property or other *assets* from the recipient through any of the following:

- (A) Probate.
 - (B) Operation of law.
- (e) A claim for correctly paid payments or benefits under MA is deferred until the time that there is no *child under age 21*, *child with a disability*, or *child with a visual impairment*.
- (f) An MA claim in an *estate* includes:
- (A) The amount of any payments or benefits paid prior to October 1, 1993 to or on behalf of a recipient 65 years of age or older are a claim against the *probate estate* of any deceased recipient.
 - (B) The amount of any payments or benefits, paid on or after October 1, 1993 and prior to July 18, 1995, to or on behalf of a recipient 55 years of age or older are a claim against the *probate estate* of any deceased recipient.
 - (C) The amount of any payments or benefits, paid on or after July 18, 1995 and prior to October 1, 2013, to or on behalf of a recipient 55 years of age or older are a claim against the *estate* of any deceased recipient. All correctly made payments on or after January 1, 2010 for *Medicare cost sharing* (see OAR [461-135-0832](#)) are excluded from a claim.
 - (D) The amount of any payments or benefits, paid October 1, 2013 or later, to or on behalf of a recipient 55 years of age or older, during the time the Department was paying any of the cost of care of the individual in a nursing facility, *home and community-based care* (see OAR [461-001-0030](#)), or in home services through the *State Plan*

Personal Care Services (see OAR [411-034-0010](#)), are a claim against the *estate* of any deceased recipient. All correctly made payments on or after January 1, 2010 for *Medicare cost sharing* are excluded from a claim.

- (5) The amount paid, for a recipient age 55 or older, after December 31, 2013, to the federal government for the recipient's Medicare Part D prescription drug coverage is a claim against the *estate* of the deceased recipient.
- (6) For trusts under OAR [461-145-0540](#)(9), upon termination of the trust or upon the death of the original beneficiary the trust pays to the State or States from such remaining amounts in the trust an amount equal to the total amount of medical assistance paid on behalf of the original beneficiary. The State or States must be listed as the first payee or payees and first remainder beneficiary or beneficiaries, and have priority over payment of other debts and administrative expenses, and other beneficiaries, except as allowed in subsection (a) of this section. Subsections (4)(d) and (4)(e) of this rule do not apply to this section.
 - (a) Allowable administrative expenses payable before any State include:
 - (A) Taxes due from the trust, excluding taxes due from the beneficiary, to the State or States or federal government because of the death of the beneficiary; and
 - (B) Reasonable fees for administration of the trust estate such as an accounting of the trust to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust. Trustee fees or conservator fees, not both, are limited to the month of the original beneficiary's death and the prior month.
 - (i) For a person that is a trustee, but not a conservator, trustee fees after the month of death, if claimed, must be reasonable and approved by the Department prior to payment.

- (ii) For a person that is a conservator and trustee, conservator fees after the month of death, if claimed, must be approved by the court, after the Department is given notice and opportunity to object.
- (b) Upon the death of the original beneficiary, the following expenses and payments are examples of some of the types not permitted prior to reimbursement of the State or States for medical assistance:
 - (A) Taxes due from the estate of the beneficiary other than those arising from inclusion of the trust in the estate;
 - (B) Payment of debts owed to third parties;
 - (C) Trustee or conservator fees, except as allowed by subsection (a) of this section;
 - (D) Funeral expenses; and
 - (E) Payments to residual beneficiaries.
- (7) Regarding claims under ORS 411.620:
 - (a) Where the Department has a claim for correctly paid assistance and files an action under ORS 411.620(1) or (2) for a violation of ORS 411.630, 411.708(2), or 416.350(2), the amount of assistance resulting from the violation is the amount the Department would have been entitled to recover from the *estate* if the transferred asset were an asset of the *estate*.
 - (b) In addition or in the alternative at the discretion of the Department, the Department shall have a claim for recovery of incorrectly paid payments or benefits under ORS 416.350(1), or for assistance to which the person was not entitled, or that results from a violation, of or under ORS 411.620, ORS 411.630, ORS 411.708, ORS 411.640, or ORS 416.350(2), against the *estate* of the deceased recipient or against any person liable under such statutes, that includes:

- (A) For individuals who received public assistance or medical assistance and transferred an asset in a manner that constitutes a disqualifying transfer under OAR [461-140-0220](#) and [461-140-0242](#), a claim includes all assistance received during a disqualification period calculated in accordance with OAR [461-140-0296](#), except that the date the disqualification period begins is:
 - (i) For an individual who transfers an asset while receiving assistance the disqualification period begins the month following the month the asset was transferred, except that if disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.
 - (ii) For an individual who transfers an asset prior to receiving assistance, the disqualification period begins on the date the person begins receiving assistance.
 - (B) For individuals who received public assistance or medical assistance and failed to disclose a *countable asset* (OAR [461-140-0010](#)) the claim includes all assistance received from the date the individual was required to disclose the asset.
- (8) Notwithstanding section (7), the Department retains the ability to void a transfer under ORS 411.620, ORS 411.630, ORS 411.708, or ORS 416.350(2), and to recover any other claim that the Department may have.

Statutory/Other Authority: ORS [409.050](#), [411.060](#), [411.070](#), [411.404](#), [413.042](#), [413.085](#), [414.685](#), [416.340](#), [416.350](#)

Statutes/Other Implemented: ORS [93.969](#), [125.495](#), [411.404](#), [411.620](#), [411.630](#), [411.640](#), [411.708](#), [411.795](#), [413.085](#), [416.310](#), [416.350](#)

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