461-140-0296 **Effective 10-01-26**

Length of Disqualification Due to an Asset Transfer; Nursing Facility Services or Home and Community-Based Care

(1) This rule applies to individuals applying for or receiving Department-paid nursing facility services or *home and community-based care* (see OAR 461-001-0030).

(2) An individual who completes a disqualifying transfer of an asset in accordance with OARs 461-140-0210, 461-140-0220, 461-140-0242, and 461-140-0250 is disqualified from receiving Department-paid nursing facility services or *home and community-based care*. The length of a disqualification period resulting from the transfer is the number of months equal to the uncompensated value (see OAR 461-140-0250) for the transfer divided by the following dollar amount:

(a) If the *initial month* (see OAR 461-001-0030) is prior to October 1, 1998---$2,595.

(b) If the *initial month* is on or after October 1, 1998 and prior to October 1, 2000---$3,320.

(c) If the *initial month* is on or after October 1, 2000 and prior to October 1, 2002---$3,750.

(d) If the *initial month* is on or after October 1, 2002 and prior to October 1, 2004---$4,300.

(e) If the *initial month* is on or after October 1, 2004 and prior to October 1, 2006---$4,700.

(f) If the *initial month* is on or after October 1, 2006 and prior to October 1, 2008---$5,360.

(g) If the *initial month* is on or after October 1, 2008 and prior to October 1, 2010---$6,494.

(h) If the *initial month* is on or after October 1, 2010 and prior to October 1, 2016---$7,663.

(i) If the *initial month* is on or after October 1, 2016 and prior to October 1, 2018---$8,425.

(j) If the *initial month* is on or after October 1, 2018 and prior to October 1, 2020---$8,784.

(k) If the *initial month* is on or after October 1, 2020 and prior to October 1, 2022---$9,551.

(l) If the *initial month* is on or after October 1, 2022 and prior to October 1, 2024--- $10,342.

(m) If the *initial month* is on or after October 1, 2024 and prior to October 1, 2026--- $14,585.

(n) If the *initial month* is on or after October 1, 2026--- $16,760.

(3) For transfers by an individual and the *spouse* (see OAR 461-001-0000) of an individual:

(a) If there are multiple transfers by the individual and the *spouse* of the individual, including any transfer less than the applicable dollar amount identified in subsections (2)(a) to (2)(m) of this rule, the value of all transfers are added together before dividing by the applicable dollar amount identified in subsections (2)(a) to (2)(m) of this rule.

(b) The quotient resulting from the calculation in section (2) of this rule is not rounded. The whole number of the quotient is the number of full months the financial group is disqualified. This number might be zero full months. The remaining decimal or fraction of the quotient is used to calculate a partial month disqualification, which may be in addition to zero or more full months. This remaining decimal or fraction is converted to a number of days by multiplying the decimal or fraction by the number of days in the month following the last full month of the disqualification period, if any. If this calculation results in a fraction of a day, the fraction of a day is rounded down.

(c) The date the disqualification begins is:

(A) For an individual who either transfers an asset while they are already receiving Department-paid nursing facility services or *home and community-based care*, or transfers an asset on or after the date that is 60 months prior to the *date of request* (see OAR 461-115-0030) but fails to report the transfer at initial application, the first of the month following the date the Department learns the asset was transferred and the *timely continuing benefit decision notice period* ends (see OAR 461-175-0050), except that if disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.

(B) For an individual who transfers an asset prior to submitting an application for services and being determined eligible who reports the transfer at application, the *date of request* for nursing facility services or *home and community-based care* as long as the applicant or individual would otherwise be eligible but for this disqualification period. If the applicant or individual is not otherwise eligible on the *date of request*, the disqualification begins the first date following the *date of request* that the applicant or individual would be otherwise eligible but for the disqualification period.

(d) If both *spouses* of a couple are applying for or receiving Department-paid nursing facility services or *home and community-based care*, part of the disqualification is apportioned to each of them. If one member of the couple is serving a disqualification when the other member of the couple applies for or starts receiving Department-paid nursing facility services or *home and community- based care*, any remaining disqualification is apportioned equally to each member of the couple. If one *spouse* is unable to serve the resulting disqualification period for any reason, the remaining disqualification applicable to both *spouses* must be served by the remaining *spouse*.

(4) If an asset is owned by more than one person, by joint tenancy, tenancy in common, or similar arrangement, the share of the asset owned by the individual is considered transferred when any action is taken either by the individual or any other person that reduces or eliminates the individual's control or ownership in the individual's share of the asset.

(5) For an annuity that is a disqualifying transfer under section (11) of OAR 461-145-0022, the disqualification period is calculated based on the *uncompensated value* as calculated under OAR 461-140-0250, unless the only requirement that is not met is that the annuity pays beyond the actuarial life expectancy of the annuitant. If the annuity pays beyond the actuarial life expectancy of the annuitant, the disqualification is calculated according to section (6) of this rule.

(6) If there is a potential disqualifying transfer under section (11) of OAR 461-145-0022, and the only requirement that is not met is that the annuity pays benefits beyond the actuarial life expectancy of the annuitant, as determined by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration, a disqualification period is assessed for the value of the annuity beyond the actuarial life expectancy of the annuitant.

(7) Effective January 1, 2023, the Department ends the disqualifications previously established under this rule based on an income cap trust.

Statutory/Other Authority: ORS 409.050, 411.060, 411.704, 411.706, 413.085, 414.685
Statutes/Other Implemented: ORS 409.010, 411.060, 411.704, 411.706, 42 USC 1396p

Previous Rules

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