

Oregon

CONSTITUTIONAL PROVISIONS REGARDING PUBLIC ASSISTANCE

There are no provisions within the Oregon State Constitution which explicitly provide or prohibit the provision of health care or mental health care to low-income or indigent populations.

STATUTORY PROVISIONS

With the exception of limited services provided to children under the Special Medical Services for Children program,¹ discussed extensively below, neither county² nor municipal³ governments are either indirectly or directly given the responsibility to meet the medical needs of their low-income populations. There are some limited state programs which provide some services to low-income populations, and they are discussed below.

State Public assistance Programs

The Department of Human Resources through the Adult and Family Services Division (“Division”) is responsible, not only for administering and supervising the state's public assistance⁴ programs, but also for drafting the regulations which guide them.⁵ The Division's authority and responsibility extends to county welfare programs, as well.⁶

General Assistance

The legislature defines General Assistance (“GA”) as “assistance or service of any character provided to needy persons not otherwise provided for to the extent of such need and the availability of funds, including medical, surgical and hospital or other remedial care . . .”⁷

¹ORS 444.010 *et seq.* [Butterworth 1992 and Michie 1996 Supp].

²ORS, titles 201 through 215 [Butterworth 1991, Michie 1996 Supp].

³ORS, titles 221-227 [Butterworth 1993, Michie 1996 Supp].

⁴“Public Assistance” is defined as including old-age assistance, aid to dependent children, aid to the blind, general assistance, aid to the permanently and totally disabled, medical assistance and such other functions as may be delegated to the Division's administrator by or in accordance with the provisions of federal and state laws. ORS 411.010(3) [Michie 1996 Supp].

⁵34 ORS §§ 411.060 [Michie 1996 Supp].

⁶35 Op.Atty.Gen. 114 (1970).

⁷ORS 411.010(2) [Michie 1996 Supp].

The legislature delegates authority to the Division to develop eligibility standards, rather than defining, even with broad strokes, who shall be eligible for general assistance.⁸ As shall be obvious, the Division has implemented quite stringent eligibility rules. The only persons who may be eligible under this program are persons who are apparently eligible for federal Supplemental Security Income (“SSI”) based on a disability, who have in fact applied, and are awaiting determination of their application. The state has considerable hubris to call this program, “general assistance.”

Eligibility

Residency and Immigration Status

Eligible applicants must be state residents⁹ who are United States citizens, legal permanent residents, or have special immigration status as conditional entrants, refugees, asylees, or parolees.¹⁰

Unemployable

Eligible applicants must be unable to perform any work activity by reason of any medically determinable physical and/or mental impairment that can be expected to last for a continuous period of not less than 12 months from the date of application. This medical condition must meet or equal the Listings of Impairment found in Title 42 of the Code of Federal Regulations (“CFR”), Part 404, Subpart P, Appendix I.¹¹

Alternatively, an eligible applicant may have a severe physical or mental impairment that does not fully meet Listings of Impairment found in 42 CFR Part 404, Subpart P, Appendix 1, that would make the individual unable to return to any previous work for a period of not less than 12 months from the date of application.¹² As used in this rule, severe impairment means an impairment that significantly limits a person's physical or mental abilities to do basic work activity.¹³ In addition the applicant must meet one of the following: (A) is 55 years or more in age; (2) is 50 years or more in age and did not complete the 12th grade or obtain a GED; (C) is 45 years of more in age, and illiterate or unable to communicate in English.¹⁴

⁸ORS 411.710, 411.730 [Butterworth 1987].

⁹ORS 411.720 [Butterworth 1987]; Oregon Administrative Rules 461-120-010 [June 1996].

¹⁰Oregon Administrative Rules 461-120-110 through 461-120-180 [June 1996].

¹¹Oregon Administrative Rules 461-125-510(1)(a) [June 1996].

¹²Oregon Administrative Rules 461-125-510(1)(b) [June 1996].

¹³*Id.*

¹⁴*Id.*

Supplemental Security Income

Eligible applicants are required to apply for Supplemental Security Income (“SSI”) and to pursue all administrative appeals until such time that either the applicant has obtained SSI coverage or exhausted all his or her administrative remedies pursuing eligibility.¹⁵

A person who has exhausted all appeals for SSI is not eligible for general assistance unless she or he files and pursues a new SSI application based on a different medical condition than originally alleged or the alleged medical condition has significantly worsened. The new medical condition must meet the GA impairment criteria.¹⁶

Applicants who are Institutionalized

A person who is a resident of a public institution or private psychiatric hospital, or is being held for a proceeding in connection with commitment to such an institution, is ineligible for general assistance.¹⁷

Financial Criteria¹⁸

Income limits are \$286 for a one-person benefit group (including clients in room and board) and \$572 for a two-person benefit group.¹⁹ Resource limits are \$1500, of which no more than \$50 can be in the form of cash, bank accounts, stocks, bonds and other securities, including the equity value of any life insurance benefit.²⁰

Benefits

To the extent funds are made available by the state legislature, medical, surgical and hospital or other remedial care shall be made available to those beneficiaries of this program in need of such services.²¹

¹⁵Oregon Administrative Rules 461-125-650 [June 1996].

¹⁶Oregon Administrative Rules 461-135-705(2) [June 1996].

¹⁷Oregon Administrative Rules 461-135-705(1) [June 1996].

¹⁸See Divisions 140 through 160 of Chapter 451 of Oregon Administrative Rules for details on determining financial eligibility, including accounting for exemptions. See also ORS 411.700 (Income and Resources that may be disregarded) [Michie 1996 Supp].

¹⁹Oregon Administrative Rules 461-160-500; 461-155-210 [June 1996].

²⁰Oregon Administrative Rules 461-160-015(6) [June 1996].

²¹ORS 411.010(2) [Michie 1996 Supp].

The state may either provide these benefits directly,²² either through its Medicaid program²³ or otherwise, or may simply purchase health insurance for the beneficiary.²⁴

Indigents Injured in Motor Vehicle Accidents Program

This program provides limited reimbursement for medical care rendered to indigents injured in motor vehicle accidents. The authority and responsibility for instituting regulations and administering this program is conferred by the legislature to the Adult and Family Services Division of the Department of Human Resources.²⁵

Eligibility

Indigence

Whether an applicant for this program's benefits is indigent turns on whether the applicant or the person or entity (if any) legally responsible for the care or support of the applicant, can be successfully sued for the costs of the medical care rendered, and if so, whether funds or resources exist with which to satisfy a judgment. Thus, if the applicant and the party legally responsible for the applicant (if any) either cannot be subject to service of process, or are effectively judgment proof, then the applicant is deemed indigent.²⁶

Residency and Immigration Status

There is no statutory restriction with respect to either residency or citizenship status. However, the Division has the authority to promulgate and enforce rules concerning residency or citizenship if it finds such rules "proper" with respect to operating this program.²⁷ If the legislature created this program, in part, to defray hospitals' costs of uncompensated care, imposing residency and citizenship requirements might be outside the Division's authority. Research into this Act's legislative history is required before definitively answering this question.

²²ORS 411.710 [Butterworth 1987].

²³U.S. Health Care Financing Administration granted Oregon a waiver which, among other things, allows Oregon to expand Medicaid eligibility past the traditional categories based on old age, SSI eligibility, Aid to Dependent Children eligibility, etc.

²⁴ORS 411.765 [Butterworth 1987].

²⁵ORS 445.050, 445.010(4) [Butterworth 1992].

²⁶ORS 445.020 [Butterworth 1992].

²⁷ORS 445.050 [Butterworth 1992].

Program Funding

The legislature created a fund known as the Motor Vehicle Accident Fund, to be held and deposited by the Treasurer in such banks as are authorized to receive deposits of the General Fund.²⁸ The Department of Transportation, after deducting its costs, passes on the four dollar “Motor Vehicle Accident Fund eligibility fee” it collects from persons applying for issuance and renewal of driver licenses and permits to the Division.²⁹ The Division in turns deposits those monies in the fund.³⁰

Program Benefits

This program provides quite limited benefits. Benefits are limited to services received within one year of the motor vehicle accident, and only one person of any one motor vehicle accident may receive benefits under this program.³¹ The maximum benefit for hospital services is \$3,000, possibly \$3500 if there are extenuating circumstances.³² The maximum benefit for physician services is \$1,250, possibly 1,550 if extenuating circumstances exist.³³ The maximum benefit for pharmaceuticals is \$500, possibly as high as \$600.³⁴

Public Health

Oregon's local health departments have such traditional public health responsibilities as sanitation control, restaurant inspections, collecting and tabulating statistics, disease tracking, and so on, but have very little obligation to meet the health care needs of low-income populations.

Immunizations

Local health departments are required to administer immunizations at convenient places and times, and may not refuse to administer them to a person because that person is unable to pay.³⁵

²⁸ORS 445.030 [Butterworth 1992].

²⁹ORS 802.110(2)(c) [Michie 1996 Supp], 807.370(16) [Michie-Butterworth 1995].

³⁰ORS 445.030(2) [Butterworth 1992].

³¹ORS 445.060 [Butterworth 1992].

³²ORS 445.060, 445.070 [Butterworth 1992].

³³*Id.*

³⁴*Id.*

³⁵ORS 433.269 [Butterworth 1992].

Family Planning & Birth Control

This is not a stand-alone program, but a requirement imposed on state and local health departments. There is no specific funding for the program and no specific requirement to provide services to low-income populations.

Requirement

The State Department of Human Resources and every county health department are required to offer family planning and birth control services to the extent funds are available.³⁶

Enumerated Services Potentially Available

Services available under this program may include the provision of pertinent literature (in appropriate languages), the referral of the client to a physician for consultation, examination, medical treatment and prescription, and upon prescription, the provision of rhythm charts, an initial supply of a drug or contraceptive device.³⁷ Whether referring a client to a physician means that such services shall be provided by the health department is unclear. If the health departments were not providing physician services themselves, however, then the services provided under this program are quite limited.

Fee-for-Service, Potentially on an Ability-to-Pay Scale

The departments providing these services may charge fees which “shall be reasonably calculated not to exceed costs of services provided and may be adjusted on a sliding scale reflecting ability to pay.”³⁸ Whether a department implemented a sliding-fee scale might depend on whether the general appropriations to the department are sufficient to pay for the department’s needs.

Communicable Disease Control

In general, neither the state nor its local health departments are required to provide free or reduced charge communicable disease testing or treatment services. This was not always the case. Prior to 1987, persons were able to obtain free testing and treatment from their local boards of health for venereal disease.³⁹

Programs for Persons with Specified Diseases

Hemophilia

This is a program which, to the extent funds are appropriated, provides certain medical services to state residents who have been diagnosed as having hemophilia, and who are unable to pay for their necessary

³⁶ORS 435.205 [Butterworth 1992].

³⁷*Id.*

³⁸*Id.*

³⁹ORS § 434.150, *repealed by* 1987 c.600 § 18 [Butterworth 1992]

medical services, in whole or in part.⁴⁰ The program is administered by the Adult and Family Services Division of the Department of Human Resources.⁴¹

Eligibility

Eligible applicants are: (1) state residents; (2) diagnosed as having hemophilia; (3) in need of necessary medical services relating to hemophilia; (4) over the age of 20 years; (5) ineligible for the requested services under any other private, state or federal programs or under other contractual or legal entitlements, and; (6) unable to pay, in whole or in part for the services.⁴²

There is no statutory language outlining the process of determining whether one is able to pay, either in whole or in part.

Benefits Potentially Available

Within such limits imposed by the extent of legislative appropriations, medical care, including the costs of blood transfusions and the use of blood derivatives shall be made available to eligible individuals.⁴³

Cystic Fibrosis

This is a program, which, to the extent funds are appropriated, provides certain medical services to state residents who have been diagnosed as having cystic fibrosis, and who are unable to pay for their necessary medical services, in whole or in part.⁴⁴ This program shall be administered within the Services for Children with Special Health Needs program.⁴⁵

Eligibility

Eligible applicants are: (1) state residents; (2) diagnosed as having cystic fibrosis; (3) in need of necessary medical services relating to cystic fibrosis; (4) over the age of 18 years; (5) ineligible for the requested services under any other private, state or federal programs or under other contractual or legal entitlements, and; (6) unable to pay, in whole or in part for the services.⁴⁶

⁴⁰ORS 414.500 [Michie 1996 Supp].

⁴¹ORS 414.500 [Michie 1996 Supp], 411.010(1), 411.060 [Butterworth 1987].

⁴²ORS 414.500 [Michie 1996 Supp], 414.510, 414.530 [Butterworth 1987].

⁴³ORS 414.510, 414.520 [Butterworth 1987].

⁴⁴ORS 414.555, 414.560 [Michie 1996 Supp].

⁴⁵ORS 414.560 [Michie 1996 Supp].

⁴⁶ORS 414.550(2), 414.565 [Butterworth 1987], 414.555, 414.560 [Michie 1996 Supp].

There is no statutory language outlining the process of determining whether one is able to pay, either in whole or in part.

Services Potentially Provided

To the extent money has been expressly appropriated and is available, medical care, including the cost of prescribed medications and equipment, respiratory therapy, physical therapy, counseling services that pertain directly to cystic fibrosis related health needs and outpatient services including physicians' fees, X-rays and necessary clinical tests to ensure proper ongoing monitoring and maintenance of the patient's health.⁴⁷

Hospital Services

Oregon Health Sciences University

Until 1995, the Health Sciences Division of the University of Oregon (a major health service center) was prohibited from discriminating on the basis of a patient's potential ability to pay. Although the University was not prohibited from charging indigent patients for the cost of services rendered, it was prohibited from denying admission on the basis that the patient might not be able to pay.⁴⁸

County Hospitals

Power and Scope

General acute-care hospitals, long-term care facilities, medical offices and clinics, and ambulance services, may be established and maintained by county and municipal governments through the creation of health districts.⁴⁹ A health district may be incorporated as a municipal corporation for the purpose of supplying its inhabitants with facilities for the care of sick and injured persons.⁵⁰ Such a municipal corporation may consist of territory of one or more counties, or of a city with or without unincorporated territory.⁵¹ A health district has the power to acquire by purchase, lease or otherwise, facilities, or other property to provide health services.⁵²

⁴⁷ORS 414.550 [Butterworth 1987].

⁴⁸ORS 352.055 [Butterworth 1987], *repealed* by 1995 c.162 § 94 [Michie 1996 Supp].

⁴⁹*See, generally* Chapter 440, ORS [Butterworth 1992].

⁵⁰Or. Const. Art XI, § 2 [Michie 1996 Supp]; ORS 440.320 [Butterworth 1992].

⁵¹*Id.*

⁵²ORS 440.360(6), (10), (13) [Butterworth 1992].

Financing

A health district may borrow money and sell and dispose of general obligation bonds if so authorized at any properly called election held for that purpose.⁵³ The district may also assess, levy and collect a property tax of up to one-fourth of one percent of the real market value of all taxable property within the district.⁵⁴ In addition to aforementioned property tax, in order to meet such interest and principal payments as may be due in a given year on bonds the district may have issued, the district may assess, levy and collect a special tax.⁵⁵ Finally, a health district may collect such fees it may collect from patients it serves in its facilities.⁵⁶

Degree of Responsibility for Indigent Care

Historically, this nation's public hospitals, formed through health districts or otherwise, provided significant amounts of health care to low-income individuals. This was so, even where there was no specific statutory or regulatory obligation. In Oregon, however, not only is there no requirement for health district hospitals to provide for indigents, but such district hospitals are specifically required to charge and collect fees for services they render.⁵⁷

Hospital Licensing

Some states take into account whether a hospital which is applying for a license or a certificate of need is a governmental, charitable or other nonprofit institution. In Oregon, however, the state licensing agency is specifically required not to take into account such factors.⁵⁸

Hospital Emergency Services

To the extent that a hospital is licensed and capable of providing services, neither its officers nor its employees may refuse to offer screening or treatment services based on the probability that the patient would be able to pay the hospital's fees.⁵⁹

⁵³ORS 440.375 [Butterworth 1992].

⁵⁴ORS 440.395(1) [Butterworth 1992].

⁵⁵ORS 440.395(2) [Butterworth 1992].

⁵⁶ORS 440.365 [Butterworth 1992].

⁵⁷ORS 440.365 [Butterworth 1992].

⁵⁸ORS 441.022 [Butterworth 1992].

⁵⁹ORS 441.094 [Michie 1996 Supp].

Special Medical Services for Children

This program provides for free hospital services rendered to indigent children under the age of 16 years who have some condition, injury or disease that can probably be remedied.⁶⁰

Eligibility

The juvenile court is given the authority to determine eligibility, and must do so based on a medical report and an evidentiary hearing.⁶¹ The court must appoint a physician to examine the applicant, and may do so either on its own motion, or upon a complaint filed with the court by a probation officer, school teacher, school officer, relief officer or licensed physician.⁶²

A hearing is held after the court receives the physician's report.⁶³ In order to find the child eligible the judge must find that the child is under the age of 16 years, is suffering from a deformity or malady which can probably be remedied by surgical or medical treatment and hospital care, and that the person or institution legally chargeable with the support of the child is unable to pay the expenses thereof.⁶⁴

If a judge finds the child eligible, then with the consent of the person or institution having the legal charge of the child, may enter an order directing that the child be taken or sent to the Oregon Health Sciences University, or some other hospital in certain cases, for free surgical and medical treatment and hospital care.⁶⁵

Payment for Services Rendered

Hospital Charges

Each month the hospital to which the child was sent for treatment must submit an itemized statement of the services rendered and their actual costs, together with an itemized statement of the hospital's other expenses; that is, the expenses incurred other than those related to caring for the child.⁶⁶ The judge presents the statements to the board of county commissioners, who, if they find the statements correct and reasonable, shall direct the county treasurer to issue warrants for the amount of such bills allowed. The county treasurer shall pay the warrants out of the funds collected for the relief of the poor of the

⁶⁰ORS 444.010 *et seq.* [Michie 1996 Supp.].

⁶¹ORS 444.110 [Michie 1996 Supp].

⁶²*Id.*

⁶³ORS 444.120 [Michie 1996].

⁶⁴ORS 444.120, 444.110 [Michie 1996 Supp].

⁶⁵ORS 444.120 [Michie 1996 Supp].

⁶⁶ORS 444.160 [Michie 1996 Supp.].

county.⁶⁷

Physician Charges

The physician who conducts the initial examination of the child for the benefit of the court's determination of the child's eligibility shall be entitled to bill for and receive five dollars for the examination and the report.⁶⁸ Although the physician is allowed compensation for other necessary expenses incurred in examining the applicant/child, one might question whether the compensation is sufficient to encourage thorough and competent examinations.

Yet, the physician conducting the initial examination receives more than the treating physicians and surgeons. Other than the initial examination costs just mentioned, no compensation shall be charged by or allowed to the physician or surgeon who treats a patient under this program.⁶⁹

It is difficult to see how children are able to receive services under this program when physicians may neither bill for nor receive compensation for such services they render. It is conceivable that the program envisions that these children shall be teaching patients, and that professors, residents and interns shall provide the bulk of services rendered. Their services may be indirectly compensated for if the monthly cost reports which the hospitals are required to submit to the court contain the costs of training and paying professors, residents and interns.

⁶⁷ORS 444.170 [Michie 1996 Supp.].

⁶⁸ORS 444.190 [Butterworth 1992].

⁶⁹ORS 444.150 [Butterworth 1992].