

Department of Human Services

Chapter 407 Division 50

MEDICARE PART C AND D AUTHORIZED DECISION MAKERS

407-050-0000

Purpose

These rules set forth parameters concerning who can make decisions and take action on behalf of individuals who are incapable of making their own Medicare Part D Decisions. The decisions and actions include choosing a Medicare Part D prescription drug plan or a Part C Medicare Advantage Plan and filing drug coverage exceptions and appeals, and pursuing grievances with Medicare Part C or D plan sponsors and the federal Centers for Medicare and Medicaid Services (CMS). These rules only pertain to those individuals who receive benefits or services, which are provided by, operated by, authorized or funded by Oregon Department of Human Services (Department). Those acting under the authority of this rule must do so with the express purpose of meeting the pharmaceutical and medical needs of the individual receiving the assistance.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 411.116, 426.500 & 430.640

Stats. Implemented: ORS 409.010, 410.250, 410.280, 410.020, 411.060, 426.490 & 430.630

Hist.: DHSD 1-2005(Temp), f. & cert. ef. 11-28-05 thru 5-26-06

407-050-0005

Definitions

(1) "Authorized Representative" for purposes of these rules means one of the following, as determined in accordance with these rules:

- (a) Closest Available Relative;
- (b) Friend or Advocate;
- (c) Department Case Manager/Eligibility Specialist or Department Social Worker or designee named by the Department office responsible for enrollment;
- (d) Owner, operator, or employee of a Department licensed or certified residential service, nursing home, foster home, or a Brokerage funded by the Department to provide Developmental Disability Support Services.

(2) "Capable" means that a person has the ability to receive and evaluate information effectively or communicate decisions to such an extent that the person currently has the ability to make Medicare Part D Decisions.

(3) "Closest Available Relative" means a Capable person who is related by blood, marriage, or adoption or a Domestic Partner and is aware of the Part D-eligible Individual's medical and pharmaceutical needs. This person has a history of acting to the benefit of the Part D-eligible Individual's health and safety and is available to make the needed decisions. It does not refer to physical proximity.

(4) "Domestic Partner" means a person who attests to meet all the following criteria:

(a) Is responsible for the Part-D eligible Individual's welfare;

(b) Is the Part-D eligible Individual's sole domestic partner;

(c) Has jointly shared the same regular and permanent residence with the Part-D eligible Individual for at least six months; and,

(d) Is jointly financially responsible for basic living expenses defined as the cost of food, shelter, and any other expenses of maintaining a household.

(5) "Department" means Oregon Department of Human Services.

(6) "Department Case Manager/Eligibility Specialist" means an employee of the Department, the Department's designee, Community Developmental Disability Program, Community Mental Health Program or the local Area Agency on Aging that provides case management services or determines eligibility for Department services for the Part D-eligible Individual.

(7) "Enroll and Enrollment" means the act of enrolling a Part D-eligible Individual into a Medicare Part D Prescription Drug Plan (PDP) or Medicare Advantage Plan (MA or MA-PD) or changing plans.

(8) "Friend or Advocate" means a Capable person known to the Part D-eligible Individual, who has had an ongoing, consistent personal relationship with the Part D-eligible Individual, is aware of the medical and pharmaceutical needs and who is interested in the welfare of the individual and will advocate appropriately on behalf of the individual.

(9) "Incapable" means that the Part D-eligible Individual's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the ability to make Medicare Part D Decisions.

(10) "Individual Designee" means a Capable person appointed verbally, in writing or by any means of communication by the Part D-eligible Individual for the purpose of making enrollment or post-enrollment decisions on behalf of the Part D-eligible Individual.

(11) "Medicare Part D Decision" means a decision to enroll or disenroll in a Medicare Part C or D plan, or any post-enrollment decision, as those terms are used in these rules.

(12) "Medicare Part D Plan, Medicare Prescription Drug Plan, Medicare Part C Plan, Medicare Advantage Plan" all mean a program under contract with the federal Centers for Medicare and Medicaid Services (CMS) to provide prescription drug insurance to people enrolled in the Medicare program.

(13) "Part D-eligible Individual" means an individual who is eligible to receive Medicare Part C or D drug benefits and who also receives benefits or services, which are provided by, operated by, authorized or funded by the Department.

(14) "Personal Representative" means:

(a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481, or 419C.555 with authority to make medical, health care or fiscal decisions.

(b) A person appointed as a Health Care Representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions.

(c) Attorney-in-fact authorized to make Medicare decisions.

(d) Any other entity authorized in state or federal law or by order of a court of competent jurisdiction.

(15) "Post-enrollment Actions/Decision" means determining whether and how to do any of the following within the Part C or D program:

(a) File a grievance;

(b) Submit a complaint to the quality improvement organization;

(c) Request and obtain a coverage determination, including exception requests and requests for expedited procedures;

(d) File and request an appeal and direct any part of the appeals process; and,

(e) Disenroll from a Medicare Part C or D Plan.

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407-050-0010

Authorized Decision Makers

(1) These rules only pertain to those Part D-eligible Individuals who receive benefits or services, which are provided by, operated by, authorized or funded by the Department. Those acting under the authority of this rule must do so with the express purpose of assisting the Part D-eligible Individual to obtain the Part C or D drug benefit that will appropriately meet their pharmaceutical needs and protect their health and safety.

(2) These rules only apply to those persons who can make decisions and take action on behalf of Part D-eligible Individuals for Medicare Part D Decisions.

(3) A Capable Part D-eligible Individual or their Individual Designee must be allowed to make all Medicare Part D Decisions.

(4) If the Part D-eligible Individual is incapable and has a Personal Representative, the Personal Representative must be allowed to make all Medicare Part D Decisions.

(5) If the Part D-eligible Individual is incapable and has an Individual Designee, the Individual Designee must be allowed to make Part D Decisions within the scope of their authority as a designee of the Part D-eligible Individual.

(6) If the Part D-eligible Individual is incapable and does not have an Individual Designee or Personal Representative, these rules authorize the first available person from the following list to be an Authorized Representative for the Part D-eligible Individual solely for the purpose of making Medicare Part D Decision, in order of priority:

(a) Closest Available Relative;

(b) Friend or Advocate;

(c) Department Case Manager/ Eligibility Specialist or Department Social Worker or designee named by the Department office responsible for enrollment;

(d) Owner, operator, or employee of a Department licensed or certified residential service, nursing home, foster home, or a Brokerage funded by the Department to provide Developmental Disability Support Services.

(7) The person acting under authority of OAR 407-050-0010(6)(c) or (d) must provide the Part D-eligible Individual a written copy of the enrollment or disenrollment decision that includes the name of the person making the decision and his or her relationship to the Part D-eligible Individual and a statement that if he or she does not agree with the

decision, he or she may change the decision or request the assistance of a different person. The written notice must be retained in the individual's file and made available to the Part D-eligible Individual upon request. In addition to providing the written information, this information may also be provided to the Part D-eligible Individual orally or in a manner that will effectively communicate with the individual.

(8) Medicare Part D Decisions by a person acting under authority of subsection (6) of these rules must be clearly guided by the Part D-eligible Individual's expressed wishes or in the Part D-eligible Individual's best interest in the drug benefit that will appropriately meet their pharmaceutical needs.

(9) An individual may not act as a Authorized Representative under subsection (6) of these rules or Individual Designee under subsection (5) of these rules if the individual or any entity from which that individual receives remuneration:

(a) Receives monetary remuneration or any other compensation from a pharmacy or a Part C or D plan based on Part C or D plan enrollment or post-enrollment activities;

(b) Makes Part C or D decisions for the benefit of a facility, pharmacy, or a plan;
or

(c) Is an agent of a Medicare Part C or D plan.

(10) Any individual may be disqualified as acting as an Authorized Representative under subsection (6) or as an Individual Designee under subsection (5) of these rules by the Part D-eligible Individual, a court or hearing process or determination by the Department that an individual is disqualified based upon a substantiated finding of abuse or neglect.

(11) Nothing in this rule implies or authorizes an individual to act on behalf of another individual as a Health Care Representative as defined in OAR 309-041-1500.

(12) These rules do not impair or supersede the existing laws relating to:

(a) The right of a person has to make his or her own decisions;

(b) Health Care Representatives;

(c) Protective proceedings; or

(d) Powers of Attorney.

(13) The intent of these rules is to encourage ongoing review of these Part D Decisions during regularly scheduled service planning. Nothing in these rules should be construed to limit regular review procedures that may include prescription drug needs of the Part D-eligible Individual and their coverage under a Medicare Part C or D plan.

(14) If a dispute exists over the decision of incapability, over whom should be the Authorized Representative or over a decision made by an Authorized Representative, the Part D-eligible Individual's Department Case Manager/ Eligibility Specialist and service planning team, which must include the Authorized Representative, must review the Part D Decision and make modifications as necessary.

(15) If the dispute is not resolved by the Department Case Manager and service planning team, the dispute may be referred by any party to the Assistant Director of the Department's Seniors and People with Disabilities cluster or designee.

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