

Secretary of State
**CERTIFICATE AND ORDER FOR FILING TEMPORARY ADMINISTRATIVE RULES
and
STATEMENT OF NEED AND JUSTIFICATION**

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on
October 1, 2016 by the

Department of Human Services, Office of Self-Sufficiency Programs			461
Agency and Division			Chapter Number
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to become effective October 1, 2016 through March 29, 2017.*

**Temporary rules are effective for a maximum of 180 days including the effective date.*

Rule Caption: *Determining length of disqualification due to an asset transfer in the OSIP and OSIPM programs*

In the Matter of: *The amendment of OAR 461-140-0296.*

AMEND: 461-140-0296

ORS 411.060, 411.070, 411.706

Stat. Auth.

42 USC 1396p

Other Auth.

ORS 411.060, 411.070, 411.706

Stats. Implemented

Rule Summary

OAR 461-140-0296 about the length of disqualification due to a disqualifying asset transfer (transfer of an asset for less than its fair market value to become eligible for program benefits) in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to update the amount used to calculate the number of months of ineligibility due to a disqualifying transfer of assets. This amount is calculated by

using the average monthly cost to a private patient of nursing facility services in Oregon. This change needs to be adopted by temporary rule on October 1, 2016.

In addition, non-substantive edits may be made to: ensure consistent terminology throughout self-sufficiency program rules and policies; make general updates consistent with current Department practices; update statutory and rule references; correct formatting and punctuation; improve ease of reading; and clarify Department rules and processes.

Need for the Rules

OAR 461-140-0296 needs to be amended to update the amount used to calculate the number of months of ineligibility due to a disqualifying transfer of assets. This amount is calculated by using the average monthly cost to a private patient of nursing facility services in Oregon and needs to be updated effective October 1, 2016. The continued use of the outdated amount likely would cause clients to be disqualified for more months than they would with the updated figure. The amended rule will reflect the correct amount used to calculate the number of months of ineligibility due to a disqualifying transfer of assets.

Documents Relied Upon

Genworth Cost of Care Survey available at <https://www.genworth.com/about-us/industry-expertise/cost-of-care.html>.

Justification of Temporary Rules

The Department finds that failure to act promptly by amending OAR 461-140-0296 will result in serious prejudice to the public interest, the Department, and OSIP and OSIPM clients because the Department would be out of compliance with federal law. The Department needs to proceed by temporary rule because the public, the Department, and clients will immediately benefit when the rule accurately reflects the figure used to calculate the length of disqualification.

Length of Disqualification Due to an Asset Transfer; OSIP and OSIPM

- (1) This rule applies to clients in the OSIP and OSIPM programs who live in a *nonstandard living arrangement* (see OAR 461-001-0000).
- (2) A *financial group* (see OAR 461-110-0530) containing a member disqualified due to the transfer of an asset is disqualified from receiving benefits. 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 461-001-0000) 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---\$8,425.
- (3) For transfers by a client and the spouse of a client that occurred before July 1, 2006:
 - (a) Add together the uncompensated value of all transfers made in one calendar month, and treat this total as one transfer.
 - (b) If the uncompensated value of the transfer is less than the applicable dollar amount identified in subsections (2)(a) to (2)(~~h~~i) of this rule, there is no disqualification.

- (c) If there are multiple transfers in amounts equal to or greater than the applicable dollar amount identified in subsections (2)(a) to (2)(~~hi~~) of this rule, each disqualification period is calculated separately.
 - (d) The number of months resulting from the calculation in section (2) of this rule is rounded down to the next whole number.
 - (e) Except as provided in subsection (3)(f) of this rule, the first month of the disqualification is the month the asset was transferred.
 - (f) If disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.
 - (g) If both spouses of a couple are in a *nonstandard living arrangement* and made the disqualifying transfer, part of the disqualification is apportioned to each of them, based on their percentage of ownership in the transferred asset. 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) For transfers by a client and the spouse of a client that occurred on or after July 1, 2006 and for income cap trusts under OAR 461-145-0540(10)(c) that accumulate funds in excess of the applicable dollar amount identified in subsections (2)(a) to (2)(~~hi~~) of this rule:
- (a) If there are multiple transfers by the client and the spouse of the client, including any transfer less than the applicable dollar amount identified in subsections (2)(a) to (2)(~~hi~~) 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)(~~hi~~) of this rule. For an income cap trust, the calculation in section (2) of this rule is performed as soon as, but not before, funds have accumulated to at least the applicable dollar amount identified in subsections (2)(a) to (2)(~~hi~~) 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. The remaining decimal or fraction of the quotient is used to calculate an additional partial month disqualification. This remaining decimal or fraction is converted to an additional 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 this calculation results in a fraction of a day, the fraction of a day is rounded down.
 - (c) Notwithstanding when the Department learns of a disqualifying transfer, the first month of the disqualification is:
 - (A) For a client who transfers an asset while he or she is already receiving Department-paid *long-term care* (see OAR 461-001-0000) or *home and*

community-based care (see OAR 461-001-0030) in a *nonstandard living arrangement*, 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.

- (B) For an applicant who transfers an asset prior to submitting an application and being determined eligible and for a client who transfers an asset while he or she is already receiving benefits in a *standard living arrangement* (see OAR 461-001-0000), the *date of request* (see OAR 461-115-0030) for *long-term care* or *home and community-based care* as long as the applicant or client would otherwise be eligible but for this disqualification period. If the applicant or client is not otherwise eligible on the *date of request*, the disqualification begins the first date following the *date of request* that the applicant or client would be otherwise eligible but for the disqualification period.
- (d) If both spouses of a couple are in a *nonstandard living arrangement* and made the disqualifying transfer, part of the disqualification is apportioned to each of them, based on their percentage of ownership in the transferred asset. If one spouse is unable to serve the resulting disqualification period, the remaining disqualification applicable to both spouses must be served by the remaining spouse.
- (5) 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 client is considered transferred when any action is taken either by the client or any other person that reduces or eliminates the client's control or ownership in the client's share of the asset.
- (6) 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 (7) of this rule.
- (7) If a client or the spouse of a client purchases an annuity on or before December 31, 2005 and 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.
- (8) A single transfer of an asset may cause a disqualification for both a medical assistance program under this rule and the SSI cash grant. The period of the disqualification is likely to be longer for SSI than for the medical assistance program, so a person may be eligible again for the medical assistance program while still disqualified from receiving SSI. The provisions of this rule are applied without regard to the related disqualification for SSI.

Stat. Auth.: ORS 411.060, 411.704, 411.706

Stats. Implemented: ORS 411.060, 411.704, 411.706