

Secretary of State
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PERMANENT ADMINISTRATIVE RULES

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November 1, 2016 by the

Department of Human Services, Office of Self-Sufficiency Programs

461

Agency and Division

Chapter Number

Kris Skaro

Human Services Building
500 Summer St NE, E-48
Salem, OR 97301

503-945-6067

kris.a.skaro@state.or.us

Rules Coordinator

Address

Telephone

Email

to become effective November 1, 2016.

Rulemaking Notice was published in the October 2016 Oregon Bulletin.

Rule Caption: *Amending rules relating to public assistance programs*

RULEMAKING ACTION

AMEND: 461-001-0000, 461-025-0310, 461-110-0530, 461-115-0150, 461-120-0210, 461-145-0530, 461-165-0045, 461-165-0180, 461-165-0410, 461-165-0420, 461-170-0130, 461-180-0085

REPEAL: 461-110-0530(T), 461-165-0180(T)

ORS 329A.500, 409.050, 411.060, 411.070, 411.083, 412.006, 412.049

Stat. Auth.

26 U.S.C. § 6409 as amended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010; Child Care and Development Block Grant Act of 2014 (CCDBG)

Other Auth.

ORS 329A.500, 409.010, 409.050, 409.610, 411.060, 411.070, 411.083, 412.006, 412.049, 412.064

Stats. Implemented

Rule Summary

OAR 461-001-0000 about definitions is being amended to allow legal mothers and fathers to be considered parents.

OAR 461-025-0310 about hearing requests; OAR 461-115-0150 about offices where clients apply; OAR 461-170-0130 about acting on reported changes for OSIPM and QMB; and OAR 461-180-0085 about effective dates for OSIPM and QMB are being amended to remove outdated references to Cover Oregon.

OAR 461-110-0530 about financial groups is being amended to remove reference to the GA program.

OAR 461-120-0210 about the requirement to provide a Social Security Number (SSN) is being amended to allow the Department to include newborns who are born in an Oregon hospital to the filing, need, and benefit groups for six months following the child's birth or until the next redetermination of the filing group, whichever is sooner.

OAR 461-145-0530 about the treatment of tax refunds is being amended to comply with federal requirements (see [26 U.S.C. § 6409](#) and [Office of Family Assistance guidance](#)) about how refunds received after January 1, 2010, are counted when determining eligibility for TANF.

OAR 461-165-0045 about emergency payees in the TANF program is being amended to allow caretaker relatives to access TANF benefits as an emergency payee even when there is another relative available to be the child's caretaker relative.

OAR 461-165-0180 about child care provider eligibility is being amended to require child care providers to develop and disclose their suspension or expulsion policies. This change will be adopted by temporary rule on October 1, 2016, to comply with federal Child Care and Development Fund (CCDF) regulations.

OAR 461-165-0410 about child care provider listing and disqualifying criminal history and OAR 461-165-0420 about child care provider listing and disqualifying child protective service history are being amended to update references to Department of Administrative Services (DAS) and Background Check Unit (BCU) rules that apply to child care providers paid by the Department through the child care subsidy program.

In addition, non-substantive edits may be made to these rules 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.

The Department requests public comment on whether other options should be considered for achieving the substantive goals of the rules while reducing the negative economic impact of the rules on business. Rule text showing edits for the rules described above is available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm.

Definitions for Chapter 461

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:

- (1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDS), or any other agency formerly part of the Department of Human Services means the Department of Human Services (DHS), except --
 - (a) The rule in which reference occurs only regulates programs covered by OAR chapter 461.
 - (b) OCCS medical program eligibility rules are in OAR chapter 410, division 200.
- (2) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of *domestic violence* (see section (24) of this rule), sexual assault, or stalking.
- (3) "Adjusted income" means the amount determined by subtracting income deductions from *countable* (see section (18) of this rule) income (see OAR 461-140-0010). Specific rules on the deductions are in OAR chapter 461, division 160.
- (4) "Adoption assistance" means financial assistance provided to families adopting children with special needs. "Adoption assistance" may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.
- (5) "Assets" mean income and resources.
- (6) "Basic decision notice" means a *decision notice* (see section (20) of this rule) mailed no later than the date of action given in the notice.
- (7) "Branch office" means any Department or AAA (Area Agency on Aging) office serving a program covered by this chapter of rules.
- (8) "Budgeting" means the process of calculating the benefit level.
- (9) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine *eligibility* (see section (27) of this rule) and benefit level for the *payment month* (see section (50) of this rule).

- (10) "Cafeteria plan" means a written benefit plan offered by an employer in which:
- (a) All participants are employees; and
 - (b) Participants may choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Service does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:
 - (A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);
 - (B) Group term life insurance plans (up to \$50,000);
 - (C) Dependent care assistance plans; and
 - (D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).
- (11) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a *microenterprise* (see section (43) of this rule), either directly or indirectly. A "capital asset" generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.
- (12) "Caretaker" means an individual who is responsible for the care, control, and supervision of a *child* (see section (15) of this rule). The status of "caretaker" ends once the individual no longer exercises care, control, and supervision of the *child* for 30 days.
- (13) "Caretaker relative" means a *caretaker* (see section 12 of this rule) who meets the requirements of one of the following subsections:
- (a) Is one of the following relatives of the *dependent child* (see section (22) of this rule):
 - (A) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.
 - (B) Stepfather, stepmother, stepbrother, and stepsister.
 - (C) An individual who legally adopts the *child* and any individual related to the individual adopting the *child*, either naturally or through adoption.
 - (b) Is or was a *spouse* (see section (62) of this rule) of an individual listed in subsection (a) of this section.

- (c) Met the definition of "caretaker relative" under subsection (a) or (b) of this section before the *child* was adopted (notwithstanding the subsequent adoption of the *child*).
- (14) "Certification period" means the period for which an individual is certified eligible for a program.
- (15) "Child" includes natural, step, and adoptive children. The term "child" does not include an unborn.
 - (a) In the ERDC program, a "child" need not have a biological or legal relationship to the *caretaker* but must be in the care and custody of the *caretaker*, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:
 - (A) Under the age of 18; or
 - (B) Under the age of 19 and in secondary school or vocational training at least half time.
 - (b) In the GA and OSIP programs, a "child" is an individual under the age of 18.
 - (c) In the OSIPM and QMB programs, "child" means an unmarried individual living with a *parent* (see section (49) of this rule) who is:
 - (A) Under the age of 18; or
 - (B) Under the age of 22 and attending full-time secondary, postsecondary or vocational-technical training designed to prepare the individual for employment.
 - (d) In the REF and REFM programs, a "child" is:
 - (A) An individual under the age of 18; or
 - (B) An individual who is 18 years of age and attending secondary school full-time or pursuing a GED full-time.
- (16) "Community based care" is any of the following:
 - (a) Adult foster care - Room and board and 24 hour care and services for the elderly or for people with disabilities 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.
 - (b) Assisted living facility - A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

- (c) In-home Services - Individuals living in their home receiving services determined necessary by the Department.
 - (d) Residential care facility - A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.
 - (e) Specialized living facility - Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition, or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.
 - (f) Independent choices - In-Home Services program wherein the participant is given cash benefits to purchase self-directed personal assistance services or goods and services provided pursuant to a written service plan (see OAR 411-030-0020).
- (17) "Continuing benefit decision notice" means a *decision notice* that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.
- (18) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine *eligibility*.
- (19) "Custodial parents" mean parents who have physical custody of a *child*. "Custodial parents" may be receiving benefits as dependent children or as caretaker relatives for their own children.
- (20) "Decision notice" means a written notice of a decision by the Department regarding an individual's *eligibility* for benefits in a program.
- (21) "Department" means the Department of Human Services (DHS).
- (22) "Dependent child" in the TANF program means an individual who has not been legally emancipated and who is one of the following:
- (a) An individual who is not a *caretaker relative* (see section (13) of this rule) of a *child* in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or
 - (b) A *minor parent* (see section (44) of this rule) whose parents have chosen to apply for benefits for the *minor parent*. This does not apply to a *minor parent* who is married and living with his or her *spouse*.
- (23) "Disability" means:
- (a) In the SNAP program, see OAR 461-001-0015.

- (b) In the REF, SFPSS, TA-DVS, and TANF programs, for purposes other than determining *eligibility*:
 - (A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the requirements of the program; or
 - (B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).

- (24) "Domestic violence" means the occurrence of one or more of the acts described in subsections (a) to (d) of this section between family members, intimate partners, or household members:
 - (a) Attempting to cause or intentionally, knowingly, or recklessly causing physical injury or emotional, mental, or verbal abuse.
 - (b) Intentionally, knowingly, or recklessly placing another in fear of imminent serious physical injury.
 - (c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.
 - (d) Using coercive or controlling behavior.
 - (e) As used in this section, "family members" and "household members" mean any of the following:
 - (A) *Spouse*;
 - (B) *Former spouse*;
 - (C) Individuals related by blood, *marriage* (see section (42) of this rule), or adoption;
 - (D) Individuals who are cohabitating or have cohabited with each other;
 - (E) Individuals who have been involved in a sexually intimate or dating relationship; or
 - (F) Unmarried parents of a *child*.

- (25) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of *domestic violence*. If the facility serves other people, a portion must be used solely for victims of *domestic violence*.

- (26) "Electronic application" is an application electronically signed and submitted through the Internet.
- (27) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.
- (28) "Equity value" means *fair market value* (see section (29) of this rule) minus encumbrances.
- (29) "Fair market value" means the amount an item is worth on the open market.
- (30) "Family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.
- (31) "Family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means an action or set of actions taken by an individual, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain *family stability* (see section (30) of this rule).
- (32) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.
- (33) "Homeless" in the ERDC program means lacking a fixed regular and adequate nighttime residence and includes living in an emergency shelter, shared housing with others due to loss of housing or economic hardship, staying in motels, cars, parks, public places, tents, trailers, or other similar settings.
- (34) "Income-producing property" means:
 - (a) In all programs except OSIP, OSIPM, and QMB, real or personal property that generates income for the *financial group* (see OAR 461-110-0530). Examples of "income-producing property" are:
 - (A) Livestock, poultry, and other animals.
 - (B) Farmland, rental homes (including a room or other space in the home or on the property of a member of the *financial group*), vacation homes, and condominiums.
 - (b) In the OSIP, OSIPM, and QMB programs, "income-producing property" means any real or personal property not used in self-employment (see OAR 461-145-0600 and 461-145-0915) that produces income for the *financial group*. "Income-producing property" includes:

- (A) Livestock, poultry, or other animals that produce marketable products sold by the *financial group*.
 - (B) Farmland not excluded under OAR 461-145-0220 that is farmed or rented out by the *financial group*.
 - (C) Real property other than the home (including vacation homes and condominiums), that is rented out.
- (c) In the OSIP, OSIPM, and QMB programs, "income-producing property" does not include:
- (A) Rooms or other space for rent in the home (see OAR 461-145-0220).
 - (B) Livestock, poultry, or other animals kept for resale (see OAR 461-145-0010).
- (35) "Initial month" of *eligibility* means any of the following:
- (a) In all programs, the first month a *benefit group* (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.
 - (b) In all programs except the SNAP program, the first month a *benefit group* is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.
 - (c) In the SNAP program:
 - (A) The first month for which the *benefit group* is certified following any period during which they were not certified to participate, except for *migrant* and *seasonal farm workers* (see OAR 461-001-0015).
 - (B) For *migrant* and *seasonal farmworkers*, the first month for which the *benefit group* is certified following any period of one month or more during which they were not certified to participate.
 - (d) For a new applicant to the OSIP or OSIPM program applying for care in a *nonstandard living arrangement* (see section (45) of this rule), for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the individual would have been eligible had it not been for the disqualifying transfer of *assets* (see section (5) of this rule).

- (e) For a current recipient of the OSIP or OSIPM program receiving or applying for care in a *nonstandard living arrangement*, for the purpose of calculating the correct divisor in OAR 461-140-0296, the later of the following:
 - (A) The month the disqualifying transfer occurred.
 - (B) The month of application for *long-term care* (see section (40) of this rule) services if the individual would have been eligible had it not been for the disqualifying transfer of *assets*.
- (36) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).
- (37) "Legally married" means a *marriage* uniting two individuals according to --
 - (a) The statutes of the state where the *marriage* occurred;
 - (b) Except in the SNAP program, the common law of the state in which the two individuals previously resided while meeting the requirements for common law marriage in that state; or
 - (c) The laws of a country in which the two individuals previously resided while meeting the requirements for legal or cultural marriage in that country.
- (38) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a "life estate" enables the owner of the "life estate" to possess, use, and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A "life estate" is created when an individual owns property and then transfers ownership to another individual while retaining, for the rest of the individual's life, certain rights to that property. In addition, a "life estate" is established when a member of the *financial group* purchases a "life estate" interest in the home of another individual.
- (39) "Lodger" means a member of the *household group* (see OAR 461-110-0210) who---
 - (a) Is not a member of the *filing group* (see OAR 461-110-0310); and
 - (b) Pays the *filing group*:
 - (A) In all programs except the OSIP, OSIPM, and QMB programs, for room and board.
 - (B) In the OSIP, OSIPM, and QMB programs, for room with or without board.
- (40) "Long-term care" means the system through which the Department provides a broad range of social and health services to eligible adults who are aged, blind, or have

disabilities for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

- (41) "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. "Lump-sum income" includes:
- (a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.
 - (b) Income from inheritance, gifts, winnings, and personal injury claims.
- (42) "Marriage" means the union of two individuals who are *legally married* (see section (37) of this rule).
- (43) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.
- (44) "Minor parent" in the ERDC and TANF programs means a *parent* under the age of 18.
- (45) "Nonstandard living arrangement" is defined as follows:
- (a) In the GA, OSIP, OSIPM, and QMB programs, an individual is considered to be in a "nonstandard living arrangement" when the individual is applying for or receiving services in any of the following locations:
 - (A) A nursing facility in which the individual receives *long-term care* services paid with Medicaid funding, except this subsection does not apply to a Medicare client in a skilled-stay nursing facility.
 - (B) An intermediate care facility for the mentally retarded (ICF/MR).
 - (C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.
 - (D) A *community based care* (see section (16) of this rule) setting, except a State Plan Personal Care (SPPC) setting is not considered a "nonstandard living arrangement".
 - (b) In all programs except GA, OSIP, OSIPM, and QMB, "nonstandard living arrangement" means each of the following locations:
 - (A) Foster care.
 - (B) Residential Care facility.
 - (C) Drug or alcohol residential treatment facility.

- (D) Homeless or domestic violence shelter.
 - (E) Lodging house if paying for room and board.
 - (F) Correctional facility.
 - (G) Medical institution.
- (46) "OCCS" is the Office of Client and Community Services, part of the Medical Assistance Programs under the Oregon Health Authority responsible for OCCS medical program *eligibility* policy, community outreach, OCCS Medical Program *eligibility* determinations, and the OHA Customer Service Call Center.
- (47) "OCCS Medical Programs" refers to programs for which *eligibility* policy can be found in OAR chapter 410, division 200, and includes CEC, CEM, MAA, MAF, EXT, OHP, Substitute Care, BCCTP, and MAGI Medicaid/CHIP programs, including:
- (a) MAGI Adult;
 - (b) MAGI Child;
 - (c) MAGI Parent or Other Caretaker Relative;
 - (d) MAGI Pregnant Woman; and
 - (e) MAGI CHIP.
- (48) "Ongoing month" means one of the following:
- (a) For all programs except the SNAP program, any month following the *initial month* (see section (35) of this rule) of *eligibility*, if there is no break in the program benefit of one or more calendar months.
 - (b) For the SNAP program, any month in the *certification period* (see section (14) of this rule) following the *initial month* of *eligibility*.
- (49) "Parent" for all programs except JPI (see OAR 461-135-1260) and the SNAP program means the biological or legal mother or father of an individual or unborn ~~child or the biological, step, or adoptive mother or father of a child~~. For JPI and the SNAP program, "parent" means the biological or legal mother or father of an individual.
- (a) If the mother lives with a male and either she or the male claims that he is the father of the *child* or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.
 - (b) A stepparent relationship exists if:

- (A) The individual is *legally married* to the child's biological or adoptive parent; and
 - (B) The *marriage* has not been terminated by legal separation, divorce, or death.
- (c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a "parent" if both of the following are true:
- (A) The *child* lives with the biological parent; and
 - (B) The legal parent has given up care, control, and supervision of the *child*.
- (50) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.
- (51) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.
- (52) "Periodic income" means income received on a regular basis less often than monthly.
- (53) "Primary person" for all programs except the SNAP program, means the *filing group* member who is responsible for providing information necessary to determine *eligibility* and calculate benefits. The "primary person" for individual programs is as follows:
- (a) In the TANF program, the *parent* or *caretaker relative*.
 - (b) In the ERDC program, the *caretaker*.
 - (c) In the SNAP program, see OAR 461-001-0015.
 - (d) In the GA, OSIP, OSIPM, QMB, REF, and REFM programs, the client or client's *spouse*.
- (54) "Qualified Partnership Policy" means a long-term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:
- (a) Issued while the individual was a resident in Oregon on January 1, 2008 or later; or
 - (b) Issued in another state while the individual was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.
- (55) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as "real property".

- (56) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.
- (57) "Safe homes" mean private homes that provide a few nights lodging to victims of *domestic violence*. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.
- (58) "Shelter costs" mean, in all programs except the SNAP program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the SNAP program, see OAR 461-160-0420.
- (59) "Shelter-in-kind" means an agency or individual outside the *financial group* provides the shelter of the *financial group*, or makes a payment to a third party for some or all of the *shelter costs* (see section (58) of this rule) of the *financial group*. "Shelter-in-kind" does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park, or bus station.
- (60) "Sibling" means the brother or sister of an individual. "Blood-related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the *marriage* of their parents.
- (61) "Spousal support" means income paid (voluntarily, per court order, or per administrative order) by a separated or divorced *spouse* to a member of the *financial group*.
- (62) "Spouse" means an individual who is *legally married* to another individual.
- (63) "Stable income" means income that is the same amount each time it is received.
- (64) "Standard living arrangement" means a location that does not qualify as a *nonstandard living arrangement*.
- (65) "Teen parent" means, for TANF and JOBS, a *parent* under the age of 20 who has not completed a high school diploma or GED.
- (66) "Timely continuing benefit decision notice" means a *decision notice* that informs the individual of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.
- (67) "Trust funds" mean money, securities, or similar property held by an individual or institution for the benefit of another individual.
- (68) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.

(69) "Variable income" means earned or unearned income that is not always received in the same amount each month.

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- (1) A *claimant* (see OAR 461-025-0305) has the right to a contested case hearing in the following situations upon the timely completion of a request for hearing:
 - (a) Except as provided in subsection (o) of this section, the Department has not approved or denied a request or application for public assistance or medical assistance within 45 days of the application.
 - (b) The Department has not acted timely on an application as follows:
 - (A) An application for SNAP program benefits --- within 30 days of the filing date.
 - (B) An application for a JOBS support service payment_---_within the time frames established in OAR 461-115-0190(3).
 - (c) The Department acts to deny, reduce, close, or suspend SNAP program benefits, a *grant of public assistance*, a *grant of aid*, a support service payment authorized in the JOBS program by OAR 461-190-0211, medical assistance, or child care benefits authorized under Division 160 or 165 of this chapter of rules in the ERDC or TANF child care programs. When used in this subsection, *grant of public assistance* and *grant of aid* mean the grant of cash assistance calculated according to the client's need.
 - (d) The Department has sent a *decision notice* (see OAR 461-001-0000) that the claimant is liable for an *overpayment* (see OAR 461-195-0501).
 - (e) The Department modifies a *grant of public assistance* or a *grant of aid*; or the *claimant* claims that the Department previously underissued public assistance, medical assistance, or SNAP program benefits and the Department denies, or denies in part, that claim.
 - (f) The household disputes its current level of SNAP program benefits.
 - (g) The *filing group* (see OAR 461-110-0370) is aggrieved by any action of the Department that affects the participation of the filing group in the SNAP program.
 - (h) The *claimant* asks for a hearing to determine if the waiver of an Intentional Program Violation hearing was signed under duress.
 - (i) The Department establishes or changes the client's premium for the Oregon Health Plan.

- (j) In the Pre-TANF program, the Department denies payment for a basic living expense (see OAR 461-135-0475) or other support service payment in the JOBS program (see subsection (c) of this section).
 - (k) In the TA-DVS program, when OAR 461-135-1235 provides a right to a hearing.
 - (l) A service re-assessment of a client conducted in accordance with OAR Division 411-015 has resulted in a reduction or termination of nursing facility services or *home and community-based care* (see OAR 461-001-0030).
 - (m) The claimant's benefits are changed to vendor, protective, or two-party payments.
 - (n) Department has issued a notice seeking repayment under ORS 411.892 to an employer participating in the JOBS program.
 - (o) In the OSIP and OSIPM programs, when the Department has not approved or denied an application within the time frames established in OAR 461-115-0190.
 - (p) The right to a hearing is otherwise provided by statute or rule.
- (2) A client is not entitled to a hearing on the question of the contents of a *case plan* (defined in OAR 461-190-0151) unless the right to hearing is specifically authorized by the Department's rules. For a dispute about an activity in the JOBS program, the client is entitled to use the Department's re-engagement process (see OAR 461-190-0231). In the TA-DVS program, a dispute about the contents of a TA-DVS case plan (see OAR 461-135-1205) is resolved through re-engagement if there is no right to a hearing under OAR 461-135-1235.
- (3) A request for hearing is complete:
- (a) In public assistance and SNAP programs, when the Department's Administrative Hearing Request form (form DHS 443) is --
 - (A) Completed;
 - (B) Signed by the *claimant*, the claimant's attorney, or the claimant's *authorized representative* (see OAR 461-115-0090); and
 - (C) Received by the Department. OAR 137-003-0528(1)(a) (which allows hearing requests to be treated as timely based on the date of the postmark) does not apply to hearing requests contesting a *decision notice* (see OAR 461-001-0000). The Department has adopted the exception to the Attorney General's model rules set out in this paragraph due to operational conflicts.
 - (b) In the SNAP program, when the Department receives an oral or written statement from the *claimant*, the claimant's attorney, or the claimant's *authorized*

representative that the *claimant* wishes to appeal a decision affecting the claimant's SNAP program benefits to a higher authority.

- (c) In the case of a provider of child care, when a written request for hearing from the provider is received by the Department.
 - (d) For medical assistance, when a hearing request is made in a manner permitted under OAR 410-200-0145 or this section.
- (4) In the event a request for hearing is not timely, the Department may issue an order of dismissal if there is no factual dispute about whether sections (7) and (10) of this rule provide a right to a hearing. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.
- (5) In the event the *claimant* has no right to a contested case hearing on an issue, the Department may enter an order accordingly. The Department may refer a hearing request to the Office of Administrative Hearings for a hearing on the question of whether the *claimant* has the right to a contested case hearing.
- (6) For medical assistance, to be timely, a hearing request must be received by the Department; or the OHP Customer Service, ~~or Cover Oregon~~ in the time frame set out in OAR 410-200-0015 and 410-200-0145. In other programs, to be timely, a completed hearing request must be received by the Department not later than:
- (a) Except as provided in subsection (b) of this section, the 45th day following the date of the *decision notice* (see OAR 461-001-0000) in public assistance programs.
 - (b) The 90th day following the effective date of the reduction or termination of benefits in a public assistance program if the reduction or termination of aid is a result of a JOBS disqualification (see OAR 461-130-0330) or a penalty for failure to seek treatment for substance abuse or mental health (see OAR 461-135-0085).
 - (c) The 90th day following the date of the *decision notice* in the SNAP program, except:
 - (A) A *filing group* may submit a hearing request at any time within a *certification period* (see OAR 461-001-0000) to dispute its current level of benefits.
 - (B) A *filing group* may submit a hearing request within 90 days of the denial of a request for restoration of benefits if not more than twelve months has expired since the loss of benefits.
 - (d) The 30th day following the date of notice from the Oregon Department of Revenue in cases covered by ORS 293.250.

- (e) In a case described in subsection (1)(h) of this rule, the request must be made within 90 days of the date the waiver was signed.
- (7) When the Department receives a completed hearing request that is not filed within the timeframe required by section (6) of this rule but is filed no later than 120 days after a *decision notice* became a final order:
- (a) The Department refers the hearing request to the Office of Administrative Hearings for a contested case hearing on the merits of the Department's action described in the notice --
 - (A) If the Department finds that the *claimant* and claimant's representative did not receive the *decision notice* and did not have actual knowledge of the notice; or
 - (B) If the Department finds that the *claimant* did not meet the timeframe required by section (6) of this rule due to excusable mistake, surprise, excusable neglect (which may include neglect due to significant cognitive or health issues), *good cause* (see OAR 461-025-0305), reasonable reliance on the statement of a Department employee relating to procedural requirements, or due to fraud, misrepresentation, or other misconduct of the Department.
 - (b) The Department refers the request for a hearing to the Office of Administrative Hearings for a contested case proceeding to determine whether the claimant is entitled to a hearing on the merits if there is a dispute between the claimant and the Department about either of the following paragraphs.
 - (A) The *claimant* or claimant's representative received the *decision notice* or had actual knowledge of the *decision notice*. At the hearing, the Department must show that the *claimant* or claimant's representative had actual knowledge of the notice or that the Department mailed or electronically mailed the notice to the correct address of the *claimant* or claimant's representative, as provided to the Department.
 - (B) The *claimant* qualifies for a contested case hearing on the merits under paragraph (a)(B) of this section.
 - (c) The Department may only dismiss such a request for hearing as untimely without a referral to the Office of Administrative Hearings if the following requirements are met:
 - (A) The undisputed facts show that the *claimant* does not qualify for a hearing under this section; and
 - (B) The *decision notice* was served personally or by registered or certified mail.

- (8) In computing the time periods provided by this rule, see OAR 461-025-0300(1).
- (9) In the REF and REFM programs, a client is not eligible for a contested case hearing when assistance is terminated because the eligibility time period imposed by OAR 461-135-0900 has been reached. If the issue is the date of entry into the United States the Department provides for prompt resolution of the issue by inspection of the individual's documentation issued by the US Citizenship and Immigration Services (USCIS) or by information obtained from USCIS, rather than by contested case hearing.
- (10) If the Department receives a hearing request more than 120 days after an overpayment notice became a final order by default:
 - (a) The Department verifies whether its records indicate that the liable adult requesting the hearing was sent the overpayment notice.
 - (b) If no overpayment notice was sent to that liable adult, the overpayment hearing request is timely. The Department will send the claimant a *decision notice* or a contested case notice.
 - (c) If the Department determines that an overpayment notice was sent to the liable adult, there is no hearing right based on the issue of whether or not the overpayment notice was received.
 - (d) Any hearing request is treated as timely when required under the Servicemembers Civil Relief Act.
 - (e) The Department may dismiss a request for hearing as untimely if the *claimant* does not qualify for a hearing under this section.
- (11) If the Department receives a hearing request more than 120 days after a *decision notice* (other than an overpayment notice) became a final order by default --
 - (a) Any hearing request is treated as timely when required under the Servicemembers Civil Relief Act.
 - (b) The Department may dismiss a request for hearing as untimely if the *claimant* does not qualify for a hearing under subsection (a) of this section.
- (12) Notwithstanding sections (7), (10), and (11) of this rule, for medical assistance, the time frame is the same as the one in OAR 410-200-0146 instead of 120 days.

Stat. Auth.: ORS 411.060, 411.095, 411.103, 411.404, 411.408, 411.816, 411.892, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.095, 411.103, 411.117, 411.404, 411.408, 411.816, 411.892, 412.009, 412.014, 412.049, 412.069

- (1) Except as provided in section (4) of this rule, the "financial group" consists of the filing group (see OAR 461-110-0310) members whose income and resources the Department considers in determining *eligibility* (see OAR 461-001-0000) and benefits.
- (2) In the ERDC, ~~GA~~, OSIPM-EPD, QMB, and SNAP programs, the "financial group" consists of each individual in the filing group.
- (3) In the REF and REFM programs, the "financial group" consists of each individual in the filing group, except an individual who is eligible for and receives an SSI cash payment.
- (4) In the OSIPM (except OSIPM-EPD) program:
 - (a) For the purposes of this section of this rule, "ineligible" means an individual not eligible to receive either SSI or TANF program benefits.
 - (b) When an individual lives in a *standard living arrangement* (see OAR 461-001-0000):
 - (A) Except as provided in paragraph (B) of this subsection, each member of the filing group is in the "financial group".
 - (B) When an individual, whose *eligibility* is not determined under certain protected groups (see OAR 461-135-0771 to OAR 461-135-0830), is married, not *assumed eligible* (see OAR 461-135-0010) for OSIPM, and the individual's *spouse* (see OAR 461-001-0000) is considered "ineligible" (see subsection (a) of this section):
 - (i) If the individual's *adjusted income* (see OAR 461-001-0000) using the deductions allowed under OAR 461-160-0550(4) is greater than the OSIPM program *adjusted income* standard for a *need group* of one under OAR 461-155-0250, the individual is in his or her own "financial group" and not eligible for OSIPM.
 - (ii) When there are children in the home, if the *ineligible* spouse's remaining *countable* (see OAR 461-001-0000) income after allocation (see OAR 461-160-0551) to each *ineligible* child is equal to or less than the difference between the couple and the individual SSI standards: the *spouse* is not included in the "financial group" when determining income *eligibility*; however, the *spouse* is included in the "financial group" when determining resource *eligibility*.
 - (iii) When there are no children in the home, if the *ineligible* spouse's *countable* income is less than the difference between the couple and the individual SSI standards: the *spouse* is not included in the

"financial group" when determining income *eligibility*; however, the *spouse* is included in the "financial group" when determining resource *eligibility*.

- (c) When an individual lives in a *nonstandard living arrangement* (see OAR 461-001-0000), the "financial group" consists only of the individual applying for benefits, except that the *community spouse* (see OAR 461-001-0030) is included in the "financial group" to determine initial *eligibility*. At initial *eligibility*, the resources of the *community spouse* are considered and the provisions of OAR 461-160-0580 apply. The income of the *community spouse* is not considered in determining initial *eligibility*, and the *community spouse* is not included in any other *eligibility* group.
- (5) In the TANF program, the "financial group" consists of each individual in the filing group except the following:
 - (a) A *caretaker relative*, other than a *parent*, who chooses not to be included in the *need group* and has income less than the *non-needy countable income limit standard* (see OAR 461-155-0030) for the filing group of the *caretaker relative*;
 - (b) The *spouse* of a *caretaker relative*, when the *caretaker relative* meets the requirements under subsection (a) of this section;
 - (c) A *dependent child* of a *caretaker relative* when the *caretaker relative* meets the requirements under subsection (a) of this section;
 - (d) An individual in the filing group solely due to the requirements of OAR 461-110-0310(2)(b); and
 - (e) An individual who is eligible for and receives an SSI cash payment.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.049, 412.064, 412.124, 414.712

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.006, 412.049, 412.064, 412.124, 414.712, 414.826, 414.839

Offices Where Clients Apply

- (1) For all programs, applicants must apply at the *branch office* (see OAR 461-001-0000) serving the area in which they live or work. Applicants temporarily in another area of the state should apply at the *branch office* serving that area. Applicants may also apply at other locations for the following programs:
 - (a) Homeless clients may apply with a Community Action Agency for the Housing Stabilization program.
 - (b) Applicants may apply for health coverage by:
 - (A) Calling the ~~Cover Oregon~~ OHP Customer Service toll-free number;
 - (B) Applying through the ~~Cover Oregon~~ OregonHealthCare.gov online portal;
~~or~~
 - (C) Contacting a trained community partner who can help an applicant complete an application; or
 - (ED) Contacting a federally qualified health center, a qualified hospital, a disproportionate-share hospital, or another entity authorized by rule.
- (2) The Department has designated liaison branch offices for some groups of applicants (such as patients in state medical institutions and refugees). Those applicants must apply at the designated liaison *branch office*.
- (3) REF and TANF applicants who meet the following requirements must apply through one of the local contracted refugee resettlement agencies:
 - (a) Have been in the US for eight months or less according to OAR 461-135-0900(4);
 - (b) Reside in Multnomah, Washington, or Clackamas County; and
 - (c) Meet the alien status requirements of OAR 461-120-0125(~~86~~)(a)-(h).
- (4) SNAP applicants may apply at an office of the Social Security Administration if all members of the filing group (see OAR 461-110-0370) are applying for or are receiving SSI, and the filing group has not applied for or received SNAP benefits during the previous 30 days.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.816

Requirement to Provide Social Security Number (SSN)

- (1) In the CAWEM, ERDC, REF, and REFM programs, a member of a *need group* (see OAR 461-110-0630) or a *benefit group* (see OAR 461-110-0750) is not required to provide or apply for a social security number (SSN). In these programs, the Department may request that a member of the filing group (see OAR 461-110-0310) or *need group* provide an SSN on a voluntary basis.
- (2) In the EA and TA-DVS programs, an individual must provide his or her SSN if the individual can.
- (3) Except as provided in section (6) of this rule, in the OSIPM and QMB programs:
 - (a) An individual is not required to apply for or provide an SSN --
 - (A) If the individual does not have an SSN; and
 - (B) May only be issued an SSN for a valid non-work reason in accordance with 20 CFR 422.104.
 - (b) When subsection (a) does not apply, to be included in the *benefit group*, an individual must:
 - (A) Provide a valid SSN for the individual; or
 - (B) Apply for a number if the individual does not have a valid one and provide the SSN when it is received.
- (4) Except as provided in sections (6) to (8) of this rule, in the SNAP program, to be included in the *need group*, an individual (other than an unborn) must:
 - (a) Provide a valid SSN for the individual; or
 - (b) Apply for a number if the individual does not have one and provide the SSN when it is received.
- (5) In the TANF program, ~~to be included in the *benefit group*;~~
 - (a) Except as provided in subsection (b) of this section, an individual must:
 - (aA) Provide a valid SSN for the individual; or
 - (bB) Provide verification of application for a SSN if the individual does not have one and provide the SSN within six months of the individual's initial

TANF approval or by the end of the *certification period* (see OAR 461-001-0000), whichever is sooner.

(b) A child (see OAR 461-001-0000) born in an Oregon hospital is eligible for TANF benefits for six months following the child's date of birth or until the next redetermination of eligibility (see OAR 461-001-0000) of the filing group (see OAR 461-110-0310 and 461-110-0330), whichever is sooner.

(6) In the OSIPM, QMB, and SNAP programs, an individual is not required to apply for or provide an SSN if the individual is ---

(a) A member of a religious sect or division of a religious sect that has continuously existed since December 31, 1950; and

(b) Adheres to its tenets or teachings that prohibit applying for or using an SSN.

(7) In the SNAP program, The-the requirement to apply for or provide the SSN is delayed as follows:

(a) ~~In the SNAP program:~~

~~(A)~~—An applicant eligible for expedited services may receive his or her first full month's allotment without meeting the SSN requirement but must meet the requirement before receiving a second full month's allotment.

~~(Bb)~~ Before applying for or providing an SSN, a newborn may be included in a *benefit group* ~~(see OAR 461-110-0750)~~ for six months following the date the child is born or until the ~~group's~~ next recertification of the benefit group, whichever is later.

~~(b)~~—~~In the TANF program, a child born in an Oregon hospital may be added to the benefit group for six months following the child's date of birth or until the next redetermination of eligibility (see OAR 461-001-0000) of the filing group (see OAR 461-110-0310 and 461-110-0330), whichever is sooner.~~

(8) In the SNAP program:

(a) An individual who refuses or fails without *good cause* (see subsection (c) of this section) to provide or apply for an SSN when required by this rule is ineligible to participate. This period of ineligibility continues until the individual provides the SSN to the Department.

(b) An individual may participate in SNAP for one month in addition to the month of application, if the individual can show *good cause* why the application for an SSN has not been completed. To continue to participate, the individual must continue

to show *good cause* each month until the application for an SSN is complete with Social Security Administration.

- (c) An individual meets the *good cause* requirement in subsections (a) and (b) of this section if the individual provides evidence or collateral information that the individual applied for or made every effort to supply the Social Security Administration with the necessary information to complete the application process. Delays due to illness not associated with a *disability* (see OAR 461-001-0015), lack of transportation, or temporary absence do not qualify as *good cause* under this rule.
- (9) This rule authorizes or requires the collection of an SSN for each of the following purposes.
- (a) The determination of *eligibility* for benefits. The SSN is used to verify income and other assets, and match with other state and federal records such as the Internal Revenue Service (IRS), Medicaid, child support, Social Security benefits, and unemployment benefits.
 - (b) The preparation of aggregate information and reports requested by funding sources for the program providing benefits.
 - (c) The operation of the program applied for or providing benefits.
 - (d) Conducting quality assessment and improvement activities.
 - (e) Verifying the correct amount of payments, recovering overpaid benefits, and identifying any individual receiving benefits in more than one household.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.081, 411.087, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.826, 414.839

- (1) An emergency payee for ongoing TANF may be used when:
 - ~~(a) The dependent children are abandoned by the caretaker relative for reasons such as the caretaker relative's death or whereabouts unknown; and~~
 - ~~(b) There are no other relatives immediately available to be the children's caretaker.~~
- (2) An emergency payee may be used for up to two payment months.
- (3) An emergency payee does not have to be related to the dependent child.
- (4) An emergency payee may not be used for initial payments.
- (5) The emergency payee may be included in the benefit group if all the following are true:
 - (a) They meet all eligibility requirements except relationship and cooperation with JOBS.
 - (b) Their income and resources are counted.
 - (c) There is no other caretaker relative in the benefit group.

Stat. Auth.: ORS 411.060, 411.070, 411.081, 411.085, 412.006, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.081, 411.085, 412.006, 412.014, 412.049

Eligibility of Child Care Providers

- (1) The Department must approve a child care provider to receive payment for child care if information available to the Department provides no basis for denying eligibility unless the Department determines, following a final fitness determination (see OAR 125-007-0260 and 407-007-0320) or Child Protective Service (CPS) records checks, that the provider or other *subject individual* (see OAR 125-007-0210 and 407-007-0210(8)(a)(J)) is not eligible for payment.
- (2) Ineligibility for payment may result from any of the following:
 - (a) A finding of "denied".
 - (A) A provider may be denied under OAR 461-165-0410 and 461-165-0420. If, after conducting a weighing test as described in OAR 407-007-0300, the Department finds substantial risk to the health or safety of a *child* (see OAR 461-001-0000) in the care of the provider, the provider must be denied and is ineligible for payment.
 - (B) A provider who has been denied has the right to a hearing under OAR 407-007-0335.
 - (b) A finding of "failed".
 - (A) A provider may be failed if the Department determines, based on a specific eligibility requirement and evidence, that a provider does not meet an eligibility requirement of this rule not covered in paragraph (c)(A) of this section.
 - (B) While the provider is in failed status:
 - (i) The Department does not pay any other child care provider for child care at the failed provider's site.
 - (ii) The Department does not pay a child care provider at another site if the failed provider is involved in the child care operation unless the Department determines that the reasons the provider is in failed status are not relevant to the new site.
 - (C) A provider with a status of "failed" may reapply at any time by providing the required documents and information to the Department for review.
 - (c) A finding of "suspended".

- (A) A provider may be suspended if the Department determines and provides notice that the provider does not meet an eligibility requirement in the following subsections and paragraphs of section (7) of this rule: (d), (e), (h), (i), (j), (k), (L), (o)(H), (o)(I), (o)(L), or (t) or in section (10) of this rule. A provider who has been suspended may challenge this status by requesting a contested case hearing subject to the requirements and limitations of OAR 461-025.
- (B) While the provider is in suspended status:
 - (i) The provider is ineligible for payment for at least six months.
 - (ii) The Department does not pay any other child care provider for child care at the suspended provider's site.
 - (iii) The Department does not pay a child care provider at another site if the suspended provider is involved in the child care operation unless the Department determines that the reasons the provider is in suspended status are not relevant to the new site.
- (C) A provider with a status of "suspended" may be eligible for payments after the six month ineligibility period ends when the provider has been approved following reapplication, including providing the required documents and information to the Department for review.
- (d) The Department has referred an overpayment against the provider for collection and the claim is unsatisfied.
- (3) The provider must submit a completed Child Care Provider Listing Form (DHS 7494) to the Department within 30 calendar days from the date the Department issues the listing form to the client. The provider and each individual identified under section (4) of this rule must complete and sign the authorization for a records check through the Criminal History (CH) record system maintained by the Oregon State Police (OSP), Federal Bureau of Investigation (FBI), and the Child Protective Service (CPS) record system maintained by the Department and, if necessary, an authorization to release information and fingerprint cards. The provider, each individual described in section (4) of this rule, and each *subject individual* described in OAR 125-007-0210 and 407-007-0210(8)(a)(J) must fully disclose all requested information as part of the records check.
- (4) This rule also establishes additional requirements for the following individuals:
 - (a) The site director of an exempt child care facility and each employee of the facility who may have unsupervised access to a *child* in care.
 - (b) The child care provider and each individual the provider uses to supervise a *child* in his or her absence.

- (c) In the case of a provider who provides care for a *child* in the provider's home--
 - (A) Each individual 16 years of age or older who lives in the provider's home; and
 - (B) Each individual who visits the home of the provider during the hours care is provided and may have unsupervised access to a *child* in care.
- (5) To receive payment or authorization for payment, the provider must meet the requirements of either subsection (a) or (b) of this section:
 - (a) Currently be certified or registered with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 unless legally exempt, and be in compliance with the applicable rules. The provider must also complete the Department's listing process and be approved by the Department.
 - (b) If legally exempt from being certified or registered with the OCC, complete the Department's background check process and be approved by the Department.
- (6) Each individual described in section (4) of this rule must:
 - (a) Allow the Department to conduct a national criminal history records check through the Oregon State Police and the Federal Bureau of Investigation as specified in OAR 407-007-0250.
 - (b) Provide, in a manner specified by the Department, information required to conduct CH, FBI, OSP, and CPS records checks and determine whether the provider meets health and safety requirements.
 - (c) Have a history of behavior that indicates no substantial risk to the health or safety of a *child* in the care of the provider.
- (7) Each provider must:
 - (a) Obtain written approval from their certifier or certifier's supervisor if the provider is also certified as a foster parent.
 - (b) Be 18 years of age or older and in such physical and mental health as will not affect adversely the ability to meet the needs of safety, health, and well-being of a *child* in care.

- (c) Not be in the same filing group (see OAR 461-110-0310 and 461-110-0350) as the *child* cared for; the *parent* (see OAR 461-001-0000) of a *child* in the *filing group*; or a sibling living in the home of a *child* in the *filing group*.
- (d) Allow the Department to inspect the site of care while child care is provided.
- (e) Keep daily attendance records showing the arrival and departure times for each *child* in care and billing records for each *child* receiving child care benefits from the Department. These written records must be retained for a minimum of 12 months and provided to the Department upon request.
- (f) Be the individual or facility listed as providing the child care. The provider may only use someone else to supervise a *child* on a temporary basis if the person was included on the most current listing form and the provider notifies the Department's Direct Pay Unit.
- (g) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.
- (h) Report to the Department's Direct Pay Unit within five days of occurrence:
 - (A) Any arrest or conviction of any *subject individual* or individual described in section (4) of this rule.
 - (B) Any involvement of any *subject individual* or individual described in section (4) of this rule with CPS or any other agencies providing child or adult protective services.
 - (C) Any change to the provider's name or address including any location where care is provided.
 - (D) The addition of any *subject individual* or individual described in section (4) of this rule.
 - (E) Any reason the provider no longer meets the requirements under this rule.
- (i) Report suspected child abuse of any *child* in his or her care to CPS or a law enforcement agency.
- (j) Supervise each *child* in care at all times.
- (k) Prevent any individual who behaves in a manner that may harm children from having access to a *child* in the care of the provider. This includes anyone *under the influence* (see section (11) of this rule).

- (L) Allow the custodial parent of a *child* in his or her care to have immediate access to the *child* at all times.
- (m) Inform a parent of the need to obtain immunizations for a *child* and have a completed, up-to-date Oregon shot record called the "Certification of Immunization Status" (CIS) form on file for each *child* in care.
- (n) Take reasonable steps to protect a *child* in his or her care from the spread of infectious diseases.
- (o) Ensure that the home or facility where care is provided meets all of the following standards:
 - (A) Each floor level used by a *child* has two usable exits to the outdoors (a sliding door or window that can be used to evacuate a *child* is considered a usable exit). If a second floor is used for child care, the provider must have a written plan for evacuating occupants in the event of an emergency.
 - (B) The home or facility has safe drinking water.
 - (C) The home or facility has a working smoke detector on each floor level and in any area where a *child* naps.
 - (D) Each fireplace, space heater, electrical outlet, wood stove, stairway, pool, pond, and any other hazard has a barrier to protect a *child*. Gates and enclosures have the Juvenile Products Manufacturers Association (JPMA) certification seal to ensure safety.
 - (E) Any firearm, ammunition, and other items that may be dangerous to children, including but not limited to alcohol, inhalants, tobacco and e-cigarette products, matches and lighters, any legally prescribed or over-the-counter medicine, cleaning supplies, paint, plastic bags, and poisonous and toxic materials are kept in a secure place out of a child's reach.
 - (F) The building, grounds, any toy, equipment, and furniture are maintained in a clean, sanitary, and hazard-free condition.
 - (G) The home or facility has a telephone in operating condition.
 - (H) No one may smoke or carry any lighted smoking instrument, including e-cigarettes or vaporizers, in the home or facility or within ten feet of any entrance, exit, window that opens, or any ventilation intake that serves an enclosed area, during child care operational hours or anytime child care children are present. No one may use smokeless tobacco in the home or facility during child care operational hours or anytime child care children are present. No one may smoke or carry any lighted smoking instrument,

including e-cigarettes and vaporizers, or use smokeless tobacco in motor vehicles while child care children are passengers.

- (I) No one may consume alcohol or use controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) on the *premises* (see section (11) of this rule) during child care operational hours or anytime child care children are present. No one *under the influence* of alcohol, controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) may be on the *premises* during child care operational hours or anytime child care children are present. No one may consume alcohol or use controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) in motor vehicles while child care children are passengers.
- (J) Is not a half-way house, hotel, motel, shelter, or other temporary housing such as a tent, trailer, or motor home. The restriction in this paragraph does not apply to licensed (registered or certified) care approved in a hotel, motel, or shelter.
- (K) Is not a structure –
 - (i) Designed to be transportable; and
 - (ii) Not attached to the ground, another structure, or to any utilities system on the same *premises*.
- (L) Controlled substances (except lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana, marijuana edibles, and other products containing marijuana), marijuana plants, derivatives, and associated paraphernalia may not be on the premises during child care operational hours or anytime child care children are present.
- (p) Complete and submit a new listing form every two years, or sooner at the request of the Department, so that the Department may review the provider's eligibility.
- (q) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.
- (r) Comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, and crib standards under 16 CFR 1219 and 1220.
- (s) Place infants to sleep on their backs.

- (t) Not hold a medical marijuana card; or distribute, grow, or use marijuana (including medical marijuana) or any controlled substance (except lawfully prescribed and over-the-counter medications).
 - (u) Develop and communicate expulsion and suspension policies to parents and caretakers.
- (8) Child Care providers who are License Exempt or Registered Family Child Care Providers with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170 must complete the "Basic Child Care Health and Safety" two- hour, web-based training or the three-hour Oregon Kids Healthy and Safe (OKHS) classroom training prior to being approved by the Department.
- (a) Prior to June 16, 2014, a provider who sends the Department a Child Care Provider Listing and Provider Information Sheet (DHS 7494) with a revision date of March 2013, or those who attempt to take the web-based training but are unable due to technical difficulties at the training site, will not be failed for not meeting this training requirement.
 - (b) License Exempt or Registered Family Child Care Providers who are exempt from this training are those who state at least one of the following:
 - (A) English is a second language.
 - (B) No internet access is available.
- (9) A child care provider not subject to certification or registration with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250, must complete an orientation provided by the Department or a Child Care Resource and Referral agency within 90 days of being approved by the Department if he or she:
- (a) Receives funds from the Department; and
 - (b) Begins providing child care services after June 30, 2010, or resumes providing child care services, after a break of more than one year that began after June 30, 2010.
- (10) Child care providers and any individual supervising, transporting, preparing meals, or otherwise working in the proximity of child care children and those completing daily attendance and billing records shall not be *under the influence*.
- (11) For purposes of these rules:
- (a) "Premises" means the home or facility structure and grounds, including indoors and outdoors and space not directly used for child care.

- (b) "Under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the individual has used alcohol, any controlled substances (including lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana), or inhalants that impairs their performance of essential job function or creates a direct threat to child care children or others. Examples of abnormal behaviors include, but are not limited to hallucinations, paranoia, or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech as well as difficulty walking or performing job activities.

Stat. Auth.: ORS 181.537, 329A.500, 409.050, 411.060, 411.070

Stats. Implemented: ORS 181.537, 329A.340, 329A.500, 409.010, 409.050, 409.610, 411.060, 411.070, 411.122

Provider Listing; Disqualifying Criminal History

- (1) This rule explains the grounds upon which the Department denies a request by a child care provider to receive child care payments from a self-sufficiency program of the Department based on the records of a *subject individual* (see OAR 125-007-0210 and 407-007-0210(218)(a)(GJ)). For the purposes of this rule, the provider and any individual identified under OAR 461-165-0180(4) is considered a *subject individual* under OAR 125-007-0210 and 407-007-0210(218)(a)(GJ).
- (2) The Department may find a child care provider ineligible for payment when the criminal history of a *subject individual* indicates behavior that may jeopardize the safety of a child or have a detrimental effect on a child while in the care of the provider, in the following circumstances, the *subject individual* has:
 - (a) Been charged with or arrested for a drug-related, sexual, or violent crime listed in OAR 407-007-0280(1). There is a rebuttable presumption that such a *subject individual* is likely to engage in conduct that would pose a significant risk to a client, the Department, or a vulnerable individual.
 - (b) Been convicted of two or more crimes listed in OAR 407-007-0280-125-007-0270 at any time.
 - (c) Been ~~convicted of~~ found in violation of probation ~~and for~~ a crime listed in OAR 407-007-0280-125-007-0270, at any time that relates to the person's qualification or duties as a child care provider.
 - (d) Been charged with two or more crimes listed in OAR 407-007-0280-125-007-0270 within the past five years.
 - (e) Three or more arrests, at any time, for crimes listed in OAR 407-007-0280-125-007-0270.
- (3) The Department may pay for the services of a child care provider even if a *subject individual* has a potentially disqualifying criminal or abuse history, defined by OAR 125-007-0270 and 407-007-02890, only if the Department has determined -- based on a weighing test as described in OAR 125-007-0260, 407-007-0300, and 407-007-0320 and consideration of the information listed in OAR 407-007-0280, 407-007-0290, ~~407-007-0300~~, and this rule -- that repeated criminal behavior is unlikely and that the provider does not present a danger to a child in the provider's care.

Stat. Auth.: ORS 181.537, 411.060

Stats. Implemented: ORS 181.537, 411.060, 411.122

Provider Listing; Disqualifying Child Protective Service History

- (1) This rule explains the grounds upon which the Department denies the request by a child care provider to receive child care payments from a self-sufficiency program of the Department based on the records of a *subject individual* (see OAR 125-007-0210 and 407-007-00210(8)(a)(J)). For the purposes of this rule, the provider and any individual identified under OAR 461-165-0180(4) is considered a *subject individual* under OAR 125-007-0210 and 407-007-0210(2+8)(a)(J).
- (2) The Department may find a child care provider ineligible for payment when the Child Protective Service (CPS) history of a *subject individual*, based on prior conduct, indicates that a *subject individual* is likely to engage in conduct that would jeopardize the safety of or have a detrimental effect on a child while in the care of the provider.
- (3) To make its determination, the Department may use any available information including the CPS records of the Department, an investigation of a complaint, or information provided by another agency. A single incident may be sufficient history for denial of eligibility.
- (4) If the Department obtains information of a potentially disqualifying nature with respect to a *subject individual*, as described in OAR 461-165-0180(4), the Department may request additional information to determine the provider's ability to provide care and must conduct a weighing test under OAR 125-007-0260, 407-007-0300, and 407-007-0320. Any additional information obtained must be reviewed by the Criminal Records Unit (CRU) for determination of eligibility.
- (5) Failure to respond to a request for information results in a finding of "failed" (see OAR 461-165-0180). The provider or *subject individual* must disclose fully all requested information as part of the records check.
- (6) The Department may pay for the services of a child care provider even if a *subject individual* has a potentially disqualifying history of behavior if the Department determines, based on a fitness determination made under OAR 125-007-0260 and 407-007-0320, that repeated behavior is unlikely and that the presence of the individual likely would not jeopardize the safety of a child in the provider's care based on:
 - (a) The content and source of the reports, the time elapsed since the reports, and the number of reports and referrals;
 - (b) The individual's participation in rehabilitation, training, or counseling;
 - (c) The likelihood of the individual's abuse of drugs or alcohol; and
 - (d) Any other relevant eligibility requirements or supplemental information under OAR 407-007-0300 or OAR 461-165-0180.

Stat. Auth.: ORS 409.027, 409.050, 411.060

Stats. Implemented: ORS 409.010, 409.027, 411.060

461-170-0130

~~Eff. 1-1-14~~

Eff. 11-1-16

Acting on Reported Changes; OSIPM, QMB

- (1) When an OSIPM or QMB client, who is required by this division of rules to report a change in circumstances, makes a timely report of a change that could reduce or end medical benefits, prior to reducing or ending medical benefits:
 - (a) The Department must review each individual in the filing group for eligibility for the other medical programs listed in this rule; and
 - (b) The Oregon Health Authority, ~~Cover Oregon~~, or the Department must review the individual for Medicaid eligibility under MAGI rules (OAR 410-200).
- (2) If the Department needs additional information to act on the timely reported change, members of the *benefit group* (see OAR 461-110-0750) remain eligible from the date the change was reported until the Department determines their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050, 411.060, 411.404

Stats. Implemented: ORS 409.010, 411.060, 411.404

461-180-0085

~~Eff. 1-1-14~~

Eff. 11-1-16

Effective Dates; Redeterminations of OSIPM and QMB

In the OSIPM and QMB programs, when the Department initiates a redetermination of *eligibility* (see OAR 461-001-0000):

- (1) Prior to reducing or ending medical benefits:
 - (a) The Department must review each individual in the filing group (see OAR 461-110-0410) for *eligibility* for the other medical programs listed in this rule; and
 - (b) The Oregon Health Authority, ~~Cover Oregon~~, or the Department must review the individual for Medicaid *eligibility* under MAGI rules (OAR 410-200).
- (2) If additional information is needed to redetermine *eligibility*, members of the *benefit group* (see OAR 461-110-0750) who may be eligible for the other programs listed in this rule remain eligible from the date the review is initiated until the Department, ~~Cover Oregon~~, or the Oregon Health Authority determines their *eligibility* in accordance with the application processing time frames in OAR 410-200-0110.

Stat. Auth.: ORS 409.050, 411.060, 411.404

Stats. Implemented: ORS 409.010, 411.060, 411.404