

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted upon filing by the

Department of Human Services, Office of Self-Sufficiency Programs	461
Agency and Division	Chapter Number

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to become effective January 1, 2017.

Rulemaking Notice was published in the December 1, 2016 Oregon Bulletin.

Rule Caption: *Amending rules relating to public assistance*

RULEMAKING ACTION

AMEND: 461-025-0310, 461-110-0370, 461-115-0020, 461-130-0305, 461-130-0310, 461-130-0315, 461-130-0330, 461-135-0520, 461-145-0540, 461-155-0150, 461-165-0010, 461-165-0180, 461-190-0360, 461-190-0500, 461-195-0501

REPEAL: 461-115-0020(T), 461-130-0305(T), 461-130-0310(T), 461-130-0315(T), 461-130-0330(T), 461-135-0520(T), 461-145-0540(T), 461-165-0180(T)

ORS 329A.500, 409.050, 411.060, 411.070, 411.095, 411.103, 411.404, 411.408, 411.816, 411.892, 412.006, 412.009, 412.014, 412.049

Stat. Auth.

Food and Nutrition Act of 2008; 7 USC 2015(d); 7 USC 2015(o); 7 CFR 273.1(a)(3); 7 CFR 273.7; 7 CFR 273.9; 7 CFR 273.24; 45 CFR 261.70; Child Care Development Block Grant (CCDBG) Act of 2014; CFR Part 98 (98.40, 98.41, 98.42, 98.44)

Other Auth.

ORS 329A.500, 409.050, 411.060, 411.070, 411.081, 411.087, 411.095, 411.103, 411.404, 411.408, 411.706, 411.816, 411.892, 412.006, 412.009, 412.014, 412.049, 412.069

Stats. Implemented

Rule Summary

OAR 461-025-0310 about hearing requests is being amended to comply with federal regulations and place in rule the TANF state plan provisions about the use of the hearing process to resolve a complaint of an alleged violation by an employer of [45 CFR 261.70\(a\)](#), prohibiting the displacement of other workers in favor of TANF work activity participants.

OAR 461-110-0370 about the SNAP filing group is being amended to comply with federal regulations regarding when a lodger may or must be included in the filing group with the rest of the household group member to whom the lodger pays room and board.

OAR 461-115-0020 about application requirements is being amended to clarify that the application and any additional information required for application be received by the Department in order to complete the application process. This clarification also applies to recertification requirements.

OAR 461-130-0305 about general provisions in employment programs is being amended to incorporate the SNAP definition of mandatory to include only those persons who are required to register for work as a SNAP eligibility requirement in accordance with OAR 461-130-0310. This makes permanent a temporary change adopted on October 19, 2016.

OAR 461-130-0310 about employment program participation classifications (exempt, mandatory, and volunteer) is being amended to divide the SNAP E&T exemption criteria list into two parts. One part is for the exemptions from work registration or any of the other E&T requirements. This includes an amendment to the definition of "chronically homeless" to align with federal guidance which requirements that homelessness must be tied to an inability to obtain employment. The second part is for those exemptions from participation in the E&T work-related activities due to employment or participation in another E&T program. Individuals meeting this second list are not exempt from work registration and the other E&T eligibility requirements: they are required to accept bone fide job offers and to maintain employment. This makes permanent temporary changes adopted on October 19, 2016.

OAR 461-130-0315 about the requirements for mandatory employment program clients is being amended to clarify which requirements apply to SNAP clients who are required to register for work. This makes permanent temporary changes adopted on October 19, 2016.

OAR 461-130-0330 about disqualifications is being amended to clarify that any mandatory SNAP client who is required to register for work must comply with all requirements in OAR 461-130-0315 (described above) including register for work must register for work, assist the department in determining if they are mandatory or exempt, accept a bone fide job offer, and maintain employment. If they fail to do these things, they are subject to the E&T disqualifications. Participation in the SNAP work-related activities are not included here because they are voluntary for all except the ABAWD in the time limit counties. ABAWD residing in the time limit counties are subject to disqualification if they fail to do the E&T requirements and subject to the time limit if they fail to do the work related activities under OAR 461-135-0520. This makes permanent temporary changes adopted on October 19, 2016.

OAR 461-135-0520 about the SNAP time limit is being amended to reflect that an ABAWD may be exempt from the time limit under either list of exemption criteria in OAR 461-130-0310(3) described above. This makes permanent temporary changes adopted on October 19, 2016. This rule is also amended to add Clackamas as a county in which the federal ABAWD time limit applies. Oregon's waiver of the time limit in Clackamas County expires January 1, 2017. (OAR 461-190-0360 about special payments in SNAP E&T and OAR 461-190-0500 about Workfare in the SNAP program are being amended to reference the time limit counties listed in OAR 461-135-0520.)

OAR 461-145-0540 about the treatment of trusts when determining financial eligibility is being amended to change the treatment of revocable trust payments in the SNAP program to how they were treated in the SNAP program before January 1, 2016. Specifically, the total value of the trust will be considered a resource available to the client and payments made from the trust will be considered unearned income, consistent with [7 CFR 273.9](#). This makes permanent a temporary rule effective November 4, 2016.

OAR 461-155-0150 about child care eligibility standard, payment rates, and copayments is being amended to reflect provider rate increases approved and funded by the Legislature in HB 2015 (2015) and HB 5026 (2015) and negotiated with provider union representatives in the SEIU 2015-2019 Collective Bargaining Agreement. Specific rate changes based on the type of provider, location of the provider, age of the child in care, and type of billing used (hourly or monthly) are shown in the rule text available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm.

OAR 461-165-0010 about the legal status of benefit payments and OAR 461-195-0501 about definitions and categories of overpayments are being amended to align with federal requirements relating to use of EBT (electronic benefit transfer) cards at prohibited locations. EBT cards are used by Department clients to access cash assistance through the REF (Refugee), SFPSS (State Family Pre-SSI/SSDI Program), and TANF (Temporary Assistance for Needy Families) programs. These rules were amended on July 1, 2015 to reflect the [federal restriction](#) on using or accessing benefits through an EBT card at a liquor store; casino, gambling casino, or gaming establishment; or retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. The rules were further amended on July 1, 2016 to prohibit using or accessing benefits at marijuana dispensaries. These rule changes further align with federal regulations by clarifying that these restrictions apply to transactions that occur in Oregon, outside Oregon, and on tribal lands and when a private bank card is used to access cash assistance direct deposited into a private bank account.

OAR 461-165-0180 about child care provider eligibility requirements is being amended to reflect changes to federal requirements that apply to child care providers who receive Child Care Development Fund (CCDF) funds. Primary changes are summarized below and were adopted by temporary rule on November 1, 2016.

- Defining "legally exempt" and "legally exempt relative".
- Stating that legally exempt providers who are not legally exempt relatives must meet the Office of Child Care (OCC) Regulated Subsidy Provider requirements, including the site visit requirement.
- Stating that legally exempt providers who *are* legally exempt relatives are not subject to the OCC Regulated Subsidy Provider requirements.
- Adding training and certification requirements for legally exempt providers who are not legally exempt relatives and requiring them to be completed prior to providing child care, unless a temporary waiver is approved.
- Stating staff-to-children ratios for certain child care centers or programs.

In addition, non-substantive edits were 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.

- (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.
 - (q) To resolve a grievance under 45 CFR 261.70 against an employer. A hearing request under this subsection must be in writing with the claimant's name, address, and daytime phone number (if available). The hearing request must be received by the Department within 45 days of the alleged violation or within 30 days after completion of an employer grievance process.
- (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, 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 329A.500, 411.060, 411.095, 411.103, 411.404, 411.408, 411.816, 411.892, 412.014, 412.049

| Stats. Implemented: ORS 329A.500, 411.060, 411.095, 411.103, 411.117, 411.404, 411.408, 411.816, 411.892, 412.009, 412.014, 412.049, 412.069

In the SNAP program:

- (1) Except as provided in this rule, the filing group (see OAR 461-110-0370) consists of members of a *household group* (see OAR 461-110-0210) who choose to apply together or customarily purchase and prepare meals together.
- (2) Except as provided in sections (3) and (8) of this rule, the following *household group* members must be in the same filing group, even if they do not customarily purchase and prepare meals together:
 - (a) Each *spouse* (see OAR 461-001-0000).
 - (b) A *parent* (see OAR 461-001-0000) and his or her child under age 22 living with the *parent*.
 - (c) A *household group* member and any child under age 18 who lives with and is under "parental control" of that *household group* member. For the purposes of this subsection, "parental control" means the adult is responsible for the care, control, and supervision of the child or the child is financially dependent on the adult.
- (3) In the following specific situations, the Department forms a filing group as indicated:
 - (a) An individual is not included in the filing group if, during the month the group applied for SNAP program benefits, the individual received SSI benefits through the state of California. This exclusion applies only in the month the group applied and, if necessary to meet notice requirements, in the month following the month the group applied.
 - (b) An individual is not included in the filing group if during the month the group applied for SNAP program benefits the individual received SNAP program benefits in another household and was not the head of household in the prior household. This exclusion applies only in the month the group applied and, if necessary to meet notice requirements, in the month following the month the group applied.
 - (c) An *elderly* (see OAR 461-001-0015) individual and his or her *spouse* may be considered a separate filing group from others with whom the *elderly* individual purchases and prepares meals, if:
 - (A) The *elderly* individual is unable to purchase or prepare food because of a permanent and severe disabling condition; and

- (B) The combined income of the other members of the *household group* does not exceed the following limit:

Other Household Members	Monthly Countable Income
1	\$1,634
2	2,203
3	2,772
4	3,342
5	3,911
6	4,480
7	5,051
8	5,623
Each additional person	572

- (4) A paid live-in attendant may choose not to be in the filing group with the recipient of the services provided, unless required by section (2) of this rule to be in the same filing group.
- (5) An individual in foster care, the individual's *spouse*, and each child under age 22 living with the individual are not eligible to participate in the SNAP program independently of the care or service provider's filing group, but may be included in the provider's filing group if the provider applies for benefits.
- (6) Unless required under section (2) of this rule, the following *household group* members may form a separate filing group from other members of the *household group*:
- (a) A resident of an alcohol or drug treatment and rehabilitation program certified by the Department for which an employee of the facility is the authorized representative (see OAR 461-135-0550). A resident's spouse in the same facility may be in a separate filing group, but a child of a resident must be in the same filing group as the resident.
 - (b) A resident in *group living* (see OAR 461-001-0015).
 - (c) A resident of a public or private non-profit *homeless* or *domestic violence shelter* (see OAR 461-135-0510).
 - (d) An individual who is a resident of federally subsidized housing for the *elderly*, an individual with a disability, or blind recipient of benefits under Title I, II, X, XIV, or XVI of the Social Security Act.
- (7) A member of the *household group* who pays the filing group for room and board (lodger) is treated as follows:

- (a) A lodger ~~cannot~~may not participate in the SNAP program independently of the *household group*.
- ~~(b) A lodger may participate in the SNAP program with the *household group* when the lodger pays a reasonable amount (see subsection (d) of this section) for room and board.~~
- ~~(c) A lodger must participate in the SNAP program with the *household group* when the lodger does not pay a reasonable amount for room and board.~~
- (d) A reasonable amount is:
 - (A) An amount that equals or exceeds the Thrifty Food Plan for the individual and anyone in that individual's filing group (see OAR 461-155-0190(2)), if more than two meals per day are provided; or
 - (B) An amount that equals or exceeds two-thirds of the Thrifty Food Plan for the individual and anyone in the individual's filing group, if two or fewer meals per day are provided.
- ~~(b) A lodger may participate in the SNAP program independently of the *household group* when the lodger pays less than a reasonable amount for room and board.~~
- (8) A *household group* member is not included in the filing group, if the member is:
 - (a) A resident of a commercial boarding house; or
 - (b) An ineligible student, as defined in OAR 461-135-0570.
- (9) A *household group* member may be included in two filing groups in the same month, if the member:
 - (a) Is a resident of a *domestic violence shelter* (see OAR 461-001-0000) or *safe home* (see OAR 461-001-0000); and
 - (b) Recently left the *household group* containing the member's abuser.

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

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.816, 411.825, 411.837

461-115-0020

~~Tech. Eff. 2-17-11~~

Temp. Eff. 10-19-16 to 4-16-17

Application Requirements

(1) To complete the application process, the applicant or his or her authorized representative (see OAR 461-115-0090) must complete, ~~and sign,~~ and submit (see section (2) of this rule) an application, apply at the appropriate location, ~~provide~~ submit necessary information to the Department within the time frames specified for each program, and meet the interview requirements of OAR 461-115-0230.

(2) As used in this rule and in OAR 461-175-0222, "submit" means that the Department has received the required documents and information.

Stat. Auth.: ORS 409.050, 411.060, 411.070

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.081, 411.087

General Provisions; Employment Programs

- (1) This division of rules states --
 - (a) The requirements for a client participating in the employment programs of the Post-TANF, Pre-TANF, REF, SNAP, and TANF programs. The employment programs are the JOBS, REF (administered under division 193 of these rules), and SNAP Employment and Training (see OAR 461-001-0020) employment programs. (The employment and training requirements for ABAWD clients in the SNAP program are also covered in OAR 461-135-0520.)
 - (b) The effect of a labor strike on a client's eligibility for program benefits.
- (2) The following definitions apply to OAR 461-130-0305 through 461-130-0335 and OAR 461-135-0520:
 - (a) "Exempt" means a client who the Department determines is not *mandatory* (see subsection (b) of this section) for an employment program in accordance with OAR 461-130-0310.
 - (b) "Mandatory" means --
 - (A) In all programs except the SNAP program, a client in the *need group* (see OAR 461-110-0630) who the Department determines must participate in an employment program in accordance with OAR 461-130-0310.
 - (B) In the SNAP program, a client in the *need group* who the Department determines must register for an employment program in accordance with OAR 461-130-0310.
 - (c) "Volunteer" means:
 - (A) A client who is an ABAWD living in one of the *time limit exempt counties* (see OAR 461-135-0520) who is either *exempt* (see subsection (a) of this section) or *mandatory* and chooses to participate in SNAP Employment and Training;
 - (B) A client who is not an ABAWD and is either *exempt* or *mandatory* and chooses to participate in SNAP Employment and Training; or
 - (C) A client who is not *mandatory* and chooses to participate in an employment program.
- (3) A client must provide the information necessary for the Department to determine each of the following:

- (a) The client's participation classification (see OAR 461-130-0310);
 - (b) The client's level of participation; and
 - (c) If applicable, whether a client had *good cause* (see OAR 461-130-0327) for any failure to meet a requirement of an employment program.
- (4) In the SNAP program, a *mandatory* client (see OAR 461-130-0310(3)(b)) is registered for the employment program when a member of the *filing group* (see OAR 461-110-0370) or an *authorized representative* (see OAR 461-115-0090 and 461-115-0140) signs the SNAP program application.

Stat. Auth.: ORS 411.060, 411.816, 412.006, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.006, 412.009, 412.049

Participation Classifications: Exempt, Mandatory, and Volunteer

- (1) In the Post-TANF, Pre-TANF, REF, SNAP, and TANF programs:
 - (a) The Department assigns an individual to one or more employment program participation classifications--*exempt*, *mandatory*, and *volunteer* (see OAR 461-130-0305 for definitions of all three terms).
 - (b) In the Post-TANF program or while receiving *Employment Payments* (see OAR 461-001-0025) under OAR 461-135-1270, an individual is classified as a *volunteer*.
- (2) In the Pre-TANF, REF, and TANF programs:
 - (a) An individual is *exempt* from employment program participation and disqualification if the individual meets the requirements of at least one of the following paragraphs. The individual is --
 - (A) Pregnant and in the last month of the pregnancy.
 - (B) Pregnant and experiencing medical complications due to the pregnancy that prohibit participation in activities of the program and are documented by a qualified and appropriate professional.
 - (C) A *parent* (see OAR 461-001-0000) during the first six months after the birth of the parent's *dependent child* (see OAR 461-001-0000) except that the Department may require the *parent* to participate in parenting classes or a *family stability activity* (see OAR 461-001-0000). An exemption allowed under this paragraph may apply only to one *mandatory* participant in each filing group (see OAR 461-110-0310, 461-110-0330, and 461-110-0430).
 - (D) Under 20 years of age during the first 16 weeks after giving birth except that the individual may be required to participate in suitable activities with a preference for educational activities, parenting classes, and *family stability activity*.
 - (E) A *parent* providing care for a family member who is an individual with a *disability* (see OAR 461-001-0000) and is in the *household group* (see OAR 461-110-0210) with the *parent*. Medical documentation to support the need for the care is required.
 - (F) An REF client 65 years of age or older.
 - (G) A TANF client 60 years of age or older.
 - (H) A noncitizen who is not authorized to work in the United States.

- (I) An individual who is eligible for and receives supplemental security income (SSI) from the Social Security Administration.
 - (J) A *caretaker relative* (see OAR 461-001-0000) who is non-needy.
 - (K) An individual whose participation is likely to cause undue hardship or is contrary to the best interests of the *dependent child* or *needy caretaker relative*.
 - (L) Pregnant and participating more than 10 hours per week during the first two months of the third trimester.
 - (M) A VISTA volunteer.
- (b) A *caretaker relative* of a *dependent child* or unborn who receives TANF program benefits is *mandatory* if the *caretaker relative* is in the same filing group with the *dependent child* or unborn (even if the *caretaker relative* is not in the TANF program *benefit group* under OAR 461-110-0750), unless the *caretaker relative* is otherwise *exempt* from participation under subsection (a) of this section.
- (3) In the SNAP program:
- (a) An individual is *exempt* from registration in an employment program ~~participation~~ and disqualification if the individual meets the requirements of one of the following paragraphs. The individual is --
 - ~~(A) — Working a minimum of 30 hours a week or earning money equal to at least the federal minimum wage multiplied by 30 hours per week multiplied by 4.3 weeks. An individual who is self-employed with allowable costs must meet the earnings threshold after allowing the 50 percent deduction. This includes migrant and seasonal farm workers (see OAR 461-001-0015) who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days.~~
 - (BA) An individual with a physical or mental condition that prevents performance of any work.
 - (CB) Responsible for the care of a *child* (see OAR 461-001-0000) in the household-filing group under 6 years of age.
 - (C) ~~or~~ Responsible for the care of an individual in the household with a *disability* (see OAR 461-001-0015) that substantially reduces or eliminates the individual's ability to care for himself or herself.
 - ~~(D) — Providing care for at least 30 hours a week for an individual in another household with a *disability* that substantially reduces or eliminates the individual's ability to care for himself or herself.~~

~~(ED)~~ Enrolled at least half-time, as defined by the school, in any high school or equivalent program recognized by a school district or enrolled at least half-time in any school, training program, or institution of higher education. An individual remains *exempt* during normal periods of class attendance, vacation, and recess but no longer qualifies for the student exemption when a break in enrollment occurs due to graduation, suspension or expulsion, or when the student drops out of school or does not enroll in classes for the next regular school term (excluding summer term).

~~(F)~~ ~~Receiving REF or TANF program benefits under Title IV of the Social Security Act.~~

~~(G)~~ ~~In receipt of unemployment insurance benefits, has completed an application for unemployment insurance benefits and is waiting for an initial decision on the claim, or is participating in at least one of the following Employment Department training programs:~~

~~(i)~~ ~~The Trade Readjustment Allowance (TRA) program serving displaced workers under the Trade Act.~~

~~(ii)~~ ~~The Training Unemployment Insurance (TUI) program.~~

~~(iii)~~ ~~The Self-Employment Insurance (SEA) program.~~

~~(iv)~~ ~~The Apprenticeship Program (APT).~~

~~(HE)~~ Participating in a drug or alcohol treatment and rehabilitation program.

~~(H)~~ Pregnant.

~~(JG)~~ Chronically homeless. For purposes of this rule, ~~an individual is "chronically homeless" if means~~ the individual is currently *homeless* (see OAR 461-001-0015), ~~unable to obtain employment due to being homeless,~~ and one of the following applies:

(i) The individual has been *homeless* for more than six months.

(ii) The individual has been *homeless* more than one time in the last 12 months.

(iii) The individual states that the individual is unable to meet the basic necessities of everyday life.

(b) An individual is mandatory for registration in an employment program and the requirements in OAR 461-130-0315 if the individual meets the requirements of one of the following paragraphs. These individuals may be disqualified under

OAR 461-130-0330 for failing to meet the requirements in OAR 461-130-0315.
The individual is --

(A) Working a minimum of 30 hours a week or earning money equal to at least the federal minimum wage multiplied by 30 hours per week multiplied by 4.3 weeks. An individual who is self-employed with allowable costs must meet the earnings threshold after allowing the 50 percent deduction. This includes *migrant and seasonal farm workers* (see OAR 461-001-0015) who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days.

(B) Receiving REF or TANF program benefits under Title IV of the Social Security Act.

(C) In receipt of unemployment insurance benefits, has completed an application for unemployment insurance benefits and is waiting for an initial decision on the claim, or is participating in at least one of the following Employment Department training programs:

(i) The Trade Readjustment Allowance (TRA) program serving displaced workers under the Trade Act.

(ii) The Training Unemployment Insurance (TUI) program.

(iii) The Self-Employment Insurance (SEA) program.

(iv) The Apprenticeship Program (APT).

(bc) A *mandatory client* is an individual in the *need group* (see OAR 461-110-0630); who is 16 or 17 years of age and a *primary person* (see OAR 461-001-0015), or 18 years of age and older and 59 years of age and younger; and who is not *exempt* under subsection (a) of this section.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.006, 412.009, 412.014, 412.049
Stats. Implemented: ORS 409.010, 409.750, 411.060, 411.070, 411.816, 411.837, 412.006, 412.009, 412.014, 412.049

Requirements for Mandatory Employment Program Clients; Pre-TANF, REF, SNAP, TANF

The following provisions apply to a *mandatory* (see OAR 461-130-0305) client:

- (1) A *mandatory* client selected by the Department to participate in an employment program of the Pre-TANF, REF, SNAP, or TANF program must do all of the following:

(a) In the Pre-TANF, REF, or TANF programs:

- (~~a~~A) Accept a bona fide offer of employment, whether temporary, permanent, full-time, part-time, or seasonal.
- (~~b~~B) Schedule and keep required employment-related appointments and interviews.
- (~~c~~C) Notify the Department's case manager or the JOBS contractor of the reason for not keeping employment-related appointments and interviews, not attending scheduled classes and activities, or not completing case management activities. Notification must be made within three working days from the date of a missed appointment, interview, class, or activity.
- (~~d~~D) Provide the Department, in the manner the Department requires, with verifiable documentation of JOBS participation hours, including paid work, job search, and educational participation hours.
- (~~e~~E) In the REF and TANF programs, complete all *activities* (see OAR 461-001-0025) specified on the *case plan* (see OAR 461-001-0025).

(~~f~~b) In the SNAP program:

- (A) Register for the SNAP Employment and Training program (see OAR 461-001-0020).
- (B) Assist the Department in the *exempt* (see OAR 461-130-0305) or *mandatory determination*.
- (C) Accept a bona fide offer of employment, whether temporary, permanent, full-time, part-time, or seasonal.
- (~~A~~D) Maintain employment:
- (i) A client meeting the requirements of subparagraph (iii) of this paragraph fails to maintain employment when the criteria in at least one of the following sub-subparagraphs is met:

- (I) Voluntarily leaving a job 30 days or less prior to the *filing date* (see OAR 461-115-0040) for SNAP benefits as provided in OAR 461-135-0521 or at any time thereafter;
- (II) Being dismissed for striking while a federal, state, or county employee; or
- (III) Reducing hours of work to less than 30 each week as defined in OAR 461-135-0521.

(ii) The following changes in employment status do not constitute failure to maintain employment:

- (I) An employer reduces a client's hours of work;
- (II) An employer fires a client from a job;
- (III) A client terminates a self-employment enterprise; and
- (IV) A client resigns from a job at the demand of the employer.

(iii) Subparagraph (i) of this paragraph applies only if the client meets at least one of the following requirements. The client --

~~(I) Is required to register for work;~~

~~(II) Is exempt from participating in the employment program due to employment under OAR 461-130-0310(3)(a)(A);~~

~~(III) Had a job that averaged not less than 30 hours each week or had provided average weekly earnings not less than the federal minimum wage multiplied by 30 hours, and the client quit the job without *good cause* (see OAR 461-130-0327); or~~

~~(IV) Quits working under a JOBS Plus agreement more than twice (see OAR 461-190-0426).~~

~~(BE) For an An ABAWD subject to the time limit in residing in one of the time limit counties (see OAR 461-135-0520) must do all of the following:~~

~~(i) Schedule and keep required employment-related appointments and interviews.~~

~~(ii) Complete all work activities and components specified in the case plan (see OAR 461-001-0020).~~

(iii) Provide the Department, in the manner required, with verifiable documentation of participation hours.

(iv) Notify the Department or the SNAP Employment and Training contractor of the reason for not doing the employment-related activities as set forth on the *case plan*.

- (2) In the Pre-TANF, REF, and TANF programs a *mandatory* client who fails to meet a participation requirement without *good cause* is subject to disqualification in accordance with OAR 461-130-0330 only after the re-engagement process under OAR 461-190-0231 has been completed.

Stat. Auth.: ORS 411.060, 411.816, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.009, 412.049

Disqualifications; Pre-TANF, REF, SNAP, TANF

- (1) In the Pre-TANF, REF, SNAP, and TANF programs, the Department may not disqualify from program benefits a client who is a *volunteer* (see OAR 461-130-0305 and 461-130-0310) participant in an employment program.
- (2) In the Pre-TANF and TANF programs, a *mandatory* (see OAR 461-130-0305) individual who fails to comply with an employment program participation requirement or an *exempt* (see OAR 461-130-0305 and 461-130-0310) individual who fails to comply with the requirements of OAR 461-135-0085, and does not have *good cause* (see OAR 461-130-0327) for the failure to comply is subject to disqualification under this rule only after the client has had the opportunity to participate in the re-engagement process under OAR 461-190-0231.
- (3) In the REF program, a *mandatory* client who fails to comply with an employment program participation requirement and does not have *good cause* for failure to comply is subject to disqualification under this rule only after the client has had the opportunity to participate in the re-engagement process under OAR 461-190-0231.
- (4) In the REF program, the effects of a disqualification are progressive. There are two levels of disqualification:
 - (a) At the first level of disqualification, the penalty is the removal of the disqualified client from the *need group* (see OAR 461-110-0630) for three months. If the disqualified client is the only member of the filing group (see OAR 461-110-0310 and 461-110-0430), the assistance is terminated.
 - (b) At the second level, the penalty is the removal of the disqualified client from the *need group* for six months. If the disqualified client is the only member of the filing group, the assistance is terminated.
- (5) In the TANF program, the effects of a JOBS disqualification or a disqualification imposed under OAR 461-135-0085 are progressive. There are four levels of disqualification. Once a disqualification is imposed, it affects benefits according to the following schedule until the disqualification ends in accordance with OAR 461-130-0335:
 - (a) At the first level, the penalty is a 25 percent reduction in benefits.
 - (b) At the second level, the penalty is a 50 percent reduction in benefits.
 - (c) At the third level, the penalty is a 75 percent reduction in benefits.
 - (d) At the fourth level, the penalty is a 100 percent reduction in benefits.

- (e) At the end of the fourth level, program benefits are closed and the filing group (see OAR 461-110-0310 and 461-110-0330) may not receive program benefits for the following two consecutive months.
- (6) In the SNAP program:
 - (a) A *mandatory* client not covered under subsection (b) of this section who fails to comply with the requirements of an employment program (see OAR 461-130-0315) without *good cause* (see OAR 461-130-0327) is subject to disqualification. A disqualified client is removed from the *need group* until he or she meets the employment program requirements and serves the applicable progressive disqualification under the following subsections:
 - (A) One calendar month for the first failure to comply.
 - (B) Three calendar months for the second failure to comply.
 - (C) Six calendar months for the third and subsequent failures to comply.
 - (b) A *mandatory* client who is an ABAWD (see OAR 461-135-0520) residing in Multnomah or Washington County one of the time limit counties (see OAR 461-135-0520) or a *mandatory* client who is served by an office that does not offer OFSET (see OAR 461-190-0310) who fails to comply with the requirements ~~to maintain employment~~ in OAR 461-130-0315(1)(~~fb~~)(~~BA~~) to (D) is subject to disqualification as provided in subsection (a) of this section. See OAR 461-135-0520 for additional employment participation requirements for ABAWD clients.
 - ~~(e) — A client who is exempt (see OAR 461-130-0305) from participation in the SNAP employment program because he or she is a mandatory participant in the JOBS program, receiving unemployment compensation benefits, or has applied for unemployment compensation benefits and is waiting on an initial decision must comply with the requirements of those programs. If the client fails to comply with the requirements of the applicable program the client is disqualified from receiving SNAP benefits, unless he or she can show good cause under OAR 461-130-0327.~~

Stat. Auth.: ORS 411.060, 411.816, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.816, 411.837, 412.009, 412.049

Time Limit and Special Requirements for ABAWD; SNAP

This rule establishes the time limit and special requirements for receipt of SNAP benefits for certain adults.

- (1) Unless the context indicates otherwise, the following definitions apply to rules in OAR chapter 461:
 - (a) "Able-bodied adult without dependents (ABAWD)" means an individual 18 years of age or over, but under the age of 50, without dependents. For the purpose of this definition, "without dependents" means there is no *child* (see OAR 461-001-0000) under the age of 18 years in the filing group (see OAR 461-110-0310 and 461-110-0370).
 - (b) "Time limit counties" means Oregon counties in which the limitation on *eligibility* (see OAR 461-001-0000) for SNAP benefits for ABAWD in section 6(o)(2) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(2)) applies. "Time limit counties" are Clackamas, Multnomah, and Washington counties.
 - (c) "Time limit exempt counties" means Oregon counties in which the limitation on *eligibility* for SNAP benefits contained in section 6(o)(2) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(2)) does not apply per a waiver approved by the United States Department of Agriculture. "Exempt counties" are Baker, Benton, ~~Clackamas~~, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Malheur, Marion, Marrow, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler, and Yamhill counties.
- (2) Except as provided otherwise in this rule, an ABAWD who resides in one of the *time limit counties* (see section (1) of this rule) is ineligible to receive food benefits as a member of any household after the individual received food benefits for three *countable months* (see section (3) of this rule) during January 1, 2016 to December 31, 2018.
- (3) "Countable months" means months within the 36-month period of January 1, 2016 to December 31, 2018 in which an individual as a member of any household receives SNAP benefits in Oregon or in any other state, unless at least one of the following applies:
 - (a) The individual resided for any part of the month in one of the *time limit exempt counties* (see section (1) of this rule).
 - (b) Benefits were prorated for the month.
 - (c) The individual was exempt (~~see OAR 461-130-0305~~) from the time limit for any part of the month under OAR 461-130-0310(3)(a) or (b).

- (d) The individual participated in one or more of the activities in paragraphs (A) to (D) of this subsection for 20 hours per week averaged over the monthly. For purposes of this rule, 20 hours per week averaged monthly means 80 hours per month. (Activities may be combined in one month to meet the 20 hours per week averaged monthly requirement.)
- (A) Work for pay, in exchange for goods or services, or as a volunteer.
 - (i) Work in exchange for goods and services includes bartering and in-kind work.
 - (ii) Voluntary work hours must be verified by the employer.
 - (ii) For self-employed individuals, countable income after deducting the costs of producing income must average at least the federal minimum wage times 20 hours per week.
 - (B) Participate in a program under the Workforce Investment Act of 1998, Pub. L. No. 105-220, 112 Stat. 936 (1998).
 - (C) Participate in a program under section 236 of the Trade Act of 1974, Pub. L. 93-618, 88 Stat. 2023, (1975) (19 U.S.C. 2296).
 - (D) Comply with the employment and training requirements described in OAR 461-001-0020, 461-130-0305, and 461-130-0315. Work search activities must be combined with other work-related activities to equal 20 hours per week and may not exceed 9 hours per week.
- (e) The individual complied with the Workfare requirements in OAR 461-190-0500.
- (4) An ABAWD must submit evidence to the Department on the issue of whether a month is countable within 90 days following the last day of the month in question.
- (5) An ABAWD who is ineligible under section (2) of this rule but otherwise eligible may regain *eligibility* if the requirements of subsections (a) or (b) of this section are met.
- (a) The individual becomes *exempt* under OAR 461-130-0310(3)(a). *Eligibility* regained under this subsection begins on the date the individual files a new application and continues as long as the individual is *exempt* and is otherwise eligible. If not eligible on the *filing date* (see OAR 461-115-0040), *eligibility* begins the date all other *eligibility* requirements are met.
 - (b) The individual, during a consecutive 30-day period during which the individual is ineligible, meets the requirements of subsection (3)(d) or (3)(e) of this rule.

- (A) *Eligibility* regained under this subsection begins on the date the individual files a new application and continues as long as the individual meets the requirements of subsection (3)(d) or (3)(e) of this rule and is otherwise eligible. If not eligible on the *filing date*, *eligibility* begins the date all other *eligibility* requirements are met.
 - (B) There is no limit to how many times an individual may regain *eligibility* under this subsection during January 1, 2016 to December 31, 2018.
 - (c) See OAR 461-180-0010 to add an individual to an open SNAP case after the individual has regained *eligibility* under this section.
- (6) An individual who regains *eligibility* under section (5) of this rule and later fails to comply with the participation requirements of subsection (3)(d) or (3)(e) of this rule may receive a second set of food benefits for three consecutive *countable months*. The *countable months* are determined as follows:
- (a) If the individual stopped participation in a work program, *countable months* start when the Department notifies the individual he or she is no longer meeting the work requirement.
 - (b) If the individual stopped participation in a work program, *countable months* start when the individual notifies the Department he or she is no longer meeting the work requirement.
 - (c) If a change occurred which results in an individual becoming subject to the time limit in section (2) of this rule and the change was required to be reported under rules in OAR chapter 461, division 170, the *countable months* start when the change occurred.
 - (d) If a change occurred which results in an individual becoming subject to the time limit and the change was not required to be reported under rules in OAR chapter 461, division 170, *countable months* start when the Department notifies the individual he or she must meet the work requirement.
 - (e) An individual may only receive benefits without meeting the requirements of subsection (3)(d) or (3)(e) of this rule for a total of six *countable months* during January 1, 2016 to December 31, 2018.
- (7) This section is a placeholder to establish criteria the Department will use to grant exemptions to ABAWD who are ineligible if the Department receives special exemptions from the Food and Nutrition Service.
- (8) An ABAWD involved in the activities specified in subsection (3)(d) or (3)(e) of this rule or an activity listed in the individual's *case plan* (see OAR 461-001-0020) is eligible for

support service payments necessary for transportation or other costs related to completing the activity as allowed by OAR 461-190-0360.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.121, 411.816

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.121, 411.816, 411.825, 411.837

Trusts

- (1) This section applies to all *trust funds* (see OAR 461-001-0000) in the REF, REFM, SNAP, and TANF programs. It also applies in the OSIP, OSIPM, and QMB-DW programs for *trust funds* established before October 1, 1993:
 - (a) *Trust funds* are counted as a resource if the fund is legally available for use by a member of the *financial group* (see OAR 461-110-0530) for items covered by program benefits. In the OSIP, OSIPM, and QMB-DW programs, the amount of the trust that is considered legally available is the maximum amount that could be distributed to the beneficiary under the terms of the trust, regardless of whether the trustee exercises his or her authority to actually make a distribution.
 - (b) *Trust funds* are excluded if the fund is not available for use by a member of the *financial group*. The *financial group* must try to remove legal restrictions on the trust, unless that would cause an expense to the group.
 - (c) The part of the fund available for use for medical expenses covered by the medical program for which the *financial group* is eligible is counted.
- (2) In the ERDC program, all *trust funds* are excluded.
- (3) In the OSIP, OSIPM, and QMB-DW programs, *trust funds* established on or after October 1, 1993, are treated in accordance with sections (5) to (11) of this rule.
- (4) In the QMB-BAS, QMB-SMB, and QMB-SMF programs:
 - (a) All *trust funds* are excluded as a resource.
 - (b) A payment made from the trust to or for the benefit of the client is counted as unearned income.
- (5) A trust is considered established if the *financial group* used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:
 - (a) The client.
 - (b) The client's spouse.
 - (c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse.
 - (d) Any other person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.
- (6) If the trust contains resources or income of another person, only the share attributable to the client is considered available.

- (7) Except as provided in section (10) of this rule, the following factors are ignored when determining how to treat a trust:
- (a) The purpose for which the trust was established.
 - (b) Whether or not the trustees have or exercise any discretion under the trust.
 - (c) Any restrictions on when or if distributions may be made from the trust.
 - (d) Any restrictions on the use of distributions from the trust.
- (8) If the trust is revocable, it is treated as follows:
- (a) In all programs except the QMB-BAS, QMB-SMB, ~~and~~ QMB-SMF, and SNAP programs:
 - (A) The total value of the trust is considered a resource available to the client.
 - (B) A payment made from the trust to or for the benefit of the client is excluded as income.
 - (b) In the SNAP program:
 - (A) The total value of the trust is considered a resource available to the client.
 - (B) A payment made from the trust to or for the benefit of the client is considered unearned income.
 - (c) A payment from the trust other than to or for the benefit of the client is considered a transfer of assets covered by OAR 461-140-0210 and following.
- (9) If the trust is irrevocable, it is treated as follows:
- (a) If, under any circumstances, the funds transferred into the trust are unavailable to the client and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.
 - (b) If, under any circumstances, payments could be made to or on behalf of the client, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client is considered a transfer of assets that may be covered by OAR 461-140-0210.
 - (c) If, under any circumstances, income is generated by the trust and could be paid to the client, the income is unearned income. Payments made for any reason other

than to or for the benefit of the client are considered a transfer of assets subject to disqualification per OAR 461-140-0210.

- (d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client, the change is a disqualifying transfer as of the date of the change.
- (10) Notwithstanding the provisions in sections (1), (3), and (5) to (9) of this rule, the following trusts are not considered in determining *eligibility* (see OAR 461-001-0000) for OSIPM and QMB-DW:
- (a) A trust containing the assets of a client determined to have a disability that meets the SSI criteria that was created before the client reached age 65, if the trust was established by one of the following and the state will receive all funds remaining in the trust upon the death of the client, up to the amount of medical benefits provided on behalf of the client:
 - (A) The client's *parent* (see OAR 461-001-0000).
 - (B) The client's grandparent.
 - (C) The client's legal guardian or conservator.
 - (D) A court.
 - (b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client and containing only the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical benefits provided on behalf of the client. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:
 - (A) Personal-needs allowance.
 - (B) Community spouse monthly maintenance needs allowance.
 - (C) Medicare and other private medical insurance premiums.
 - (D) Other incurred medical.
 - (c) A trust established on or after April 1, 1995 for the benefit of the client whose income is above 300 percent of the full SSI standard and containing the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical assistance provided on behalf of the client. The trust contains

all of the client's income. The income deposited into the trust is distributed monthly in the following order with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:

- (A) Personal needs allowance and applicable room and board standard.
 - (B) Reasonable administrative costs of the trust, not to exceed a total of \$50 per month, including the following:
 - (i) Trustee fees.
 - (ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income.
 - (iii) Conservatorship and guardianship fees and costs.
 - (C) Community spouse and family monthly maintenance needs allowance.
 - (D) Medicare and other private medical insurance premiums.
 - (E) Other incurred medical costs as allowed under OAR 461-160-0030 and 461-160-0055.
 - (F) Contributions to reserves or payments for child support, alimony, and income taxes.
 - (G) Monthly contributions to reserves or payments for the purchase of an irrevocable burial plan with a maximum value of \$5,000.
 - (H) Contributions to a reserve or payments for home maintenance if the client meets the criteria of OAR 461-155-0660 or OAR 461-160-0630.
 - (I) Patient liability not to exceed the cost of *home and community-based care* (see OAR 461-001-0030) or nursing facility services.
- (11) This section of the rule applies to a trust signed on or after July 1, 2006.
- (a) Notwithstanding the provisions of sections (1), (3), and (5) to (9) of this rule, a trust that meets the requirements of subsection (b) of this section is not considered in determining *eligibility* for OSIPM and QMB-DW, except that if the client is age 65 or older when the trust is funded or a transfer is made to the trust, the transfer may constitute a disqualifying transfer of assets under OAR 461-140-0210 and following.

- (b) This section of the rule applies to a trust that meets all of the following conditions:
 - (A) The trust is established and managed by a non-profit association.
 - (B) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.
 - (C) The trust is established by the client, client's *parent*, grandparent, or legal guardian or a court for clients who have disabilities.
 - (D) Upon the death of the beneficiary or termination of the trust, the trust pays to the state an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid. The amount paid to the state may be reduced by administrative costs directly related to administering the sub-trust account of the beneficiary.
 - (E) The trust contains the resources or income of a client who has a disability that meets the SSI criteria.

- (12) In the OSIP, OSIPM, and QMB-DW programs, the provisions of this rule may be waived for an irrevocable trust if the Department determines that denial of benefits would create an undue hardship on the client if, among other things:
 - (a) The absence of the services requested may result in a life-threatening situation.
 - (b) The client was a victim of fraud or misrepresentation.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085,
414.685, 414.839

Child Care Eligibility Standard, Payment Rates, and Copayments

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, and TANF programs:

- (1) The following definitions apply to the rules governing child care rates:
 - (a) **Infant:** For all providers other than licensed (registered or certified) care, a child aged newborn to 1 year. For licensed care, an infant is a child aged newborn to 2 years.
 - (b) **Toddler:** For all providers other than licensed (registered or certified) care, a child aged 1 year to 3 years. For licensed care, a toddler is a child aged 2 years to 3 years.
 - (c) **Preschool:** A child aged 3 years to 6 years.
 - (d) **School:** A child aged 6 years or older.
 - (e) **Special Needs:** A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral, or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:
 - (A) A physician, nurse practitioner, clinical social worker, or any additional sources in OAR 461-125-0830.
 - (B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.
 - (C) Eligibility for SSI.
- (2) The following definitions apply to the types of care specified in the child care rate charts in subsections (4)(a) through (4)(c) of this rule:
 - (a) The *Standard Family Rate* applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.
 - (b) The *Enhanced Family Rate* applies to child care provided in the provider's own home or in the home of the child when the provider meets the training requirements of the Oregon Registry, established by the Oregon Center for Career Development in Childhood Care and Education.

- (c) The *Registered Family Rate* applies to child care provided in the provider's own home when the provider meets criteria established by the Office of Child Care.
 - (d) The *Certified Family Rate* applies to child care provided in a residential dwelling that is certified by the Office of Child Care as a Certified Family Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.
 - (e) The *Standard Center Rate* applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Office of Child Care Certification rules (see OAR 414-300-0000).
 - (f) The *Enhanced Center Rate* applies to child care provided in an exempt center whose staff meet the training requirements of the Oregon Registry established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:
 - (A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry training requirements noted in subsection (b) of this section.
 - (B) New staff must meet the Oregon Registry training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.
 - (C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.
 - (g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (b) or (f) of this section.
 - (h) The *Certified Center Rate* applies to child care provided in a center that is certified by the Office of Child Care.
- (3) The following provisions apply to child care payments:
- (a) Providers not eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.
 - (b) Providers eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 136 hours a month, unless the provider customarily

bills all families at a part-time monthly rate subject to the maximum full-time monthly rate and is designated as the primary provider for the case.

- (c) At their request, providers eligible for the enhanced or licensed rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month, customarily bill all families at a part-time monthly rate, and are designated as the primary provider for the case.
- (d) Unless required by the circumstances of the client or child, the Department will not pay for care at a part-time monthly or a monthly rate to more than one provider for the same child for the same month.
- (e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.
- (f) The Department will pay for up to five days each month the child is absent if:
 - (A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care; and
 - (B) It is the provider's policy to bill all families for absent days.
- (g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.
- (h) Child care providers are eligible to receive an incentive payment upon achieving and maintaining a three star or higher rating with the Quality Rating Improvement System (QRIS) subject to all of the following provisions.
 - (A) The incentive payment is in addition to the Department maximum rate.
 - (B) A provider may receive an incentive payment for any ERDC child that the Department paid the provider for full-time care (136 hours or more).
 - (C) Providers who are contracted for child care services through the ERDC program are not eligible to receive incentive payments.
 - (D) Eligibility for the incentive payment is effective the month after the QRIS rating has been achieved.

- (E) The incentive payment amount is based on the provider's star QRIS rating as follows:

Star Rating	Amount
3	\$54
4	\$72
5	\$90

- (4) The following are the child care rates based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (hourly or monthly):

- (a)

Group Area A
STANDARD RATE MAXIMUMS (Not Licensed)

	Standard Family Rate		Standard Center Rate	
	1-157 Hours per month	158-215 Hours per month	1-157 Hours per month	158-215 Hours per month
	Hourly	Monthly	Hourly	Monthly
Infant	\$3. 0730	\$552610	\$9.00	\$941
Toddler	\$3. 0724	\$516585	\$5.25	\$928
Preschool	\$3. 0724	\$509550	\$5.06	\$724
School	\$3. 0724	\$482550	\$4.50	\$638
Special Needs	\$3. 0730	\$552610	\$9.00	\$941

ENHANCED RATE MAXIMUMS (Not Licensed)

	Enhanced Family Rate			Enhanced Center Rate		
	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month
	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly
Infant	\$3. 1855	\$446480	\$594640	\$10.20	\$800	\$1,067
Toddler	\$3. 1734	\$416461	\$555615	\$5.95	\$788	\$1,051
Preschool	\$3. 1734	\$412435	\$549580	\$5.74	\$615	\$820
School	\$3. 1725	\$389435	\$519580	\$5.10	\$542	\$723
Special Needs	\$3. 1855	\$446480	\$594640	\$10.20	\$800	\$1,067

LICENSED RATE MAXIMUMS

	Registered Family Rate			Certified Family Rate			Certified Center Rate		
	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month
	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly
Infant	\$3.75	\$503	\$670	\$6.00	\$750	\$1,000	\$12.00	\$941	\$1,255
Toddler	\$3.50	\$484	\$645	\$5.50	\$750	\$1,000	\$7.00	\$928	\$1,237
Preschool	\$3.50	\$458	\$610	\$5.00	\$653	\$870	\$6.75	\$724	\$965
School	\$3.25	\$458	\$610	\$4.50	\$488	\$650	\$6.00	\$638	\$850
Special Needs	\$3.75	\$503	\$670	\$6.00	\$750	\$1,000	\$12.00	\$941	\$1,255

Zip Codes for Group Area A:
Portland, Bend, Eugene, Corvallis, Springfield, Monmouth and Ashland areas

97003	97004	97005	97006	97007	97008	97009	97010	97013	97014	97015	97019
97022	97023	97024	97027	97028	97030	97031	97034	97035	97036	97041	97045
97051	97055	97056	97060	97062	97064	97068	97070	97080	97086	97089	97106
97109	97112	97113	97116	97119	97123	97124	97125	97132	97133	97135	97140
97149	97201	97202	97203	97204	97205	97206	97209	97210	97211	97212	97213
97214	97215	97216	97217	97218	97219	97220	97221	97222	97223	97224	97225
97227	97229	97230	97231	97232	97233	97236	97239	97242	97258	97266	97267
97268	97286	97292	97330	97331	97333	97339	97351	97361	97371	97376	97401
97402	97403	97404	97405	97408	97454	97455	97477	97478	97482	97520	97525
97701	97702	97703	97707	97708	97709						

(b)

Group Area B
STANDARD RATE MAXIMUMS (Not Licensed)

	Standard Family Rate		Standard Center Rate	
	1-157 Hours per month	158-215 Hours per month	1-157 Hours per month	158-215 Hours per month
	Hourly	Monthly	Hourly	Monthly
Infant	\$2.6683	\$444485	\$3.75	\$546
Toddler	\$2.6683	\$440465	\$3.75	\$536
Preschool	\$2.5269	\$432461	\$3.00	\$443
School	\$2.5269	\$425450	\$3.30	\$428
Special Needs	\$2.6683	\$444485	\$3.75	\$546

ENHANCED RATE MAXIMUMS (Not Licensed)

	Enhanced Family Rate			Enhanced Center Rate		
	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month
	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly
Infant	\$2,873.00	\$391,394	\$521,525	\$4.25	\$464	\$619
Toddler	\$2,873.00	\$375	\$500	\$4.25	\$456	\$608
Preschool	\$2,873.00	\$365,375	\$487,500	\$3.40	\$377	\$502
School	\$2,873.00	\$344,360	\$458,480	\$3.74	\$364	\$485
Special Needs	\$2,873.00	\$391,394	\$521,525	\$4.25	\$464	\$619

LICENSED RATE MAXIMUMS

	Registered Family Rate			Certified Family Rate			Certified Center Rate		
	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month
	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly
Infant	\$3.05	\$416	\$555	\$3.60	\$469	\$625	\$5.00	\$546	\$728
Toddler	\$3.05	\$398	\$530	\$3.70	\$450	\$600	\$5.00	\$536	\$715
Preschool	\$3.05	\$398	\$530	\$3.70	\$413	\$550	\$4.00	\$443	\$590
School	\$3.05	\$383	\$510	\$3.75	\$413	\$550	\$4.40	\$428	\$570
Special Needs	\$3.05	\$416	\$555	\$3.60	\$469	\$625	\$5.00	\$546	\$728

Zip Codes for Group Area B:

Salem, Medford, Roseburg, Brookings and areas outside the metropolitan areas in Eugene and Portland

97002	97011	97016	97017	97018	97038	97042	97044	97048	97049	97053
97058	97067	97071	97103	97107	97108	97110	97111	97114	97115	97118
97121	97122	97127	97128	97131	97134	97138	97141	97143	97146	97148
97302	97303	97304	97305	97306	97307	97309	97310	97317	97321	97322
97326	97327	97328	97336	97338	97341	97343	97344	97348	97352	97353
97357	97362	97365	97366	97367	97370	97372	97374	97377	97378	97380
97383	97385	97386	97389	97391	97392	97394	97415	97420	97423	97424
97431	97444	97446	97448	97452	97456	97457	97459	97465	97470	97471
97487	97489	97501	97502	97503	97504	97524	97534	97535	97756	97759
97801	97812	97813								

(c)

Group Area C

STANDARD RATE MAXIMUMS (Not Licensed)

	Standard Family Rate		Standard Center Rate	
	1-157 Hours per month	158-215 Hours per month	1-157 Hours per month	158-215 Hours per month
	Hourly	Monthly	Hourly	Monthly
Infant	\$2,597	\$424,450	\$2.74	\$440

Toddler	\$2. 3755	\$401429	\$2.91	\$432
Preschool	\$2. 3745	\$388416	\$2.25	\$340
School	\$2. 3745	\$388416	\$2.52	\$372
Special Needs	\$2. 5976	\$424450	\$2.74	\$440

ENHANCED RATE MAXIMUMS (Not Licensed)

	Enhanced Family Rate			Enhanced Center Rate		
	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month
	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly
Infant	\$2. 8198	\$338	\$450	\$3.83	\$398	\$531
Toddler	\$2. 5780	\$321338	\$428450	\$3.40	\$383	\$510
Preschool	\$2.50	\$314334	\$418445	\$2.76	\$290	\$386
School	\$2.50	\$314319	\$419425	\$2.85	\$316	\$421
Special Needs	\$2. 8198	\$338	\$450	\$3.83	\$398	\$531

LICENSED RATE MAXIMUMS

	Registered Family Rate			Certified Family Rate			Certified Center Rate		
	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month
	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly
Infant	\$3.00	\$360	\$480	\$3.50	\$413	\$550	\$4.50	\$469	\$625
Toddler	\$3.00	\$360	\$480	\$3.50	\$428	\$570	\$4.00	\$450	\$600
Preschool	\$2.55	\$356	\$475	\$3.50	\$371	\$495	\$3.25	\$340	\$453
School	\$2.55	\$341	\$455	\$3.50	\$356	\$475	\$3.35	\$372	\$495
Special Needs	\$3.00	\$360	\$480	\$3.50	\$413	\$550	\$4.50	\$469	\$625

Zip Codes for Group Area C: Balance of State, Other State Zips

97001	97020	97021	97026	97029	97032	97033	97037	97039	97040	97050	97054	97057
97063	97065	97101	97102	97130	97136	97137	97144	97145	97147	97324	97329	97335
97342	97345	97346	97347	97350	97358	97359	97360	97364	97368	97369	97375	97384
97388	97390	97396	97406	97407	97409	97410	97411	97412	97413	97414	97416	97417
97419	97425	97427	97428	97429	97430	97432	97433	97434	97435	97436	97437	97438
97439	97441	97442	97443	97447	97449	97450	97451	97453	97458	97460	97461	97462
97463	97464	97466	97467	97468	97469	97472	97473	97476	97480	97481	97484	97486
97488	97490	97491	97492	97493	97494	97495	97496	97497	97498	97499	97522	97523
97526	97527	97530	97531	97532	97533	97536	97537	97538	97539	97540	97541	97543
97544	97601	97603	97604	97620	97621	97622	97623	97624	97625	97626	97627	97630
97632	97633	97634	97635	97636	97637	97638	97639	97640	97641	97710	97711	97712
97720	97721	97722	97730	97731	97732	97733	97734	97735	97736	97737	97738	97739
97740	97741	97742	97750	97751	97752	97753	97754	97758	97761	97810	97814	97817
97818	97819	97820	97821	97822	97823	97824	97825	97826	97827	97828	97830	97831
97833	97834	97835	97836	97837	97838	97839	97840	97841	97842	97843	97844	97845
97846	97848	97850	97856	97857	97859	97861	97862	97864	97865	97867	97868	97869
97870	97871	97872	97873	97874	97875	97876	97877	97880	97882	97883	97884	97885
97886	97901	97902	97903	97904	97905	97906	97907	97908	97909	97910	97911	97913
97914	97918	97919	97920									

- (5) Except to the extent provided otherwise in section (12), (13), or (14) of this rule or for children in contracted child care (see OAR 461-135-0405 and 461-135-0407), this section establishes the ERDC eligibility standard and the client's copayment (copay).
- (a) At initial certification, the ERDC eligibility standard is met for a *need group* (see OAR 461-110-0630) of eight or less if monthly *countable income* (see OAR 461-001-0000) for the *need group* is less than 185 percent of the federal poverty level (FPL), as described in OAR 461-155-0180. The eligibility standard for a *need group* of eight applies to any *need group* larger than eight.
- (b) During the *certification period* (see OAR 461-001-0000) and at recertification the ERDC eligibility standard is met for a *need group* of eight or less if monthly *countable income* for the *need group* during the 12 month period is less than 250 percent FPL or 85 percent state median income (SMI), whichever is higher, as described in OAR 461-155-0180. The eligibility standard for a *need group* of eight applies to any *need group* larger than eight.
- (c) The minimum monthly ERDC copay is \$25.
- (d) The filing group may not exceed the resource limit in OAR 461-160-0015.

- (e) For a filing group (see OAR 461-110-0310) whose *countable income* is at or below 50 percent of the 2007 FPL, the copay is \$25 or 1.5 percent of the filing group's monthly *countable income*, whichever is greater.
- (f) For a filing group whose *countable income* is over 50 percent of the 2007 FPL, the copay amount is determined with the following percentage of monthly income:
 - (A) Divide the filing group's *countable income* by the 2007 FPL, drop all digits beyond two decimal points, subtract 0.5, and multiply this difference by 0.12.
 - (B) Add .015 to the amount in paragraph (A) of this subsection. This sum is the percentage of monthly income used to determine the copay amount. Multiply this sum by the filing group's *countable income* and round to the nearest whole dollar.
- (g) The 2007 federal poverty level used to determine copay amounts under subsections (d) and (e) of this section is set at the following amounts:

Number in Family	Gross Monthly Income	Gross Yearly Income
2	\$1,141	\$13,690
3	1,431	17,170
4	1,721	20,650
5	2,011	24,130
6	2,301	27,610
7	2,591	31,090
8 or more	2,881	34,570

- (6) Subject to the provisions in section (9) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:
 - (a) The monthly rate provided in section (4) of this rule.
 - (b) The product of the hours of care, limited by section (8) of this rule, multiplied by the hourly rate provided in section (4) of this rule.
- (7) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:
 - (a) The amount billed by the provider or providers.

- (b) The monthly rate established in this rule for 215 hours of care.
- (8) The number of payable billed hours of care for a child is limited as follows:
- (a) In the ERDC and TANF programs, the total payable hours of care in a month may not exceed the amounts in paragraphs (A) or (B) of this subsection:
 - (A) 125 percent of the number of child care hours authorized:
 - (i) Under OAR 461-160-0040(2) and (5); or
 - (ii) To participate in activities included in a *case plan* (see OAR 461-001-0025) including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client.
 - (B) The monthly rate established in section (4) of this rule multiplied by a factor of not more than 1.5, determined by dividing the number of hours billed by 215, when the client meets the criteria for extra hours under section (10) of this rule.
 - (b) In the ERDC program, for a client who earns less than the Oregon minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time).
 - (c) In the TANF program, for a client who earns less than the Oregon minimum wage or is self-employed, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the client's employment.
 - (d) In the ERDC program, employed caretakers eligible under OAR 461-135-0400 may have education hours added to the authorized work hours. Education hours may not exceed authorized work hours and combined hours may not exceed 215 hours per month. Education hours are hours required to participate in coursework that leads to a certificate, degree, or job-related knowledge or skills attainment at an institution of higher education approved to receive federal financial aid.
- (9) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (10) of this rule, is the lesser of one of the following:
- (a) The amount billed by the provider or providers; or
 - (b) The monthly rate established in section (4) of this rule multiplied by a factor, of not more than 1.5, determined by dividing the number of hours billed by 215.

- (10) The limit allowed by section (9) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this section, a client has special circumstances when it is necessary for the client to obtain child care in excess of 215 hours in a month to perform the requirements of his or her employment or training required to keep current employment, not including self-employment. This is limited to the following situations:
- (a) The commute time to and from work exceeds two hours per day.
 - (b) The caretaker works an overnight shift and care is necessary for both work hours and sleep hours.
 - (c) The caretaker works a split shift and it is not feasible to care for the child between shifts.
 - (d) The caretaker consistently works more than 40 hours per week.
- (11) The payment available for care of a child who meets the special needs criteria described in subsection (e) of section (1) of this rule is increased in accordance with OAR 461-155-0151 if the requirements of both of the following subsections are met:
- (a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age.
 - (b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.
- (12) Effective May 1, 2012:
- (a) The minimum monthly ERDC copay is \$27.
 - (b) Except as stated in subsection (a) of this section, the Department adds 10 percent to the monthly client copay amount set under section (5) of this rule by multiplying the copay amount by 1.1 and rounding down to the nearest whole dollar.
- (13) Effective April 1, 2016, the ERDC copay is \$27 for no more than three months after closure of Pre-TANF, SFPSS, or TANF benefits when:
- (a) The closure is because an individual in the *need group* had earned income that led to the TANF closure;

- (b) An ERDC *date of request* (see OAR 461-115-0030) is established within 90 days of closure; and
 - (c) The individual is eligible for ERDC.
- (14) The ERDC copay will be reduced starting the month after the ERDC case has been electronically connected to a Department approved child care provider with a Quality Rating and Improvement System (QRIS) star rating of 3, 4, or 5. The copay will be reduced by the following amounts:
- (a) A copay set at \$27 is waived, unless the copay is \$27 under section (13) of this rule in which case the copay is not waived under this section.
 - (b) Copay amounts of \$28 to \$200 are reduced by \$20.
 - (c) Copay amounts of \$201 or more are reduced by 10 percent rounding to the nearest dollar.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.070, 412.006, 412.049

Stats. Implemented: ORS 329A.500, 409.010, 409.050, 409.610, 411.060, 411.070, 411.122, 411.141, 412.006, 412.049, 412.124, 418.485

Legal Status of Benefit Payments

- (1) Under Oregon law, cash benefits are not subject to assignment, transfer, garnishment, levy, or execution, as long as they can be identified as program payments and are separate from other money in the client's possession.
- (2) A cash payment, once issued to or on behalf of the client, becomes vested in the client.
- (3) Except for electronic benefit transfer (EBT), the Department considers a benefit issued if the check has been handed to the client in the branch office, or mailed to the client. The Department considers a benefit issued, and received by the client, when a direct check deposit is made to the client's bank account.
- (4) For EBT, the Department considers benefits issued and received when an EBT card and personal identification number (PIN) have been issued in person to the client, or the EBT card and PIN have been received by the client in the mail during conversion, and the benefits have been deposited to the client's EBT account.
- (5) SNAP program benefits issued by EBT remain available for client access for 12 calendar months from the date of issuance. The EBT system expunges unused benefits after 12 calendar months.
- (6) Benefits, once issued, are unrestricted and do not require accountability for individual expenditures or amounts, unless limited elsewhere in rule.
- (7) In the TA-DVS program, a payment issued on behalf of a client as a vendor or dual payee payment or directly to the client becomes vested in the client when issued. The Department considers the benefit to be issued if the Department has mailed the payment to the vendor or has hand delivered or mailed a dual payee check to the client. Benefits in the TA-DVS program are restricted to uses outlined in OAR 461-135-1230.
- (8) In the REF program:
 - (a) Cash benefits are provided to help meet the basic needs of low-income refugees and may not be used in any *electronic benefit transfer transaction* (see section (10) of this rule) in--
 - (A) Any *liquor store* (see section (10) of this rule);
 - (B) Any *casino, gambling casino, or gaming establishment* (see section (10) of this rule);
 - (C) Any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or

- (D) Any marijuana dispensary.
 - (b) The Department will take steps to ensure clients have adequate access to their cash benefits.
- (9) In the SFPSS and TANF programs:
- (a) Cash benefits are provided to help meet the basic needs of low-income families with *dependent children* (see OAR 461-001-0000) and may not be used in any *electronic benefit transfer transaction in--*
 - (A) Any *liquor store*;
 - (B) Any *casino, gambling casino, or gaming establishment*;
 - (C) Any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or
 - (D) Any marijuana dispensary.
 - (b) The Department will take steps to ensure clients have adequate access to their cash benefits.
- (10) For purposes of sections (8) and (9) of this rule:
- (a) ~~The term~~ "Liquor store" means any retail establishment which sells exclusively or primarily intoxicating liquor. Such term does not include a grocery store which sells both intoxicating liquor and groceries including staple foods (as defined in section 3(r) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(r))). ~~The term~~ "liquor" includes alcoholic beverages broadly, including beer and wine.
 - (b) ~~The terms~~ "eCasino", "gambling casino", ~~and~~ "or gaming establishment" means an establishment with a primary purpose of accommodating the wagering of money, and does not include--
 - (A) A grocery store which sells groceries including such staple foods and which also offers, or is located within the same building or complex as, casino, gambling, or gaming activities; or
 - (B) Any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.
 - (c) ~~The term~~ "eElectronic benefit transfer transaction" means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to

an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

(A) "Electronic benefit transfer transaction" includes transactions in Oregon, outside Oregon, and on tribal lands.

(B) "Electronic benefit transfer transaction" includes using or accessing cash benefits in a private bank account.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.006, 412.014, 412.049

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.117, 411.816, 411.837, 412.006, 412.014, 412.049, 412.151

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~~ comply with at least one of the requirements of either subsection (a) or (b) of this section following subsections:
 - (a) If the provider is not *legally exempt* (see section (11) of this rule):
 - (A) ~~Currently~~ Be currently 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;
 - (B) Complete the Department's background check process;
 - (C) ~~The provider must also~~ Complete the Department's listing process; and
 - (D) ~~Be~~ Be approved by the Department.

 - (b) ~~If the provider is *legally exempt* from being certified or registered with the OCC and a *legally exempt relative* (see section (11) of this rule);~~
 - (A) ~~e~~ Complete the Department's background check process;
 - (B) Complete the Department's listing process; and
 - (C) ~~h~~ Be approved by the Department.

 - (c) If the provider is *legally exempt* and not a *legally exempt relative* for all children in care:
 - (A) Meet all OCC Regulated Subsidy Provider requirements under OAR 414-180-0005 through 414-180-0100;
 - (B) Submit to and pass a site visit at the location where care will be provided;
 - (C) Complete the Department's background check process;

(D) Complete the Department's listing process; and

(E) 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. Any gate or barrier may not pose a risk or hazard to any *child* in care.~~
- (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-Legally exempt providers~~ must complete the "~~Basie~~Introduction to Child Care Health and Safety" two-hour, web-based training as provided in the following subsections: ~~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.~~
- (a) Legally exempt providers with a list date prior to November 1, 2016, must complete the "Introduction to Child Care Health and Safety" training by June 30, 2017.
- (b) Legally exempt providers with a list date of November 1, 2016 or later must complete the "Introduction to Child Care Health and Safety" prior to Department approval.
- (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; Legally exempt providers 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.

- (c) "Legally exempt" means the child care provider is exempt from licensing with the OCC because the provider is not subject to the licensing requirements under OAR 414-205-0000 to 414-205-0170, OAR 414-350-000 to 414-350-0405, and OAR 414-300-0000 to 414-300-0415.
 - (d) "Legally exempt relative" means a *legally exempt* provider who is a relative to all children in care including a great-grandparent, grandparent, aunt, uncle, or sibling not living in the home of any *child* in care.
- (12) Legally exempt providers that are not a *legally exempt relative* to all children in care must meet all of the requirements in this section before approval by the Department, unless otherwise noted:
- (a) Have an up-to-date, in-person infant and child CPR and first aid certification or have a currently valid waiver of this requirement from the Child Care Resource and Referral program.
 - (b) Complete the Recognizing and Reporting Child Abuse and Neglect (RRCAN) web-based training. If training is not immediately available, the Department may approve a child care provider prior to completing the training, but for no more than 90 day
 - (c) Complete six hours of ongoing education in each two-year listing period as provided in this subsection. All trainings must be accepted by the Oregon Center for Career Development (OCCD) and be part of the OCCD's 10 Core Knowledge Categories recognized by Oregon Registry Online to count toward the six hours.
 - (A) Two of the six hours must fall under the "Human Growth and Development" category; and
 - (B) Two of the six hours must cover "Understanding & Guiding Behavior".
- (13) Child care centers or programs that are *legally exempt* from certification or registration with the OCC, are located in a commercial or institutional facility, and receive payment from the Department on behalf of a family receiving a child care subsidy, may not exceed the following staff to children in care ratios:
- (a) Six weeks through 23 months of age, the minimum number of staff to children is one to four. The maximum number of children in a group is eight.
 - (b) 24 months through 35 months of age, the minimum number of staff to children is one to five. The maximum number of children in a group is 10.

- (c) 36 months of age to attending kindergarten, minimum number of staff to children is one to 10. The maximum number of children in a group is 20.
- (d) Attending kindergarten and older, the minimum number of staff to children is one to 15. The maximum number of children in a group is 30.
- (e) In a mixed-age group of children, the number of staff and group size shall be determined by the age of the youngest child in the group.

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

Special Payments; SNAP Employment and Training Programs

In the SNAP program:

- (1) The Department may authorize special payments to clients participating in one of the three SNAP Employment and Training programs described in OAR 461-001-0020 for transportation and other costs identified in the client's *case plan* (see OAR 461-001-0020) subject to the provisions of this rule.
 - (a) Costs must be directly related to an approved component in the *case plan* and be reasonable and necessary.
 - (b) The Department must consider lower cost alternatives.
 - (c) The Department may deny, reduce, or close special payments when costs exceed the local district's budget for employment and training.
 - (d) Special payments are not intended to replace other funding available in the community. The Department or the Employment and Training contractor and the client must seek resources reasonably available to the client in order to comply with the requirements in the *case plan*.
 - (e) When this rule authorizes a special payment for transportation, and public transportation is available, the Department may issue bus passes or tickets to the client sufficient to enable the client to participate in the program activities identified in the *case plan*.
- (2) In the 50 percent (50/50) reimbursement program:
 - (a) Funds may be used to pay for tuition and mandatory school fees charged to the general public. Funds may not be used to pay for state or local education entitlements.
 - (b) Special payments for *job retention* (see OAR 461-001-0020) is only available if the individual was participating in a component other than *job retention* prior to securing employment.
- (3) In the OFSET program, the Department may authorize payment of not more than \$80 over ~~the an~~ eight week participation period for transportation and other costs identified in the client's *case plan*. If necessary, the *case plan* is adjusted to ensure that OFSET program participation requirements may be fulfilled at no cost to the client.
- (4) In ~~non-waivered one of the time limit~~ counties (see OAR 461-135-0520), the Department may authorize payment of not more than \$100 a month to reimburse an ABAWD for transportation and other costs identified in the client's *case plan*. If necessary, the *case*

plan is adjusted to ensure the ABAWD work requirements may be fulfilled at no cost to the client.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.121, 411.816, 411.825, 411.837

461-190-0500
Workfare; SNAP

~~Eff. 4-1-16~~

Eff. 1-1-17

- (1) Workfare is a voluntary employment program to meet the work requirements in OAR 461-135-0520 for ABAWD (see OAR 461-135-0520) clients who reside in ~~Multnomah or Washington County~~ *time limit counties* (see OAR 461-135-0520).
- (2) For each individual that the Department determines has a potential for locating unsubsidized employment, Workfare begins with 30 days of intensive job search or job search training. If the Department determines this labor market test is inappropriate, Workfare begins with a job site placement.
- (3) After the first 30 days, individuals who are not participating in an activity listed in OAR 461-135-0520(3)(d) may continue in a Workfare job site placement.
- (4) Individuals in a Workfare job site placement must complete an average of five hours per week (at least 20 hours per month). The individual must meet the monthly requirements in order to comply with the requirements of the Workfare program, unless they have good cause under OAR 461-130-0327.
- (5) Individuals in a Workfare job site placement must provide proof from the employer of Workfare hours worked each month.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.116, 411.816

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.116, 411.816

Definitions and Categories of Overpayments

This rule applies to benefits and services delivered under chapters 410, 411, and 461 of the Oregon Administrative Rules.

(1) "Overpayment" means:

- (a) A benefit or service received by or on behalf of a client, or a payment made by the Department on behalf of a client, that exceeds the amount for which the client is eligible.
- (b) A payment made by the Department and designated for a specific purpose which is spent by a person on an expense not approved by the Department.
 - (A) In the REF program, there is a rebuttable presumption that the full amount of cash benefits was improperly spent in violation of OAR 461-165-0010(8)(a) when cash benefits are used or accessed in Oregon, outside of Oregon, or on tribal lands at:
 - (i) Any *liquor store* (see OAR 461-165-0010);
 - (ii) Any *casino, gambling casino, or gaming establishment* (see OAR 461-165-0010); ~~or~~
 - (iii) Any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or
 - (iv) Any marijuana dispensary.
 - (B) In the SFPSS and TANF programs, there is a rebuttable presumption that the full amount of cash benefits was improperly spent in violation of OAR 461-165-0010(9)(a) when cash benefits are used or accessed in Oregon, outside of Oregon, or on tribal lands at:
 - (i) Any *liquor store*;
 - (ii) Any *casino, gambling casino, or gaming establishment*; ~~or~~
 - (iii) Any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or
 - (iv) Any marijuana dispensary.

(C) The rebuttable presumptions in paragraphs (A) and (B) of this section also apply when an individual in a location covered in paragraphs (A) or (B) uses or accesses cash benefits from a private bank account.

- (c) A payment for child care made by the Department to, or on behalf of, a client that:
 - (A) Is paid to an ineligible provider;
 - (B) Exceeds the amount for which a provider is eligible;
 - (C) Is paid when the client was not engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-001-0025 and OAR 461-190-0151 to OAR 461-190-0401);
 - (D) Is paid when the client was not eligible for child care benefits; or
 - (E) Has given an electronic benefit transfer (EBT) card, card number, or personal identification number (PIN) to a provider for the purpose of checking a *child* (see OAR 461-001-0000) in or out from the provider's child care.
- (d) A misappropriated payment when a person cashes and retains the proceeds of a check from the Department on which that person is not the payee and the check has not been lawfully endorsed or assigned to the person.
- (e) A benefit or service provided for a need when that person is compensated by another source for the same need and the person fails to reimburse the Department when required to do so by law.
- (f) A cash benefit received by an individual in the GA or SFPSS programs for each month for which the client receives a retroactive SSI lump sum payment.
- (g) In the TA-DVS program, a payment made by the Department to an individual or on behalf of an individual when the individual intentionally and without intimidation or coercion by an abuser:
 - (A) Makes a false or misleading statement or misrepresents, conceals, or withholds information for the purpose of establishing *eligibility* (see OAR 461-001-0000) for or receiving a benefit from the TA-DVS program; or
 - (B) Commits any act intended to mislead or misrepresent, conceal, or withhold information for the purpose of establishing *eligibility* for or receiving a benefit from the TA-DVS program.
- (2) The Department may establish an *overpayment* for the *initial month* (see OAR 461-001-0000) of *eligibility* under circumstances including, but not limited to:

- (a) The filing group (see OAR 461-110-0310), ineligible student, or *authorized representative* (see OAR 461-115-0090) withheld information;
 - (b) The filing group, ineligible student, or *authorized representative* provided inaccurate information;
 - (c) The Department failed to use income reported as received or anticipated in determining the benefits of the filing group; or
 - (d) The error was due to an error in computation or processing by the Department.
- (3) In the OCCS Medical programs, the Department may establish an *overpayment* for the *budget month* (see OAR 410-200-0015) when the OCCS medical program *household group* (see OAR 410-200-0015) or *authorized representative* (see OAR 410-200-0015) withheld or provided inaccurate information.
- (4) Overpayments are categorized as follows:
- (a) An administrative error *overpayment* is an *overpayment* caused by any of the following circumstances:
 - (A) The Department fails to reduce, suspend, or end benefits after timely reporting by the filing group, OCCS medical program *household group*, ineligible student, or *authorized representative* (see OAR 461-115-0090 and 410-200-0015) of a change covered under OAR 461-170-0011 or 410-200-0235 and that reported change requires the Department to reduce, suspend, or end benefits;
 - (B) The Department fails to use the correct benefit standard;
 - (C) The Department fails to compute or process a payment correctly based on accurate information timely provided by the filing group, OCCS medical program *household group*, ineligible student, or *authorized representative*;
 - (D) In the GA and SFPSS programs, the Department fails to require a client to complete an interim assistance agreement; or
 - (E) The Department commits a procedural error that was no fault of the filing group, OCCS medical program *household group*, ineligible student, or *authorized representative*.
 - (b) A client error *overpayment* is any of the following:
 - (A) An *overpayment* caused by the failure of a filing group, OCCS medical program *household group*, ineligible student, or *authorized representative* to declare or report information or a change in circumstances as required under OAR 461-170-0011 or 410-200-0235, including information

available to the Department, that affects the client's *eligibility* to receive benefits or the amount of benefits.

- (B) A client's unreduced liability or receipt of unreduced benefits pending a contested case hearing decision or other final order favorable to the Department.
 - (C) A client's failure to return a benefit known by the client to exceed the correct amount.
 - (D) A client's use of a JOBS or SFPSS program support payment (see OAR 461-190-0211) for other than the intended purpose.
 - (E) A payment for child care when the client was not engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-001-0025 and OAR 461-190-0151 to OAR 461-190-0401).
 - (F) A payment for child care when the client was not eligible for child care benefits.
 - (G) The failure of a client to pay his or her entire share of the cost of services or the participant fee (see OAR 461-160-0610 and 461-160-0800) in the month in which it is due.
 - (H) An *overpayment* caused by a client giving an electronic benefit transfer (EBT) card, card number, or personal identification number (PIN) to a provider for the purpose of checking a *child* in or out from the provider's child care.
 - (I) In the REF, SFPSS, and TANF programs, an *overpayment* caused by the client using or accessing cash benefits in any electronic benefit transaction in any liquor store; casino, gambling, or gaming establishment; ~~or~~ retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or marijuana dispensary (see OAR 461-165-0010).
- (c) A fraud *overpayment* is an *overpayment* determined to be an *intentional program violation* (see OAR 461-195-0601 and 461-195-0611) or substantiated through a criminal prosecution.
 - (d) In the SNAP program, a provider error *overpayment* is an *overpayment* made to a drug or alcohol treatment center or residential care facility that acted as a client's *authorized representative*.
 - (e) In the child care program, a provider error *overpayment* is a payment made by the Department on behalf of a client to a child care provider when:

- (A) Paid to an ineligible provider; or
 - (B) The payment exceeds the amount for which a provider is eligible.
- (5) When an *overpayment* is caused by both an administrative and client error in the same month, the Department determines the primary cause of the *overpayment* and assigns as either an administrative or client error *overpayment*.
- (6) In the TANF and TA-DVS programs, when an *overpayment* puts the client at greater risk of *domestic violence* (see OAR 461-001-0000), the *overpayment* is waived (see OAR 461-135-1200).
- (7) Except as provided in section (8) of this rule, the Department establishes an *overpayment* when the following thresholds are exceeded:
- (a) Administrative error overpayments concerning --
 - (A) Cash and child care programs, when the amount is greater than \$200;
 - (B) SNAP open case, when the amount is greater than \$100; and
 - (C) SNAP closed case, when the amount is greater than \$200.
 - (b) Client error overpayments in:
 - (A) Cash and child care programs, when the amount is greater than \$200;
 - (B) SNAP open case, when the amount is greater than \$100;
 - (C) SNAP closed case, when the amount is greater than \$200;
 - (D) Medical programs, when the amount is greater than \$750.
 - (c) Provider error overpayments in:
 - (A) Cash and child care programs, when the amount is greater than \$200;
 - (B) SNAP open case, when the amount is greater than \$100;
 - (C) SNAP closed case, when the amount is greater than \$200.
- (8) There are no *overpayment* thresholds in all of the following situations:
- (a) In SNAP program, if the *overpayment* was identified in a quality control review.

- (b) In all programs, if the *overpayment* was caused by a client's receipt of continuing benefits in a contested case.
- (c) In all programs, if the *overpayment* was caused by possible fraud by a client or provider.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.081, 411.404, 411.816, 412.001, 412.014, 412.049, ~~HB 2089 (2013, Section 10), 413.085~~

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.081, 411.117, 411.404, 411.620, 411.640, 411.690, 411.816, 411.892, 412.001, 412.014, 412.049, 413.085, ~~414.025~~, 416.350