

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

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

Department of Human Services, Office of Self-Sufficiency Programs	461
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Agency and Division	Chapter Number
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Rules Coordinator	Address	Telephone	Email
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to become effective April 1, 2017 through September 27, 2017.*

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

Rule Caption: Disregarding unearned shelter-in-kind income in APD medical programs

In the Matter of: Amending OAR 461-145-0470, 461-155-0020, 461-155-0250, 461-155-0660, 461-155-0670 and suspending OAR 461-155-0300

AMEND: 461-145-0470, 461-155-0020, 461-155-0250, 461-155-0660, 461-155-0670

SUSPEND: 461-155-0300

ORS 409.050, 411.060, 411.070, 411.083, 411.704, 411.706, 411.816, 412.014, 412.049

Stat. Auth.

Other Auth.

ORS 409.010, 411.060, 411.070, 411.083, 411.704, 411.706, 411.816, 412.014, 412.049

Stats. Implemented

Rule Summary

OAR 461-145-0470 about shelter-in-kind income is being amended to exclude unearned shelter-in-kind in the OSIP, OSIPM, and QMB programs. OAR 461-155-0020 about pro-rated standards-adjusted number in household is being amended to remove OSIP, OSIPM, and QMB programs. OAR 461-155-0250 about OSIPM income and payment standards is being amended to remove the OSIPM items of need chart, and the adjusted number in household labels and the pro-rated standards from the adjusted income standards chart (section (3)). OAR 461-155-0300 about shelter-in-kind standards is being suspended. OAR 461-155-0660 about special need, accommodation allowance and OAR 461-155-0670 about special need, special diet allowance are being amended to remove references to the shelter and food standards in 461-155-0250 (which are removed) and refer to the actual dollar amounts instead. These rule changes implement the federally-approved state plan amendment that has an effective date of April 1, 2017 and will support client eligibility.

The rule text showing changes is available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_temporary.htm.

Need for the Rules

The Department needs to change six rules to implement the federally-approved state plan amendment that has an effective date of April 1, 2017 and support client eligibility by excluding unearned shelter-in-kind income in the OSIPM and QMB programs. OAR 461-145-0470 about shelter-in-kind income is being amended to exclude unearned shelter-in-kind in the OSIP, OSIPM, and QMB programs. Because applying pro-rated OSIPM standards is another way of attributing unearned shelter-in-kind income to individuals, these standards will be eliminated from OAR 461-155-0250 and OSIP, OSIPM, and QMB programs will be removed from OAR 461-155-0020. Because the items of need are related to the pro-rated income standards, this chart will be removed as it will no longer be relevant. OAR 461-155-0020 about pro-rated standards-adjusted number in household is being amended to remove OSIP, OSIPM, and QMB programs. OAR 461-155-0300 about shelter-in-kind standards is being suspended. OAR 461-155-0660 about special need, accommodation allowance and OAR 461-155-0670 about special need, special diet allowance are being to remove references to the shelter and food standards in 461-155-0250 (which are removed) and refer to the actual dollar amounts instead.

Documents Relied Upon

Federal letter of approval of Oregon State Plan Amendment Transmittal Number 17-0001, with attachments, March 10, 2017, sent to Lynn Saxton, Oregon Health Authority Director, available from Rule Coordinator, DHS Self Sufficiency Programs, 500 Summer Street NE, E48, Salem, Oregon 97301

Justification of Temporary Rules

The Department finds that failure to act promptly by amending OAR 461-145-0470, 461-155-0020, 461-155-0520, 461-155-0660, and 461-155-0670 and by suspending OAR 461-155-0300 will result in serious prejudice to the public interest, the Department, and clients in these programs. The Department needs to proceed by temporary rule to implement the federally-approved state plan amendment that has an effective date of April 1, 2017 and support client eligibility by excluding unearned shelter-in-kind income in the OSIPM and QMB programs.

- (1) Except as provided in section (2) of this rule:
 - (a) In the ERDC program, *shelter-in-kind* (see OAR 461-001-0000) payments are excluded, except earned *shelter-in-kind* is not excluded in the ERDC program.
 - (b) In the REF, REFM, and TANF programs, except for child support (see OAR 461-145-0080 and 461-145-0280), *shelter-in-kind* payments are excluded.
 - (c) In the SNAP program, *shelter-in-kind* housing and utility payments are excluded (see OAR 461-145-0130 about exclusion of earned in-kind income), except an expenditure by a business entity for *shelter costs* (see OAR 461-001-0000) of a *principal* (see OAR 461-145-0088) is counted as income.
 - (d) In the OSIP, OSIPM, and QMB programs:
 - (A) ~~Except as provided in paragraph (C) of this subsection, u~~Unearned *shelter-in-kind* income is ~~treated as follows:~~
 - ~~(i) Shelter in-kind payments from HUD are excluded.~~
 - ~~(ii) If the shelter in-kind includes all housing and utilities, the Shelter in Kind Standard for total shelter (see OAR 461-155-0300) is counted as unearned income.~~
 - ~~(iii) If the shelter in-kind includes all housing (utilities are not included), the Shelter in Kind Standard for housing costs (see OAR 461-155-0300) is counted as unearned income.~~
 - (B) ~~Except as provided in paragraph (C) of this subsection, e~~Earned *shelter-in-kind* income is treated as follows:
 - (i) If shelter is provided for services related to the employer's trade or business and acceptance of the shelter is a condition of employment, the *shelter-in-kind* income is treated in accordance with paragraph (A) of this subsection.
 - (ii) Except as provided in subparagraph (i) of this paragraph, the *fair market value* (see OAR 461-001-0000) of the shelter is counted as earned income.
 - (C) ~~In the OSIP and OSIPM programs, when a prorated standard is used (see OAR 461-155-0020 and OAR 461-155-0250) shelter in-kind income is excluded.~~

- (2) A payment for which there is a legal obligation to pay to a member of the *financial group* (see OAR 461-110-0530) that is made to a third party for shelter expenses of a member of the *financial group* is counted as unearned income.

Stat. Auth.: ORS 409.050, 411.060, 411.083, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.083, 411.404, 411.816, 412.014, 412.049, 414.042

(1) Prorated standards are used only in the no-adult tables ~~and the non-SSI OSIP and OSIPM table.~~

~~(2) In the OSIP and OSIPM programs:~~

~~(a) Prorated standards only apply when an individual or a couple receives free food and shelter from others living in the household, and the individual or couple does not have an ownership interest or rental liability in the residence.~~

~~(b) Prorated standards are not applied to cases in which an individual receives services described in OAR chapter 411, division 015.~~

~~(c) Shelter in kind (see OAR 461-145-0470) may apply when prorated standards are not used.~~

(2) This rule does not apply to the OSIP, OSIPM, and QMB programs.

(3) In the TANF program, the no-adult tables are used when there are no adults in the TANF *benefit group* (see OAR 461-110-0750).

(4) In all programs except the TANF program, prorated standards are based on the number of people in the *need group*, compared to the adjusted number in the *household group* (see OAR 461-110-0210). The adjusted number in the household is determined by taking the total number of individuals in the household, minus the following individuals unless they are included in the *need group*:

(a) Unborns.

(b) Individuals receiving *long-term care* (see OAR 461-001-0000) or *home and community-based care* (see OAR 461-001-0030).

(c) Foster children.

(d) Children receiving adoption assistance.

(e) Live-in attendants who live with the filing group (see OAR 461-110-0310) solely to provide necessary medical or housekeeping services and are paid to provide these services.

(f) Landlords and tenants. A landlord-tenant relationship exists if one person pays another at *fair market value* (see OAR 461-001-0000) for housing and if--

(A) The filing group lives independently from the landlord or tenant;

- (B) The filing group has and uses sleeping, bathroom, and kitchen facilities that are separate from the landlord or tenant; and
- (C) If bathroom or kitchen facilities are shared, the housing must be a commercial establishment that provides either room, board, or both for *fair market value* compensation.

~~(g) In the OSIP and OSIPM programs only:~~

- ~~(A) The biological and adoptive children of either spouse (see OAR 461-001-0000).~~
- ~~(B) Recipients of OCCS Medical Programs (see OAR 461-001-0000), OSIP, OSIPM, QMB, or TANF.~~

- (5) In the TANF program, prorated standards are based on the number of people in the *benefit group* (see OAR 461-110-0750), compared to the adjusted number in the *household group* (see OAR 461-110-0210). The adjusted number in the household is determined by taking the total number of individuals in the household, minus the following individuals unless they are included in the *benefit group*:
 - (a) Unborns.
 - (b) Individuals receiving *long-term care* (see OAR 461-001-0000) or *home and community-based care* (see OAR 461-001-0030).
 - (c) Foster children.
 - (d) Children receiving adoption assistance.
 - (e) Live-in attendants who live with the filing group (see OAR 461-110-0310 and 461-110-0330) solely to provide necessary medical or housekeeping services and are paid to provide these services.
 - (f) Landlords and tenants. A landlord-tenant relationship exists if one person pays another at *fair market value* (see OAR 461-001-0000) for housing and if--
 - (A) The filing group lives independently from the landlord or tenant;
 - (B) The filing group has and uses sleeping, bathroom, and kitchen facilities that are separate from the landlord or tenant; and
 - (C) If bathroom or kitchen facilities are shared, the housing must be a commercial establishment that provides either room, board, or both for *fair market value* compensation.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.402, 411.404, 411.706, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.402, 411.404, 411.706, 412.049, 413.085, 414.685

Income and Payment Standard; OSIPM

- (1) An individual who is assumed eligible per OAR 461-135-0010 is presumed to meet the income limits for the OSIPM program.
- (2) An individual in a *nonstandard living arrangement* (see OAR 461-001-0000) meeting the requirements of OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in section (4) of this rule, must have *countable* (see OAR 461-001-0000) income that is equal to or less than 300 percent of the full SSI standard for a single individual (except OSIPM-EPD) or have established a qualifying trust as specified in OAR 461-145-0540(10)(c).
- (3) ~~The OSIPM (except OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows:~~

OSIPM Items of Need				
	One Person in Need Group		Two People in Need Group	
Adjusted No. in Household	One	Two or More	Two	Three or More
Shelter	451.00	209.00	559.00	207.00
Food	178.00	175.00	341.00	324.34
Other	106.00	106.00	203.00	204.00

- (~~43~~) An individual, other than one identified in section (1), (2), or (~~65~~) of this rule, must have adjusted income below the standard in this section. ~~The Department determines the adjusted number in the household under OAR 461-155-0020.~~

OSIPM Adjusted Income Standards				
	One Person in Need Group		Two People in Need Group	
Adjusted No. in Household Number in Need Group	One	Two or More	Two	Three or More
AB/AD/OAA	735.00	490.00	1,103.00	735.34

- (~~54~~) In the OSIPM (except OSIPM-EPD) program, an individual in a nursing facility or an ICF-MR is allowed the following amounts for clothing and personal incidentals:
 - (a) For an individual who receives a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.

- (b) For all other individuals, \$60.18 is allowed.
- (c) For an individual identified in subsection (b) of this section with *countable* income (including any SSI) that is less than \$60.18, the payment standard is equal to the difference between the individual's *countable* income (including any SSI) and \$60.18. For the purposes of this subsection, *countable* income includes income that would otherwise be *countable* for an individual who is assumed eligible under OAR 461-135-0010.

(65) In the OSIPM-EPD program, the adjusted earned income limit is 250 percent of the federal poverty level for a family of one.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706

461-155-0300
Shelter-in-Kind Standard

Temporary —

Eff. ~~1-1-17~~ 4-1-17

THIS RULE IS SUSPENDED

In the OSIP, OSIPM, and QMB programs, the Shelter-in-Kind Standard is:

- (1) For a single individual:
 - (a) Living alone, \$451 for total shelter or \$271 for housing costs only.
 - (b) Living with others, \$209 for total shelter or \$125 for housing costs only.
- (2) For a couple:
 - (a) Living alone, \$559 for total shelter or \$335 for housing costs only.
 - (b) Living with others, \$207 for total shelter or \$124 for housing costs only.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Special Need; Accommodation Allowance

- (1) An OSIP or OSIPM program client living in a nursing facility is not eligible for an accommodation allowance. An OSIP or OSIPM program client living in a *nonstandard living arrangement* (see OAR 461-001-0000) is not eligible for an accommodation allowance unless he or she is receiving, or is eligible to receive after a temporary absence, *home and community-based care* (see OAR 461-001-0030) in-home services. An OSIP or OSIPM program client receiving SSI or having an adjusted income less than the OSIPM program income standard (except a client in a nursing facility) or eligible to receive or receiving *home and community-based care* in-home services is allowed an accommodation allowance if the client is 18 years of age or older and meets the criteria in section (2) or (3) of this rule.
- (2) Temporary absence of client from home.
 - (a) A temporary accommodation allowance may be authorized, when permitted under section (1) of this rule, if a client meets the following criteria:
 - (A) The client leaves his or her home or rental property and enters an adult foster care facility, assisted living facility, group care home, hospital, nursing facility, residential care facility, specialized living facility, or state psychiatric institution;
 - (B) The client cannot afford to keep the home without the allowance;
 - (C) The client will be able to return home within six months of leaving, according to a written statement from a primary practitioner, RN, or PAS (pre-admission screening) RN; and
 - (D) The home will accommodate the service plan of the client when the client returns.
 - (b) The allowance may be authorized for six months. If, after six months, the client continues to meet the criteria in subsection (a) of this section, an extension may be approved in writing by a supervisor.
 - (c) The accommodation allowance equals the total of the client's housing cost, including taxes and insurance, plus the limited standard utility allowance for the SNAP program provided in OAR 461-160-0420.
- (3) Additional cost for accommodation. A client meeting the criteria in section (1) of this rule may receive an accommodation allowance if the client's shelter cost exceeds ~~the shelter standard in OAR 461-155-0250(2)~~ \$451 for a one-person need group (see OAR 461-110-0610) or \$559 for a two-person need group, and the requirements of one of the following subsections are met:

- (a) The client has a documented increase in rent associated with access by an individual with a disability; or
 - (b) The client has been assessed to need a live-in provider, has accepted the services of a live-in provider, and requires an additional bedroom for the live-in provider.
- (4) The accommodation allowance is determined as follows:
- (a) For a client who receives an accommodation allowance based on increased costs associated with access by an individual with a disability, only the additional increase in cost for the accommodation is allowed.
 - (b) For a client who receives an accommodation allowance based on the need for an additional bedroom for a live-in provider, the amount of the accommodation allowance is the limited standard utility allowance for the SNAP program under OAR 461-160-0420 plus --
 - (A) One-third of the monthly rental cost; or
 - (B) One-third of the monthly payment on the property agreement (including mortgage, trust deed, or land sale contract). The property agreement is the agreement existing at the time the client is approved for the accommodation allowance. The accommodation allowance for the housing portion ends if the debt is refinanced, unless the refinancing was done only to reduce the original property agreement's interest rate or total monthly payment amount and the owner realized no direct or indirect payment of the home's equity value from the refinancing.
 - (i) If the refinancing requirement under this paragraph is met, the amount of the accommodation allowance is one-third of the refinanced property agreement amount plus the limited standard utility allowance under OAR 461-160-0420.
 - (ii) If the refinancing requirement under this paragraph is not met and the housing portion of the accommodation allowance ends, the client remains eligible only for the limited standard utility allowance portion under OAR 461-160-0420.
- (5) Special requirements.
- (a) A client who rents and qualifies for an allowance under section (3) of this rule must take the steps necessary to obtain subsidized housing under any federal or state housing program. A client who fails, at any time, to take the steps necessary to obtain subsidized housing reasonably available is ineligible for the allowance.

A client, who has been denied or revoked from participation in any rent subsidy program based on the client's own actions is ineligible for benefits under this rule.

- (b) A client who rents housing and refuses subsidized housing will no longer be eligible for an accommodation allowance, except that if the housing that is offered is not suitable, related to accommodations, and the client continues to have increased costs related to accommodations in the client's current living situation, the accommodation allowance may continue until such time as appropriate subsidized housing is found.

Stat. Auth.: ORS 411.060, 411.070, 411.704, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.704, 411.706

Special Need; Special Diet Allowance

- (1) In the OSIP, OSIPM, REF, REFM, SFPSS, and TANF programs, a client is not eligible for a special diet allowance if receiving any of the following:
 - (a) Room and board.
 - (b) Residential care facility services or assisted living facility services.
 - (c) Nursing facility services.
 - (d) Adult foster care services.
 - (e) An allowance for restaurant meals.
 - (f) A commercial food preparation diet.
- (2) An REF, REFM, SFPSS, or TANF client, or an OSIP or OSIPM client receiving SSI, having an adjusted income less than the OSIPM program income standard under OAR 461-155-0250, or receiving in-home services is eligible for a special diet allowance if the client meets the following requirements:
 - (a) The client would be in an imminent life-threatening situation without the diet, as verified by medical documentation from a Department-approved medical authority (see OAR 461-125-0830); and
 - (b) A nutritionist verifies that the special diet needed exceeds the cost of a regular diet.
- (3) The amount of a special diet allowance is calculated as follows:
 - (a) In the REF, REFM, SFPSS, and TANF programs, the difference between the actual cost of the special diet and a prorated share of the SNAP program benefit for the appropriate number of clients in the *benefit group* (see OAR 461-110-0750).
 - (b) In the OSIP and OSIPM programs, the lesser of ~~the following paragraph (A) or (B) of this subsection:~~
 - (A) The difference between the actual cost of the special diet and: ~~the amount provided in the basic standard for food (see OAR 461-155-0250).~~
 - (i) \$178 for a one-person *need group* (see OAR 461-110-0630).
 - (ii) \$341 for a two-person *need group*.

(B) A maximum of \$300 per month, or an exceptional amount, authorized by the SPD Program Assistance Section, which will not exceed the cost of home IV therapy.

(4) Local management staff must approve the request for a special diet allowance.

(5) Each special diet allowance must be reviewed at six-month intervals.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.706, 412.014, 412.049