

Oregon Secretary of State
**Notice of Proposed Rulemaking Hearing and
Statement of Need and Fiscal Impact**

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

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Rules Coordinator	Address	Telephone	Email Address
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Rule Caption: *Amending rules relating to APD medical programs*

In the Matter of: *The amendment of OAR 461-001-0000, 461-110-0210, 461-110-0410, 461-110-0530, 461-115-0090, 461-120-0310, 461-120-0315, 461-120-0330, 461-135-0745, 461-135-0750, 461-135-0780, 461-135-0875, 461-135-0950, 461-140-0070, 461-145-0010, 461-145-0080, 461-145-0140, 461-145-0261, 461-145-0330, 461-145-0370, 461-145-0380, 461-155-0250, 461-155-0600, 461-155-0610, 461-155-0680, 461-160-0620, 461-160-0630, 461-165-0120, 461-175-0230, 461-180-0090*

Submit Comments: Written comments may be submitted until Thursday, August 24, 2017 at 5:00 p.m. via email to robert.trachtenberg@dhsosha.state.or.us, faxed to 503-373-7032, or mailed to Robert Trachtenberg, Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon, 97301.

Public Hearing: Wednesday, August 23, 2017 at 11:00 a.m.
500 Summer St. NE, room 254
Salem, OR 97301

This location is accessible for people with mobility impairments and auxiliary aids are available upon request.

RULEMAKING ACTION

AMEND: 461-001-0000, 461-110-0210, 461-110-0410, 461-110-0530, 461-115-0090, 461-120-0310, 461-120-0315, 461-120-0330, 461-135-0745, 461-135-0750, 461-135-0780, 461-135-0875, 461-135-0950, 461-140-0070, 461-145-0010, 461-145-0080, 461-145-0140, 461-145-0261, 461-145-0330, 461-145-0370, 461-145-0380, 461-155-0250, 461-155-0600, 461-155-0610, 461-155-0680, 461-160-0620, 461-160-0630, 461-165-0120, 461-175-0230, 461-180-0090

REPEAL: 461-115-0090(T), 461-135-0950(T), 461-180-0090(T)

ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 413.085, 414.685

Stat. Auth.

42 USC 1382c(f), 42 USC 1396d, 42 USC 1396r-5, Section 503 of Public Law 94-566 (90 Stat. 2685 (1976)), Public Law 106-501, 7 CFR 273.9, 20 CFR 416.1202, 20 CFR 416.1210, 20 CFR 416.1231, 42 CFR 431.201 – 213, 42 CFR 433.135, 42 CFR 433.145, 42 CFR 433.148, 42 CFR 435.622, 42 CFR 435.725, 42 CFR 435.726, 42 CFR 435.915, 45 CFR 261.10, 45 CFR 263.2

Other Auth.

Stats. Implemented

Rule Summary

OAR 461-001-0000 defining terms is being amended to add definitions of “blind work expenses” “impairment related work expenses” “eligible child” “ineligible” and “ineligible child” as well as to revise the definitions of “child”, “long term care” and “nonstandard living arrangement” to support program requirements, make the rules consistent, and follow federal requirements. This rule is also being amended to treat emancipated minors in the same manner as adults for the REF and REFM programs and change the definition of “teen parent” to support program requirements for teens and participation in the JOBS, REF, REFM, and TANF programs.

OAR 461-110-0210 which sets out who is considered part of the household group for determining eligibility is being amended to add a reference to the acute care setting rule along with the existing references to service settings. The service settings language is being changed from home and community based and nursing facility care to nonstandard living arrangements. It is also being amended to specify that OSIPM recipients who remain in an acute care hospital for 30 days or more are no longer in the household group. These amendments clarify that individuals in acute care settings are treated like those applying for or receiving services when determining financial eligibility. This rule is also being amended to remove the 30-day limit on household membership for the Refugee and Refugee Medical programs when the absence is due to emergent need, correcting an error in the rule.

OAR 461-110-0410 about filing groups in the OSIPM and QMB programs is being amended to add a reference to the acute care setting rule along with the existing references to service settings to clarify that individuals in acute care settings are treated like those applying for or receiving services when determining financial eligibility.

OAR 461-110-0530 about financial groups is being amended to add a reference to the acute care setting rule along with the existing references to service settings to clarify that individuals in acute care settings are treated like those applying for or receiving services when determining financial eligibility. This rule is also being amended indicate that individuals outside the household in the filing group may be included in the financial group, aligning the rule text with current practices.

OAR 461-115-0090 about authorized representatives, OAR 461-135-0950 about eligibility for inmates and residents of state hospitals, and OAR 461-180-0090 about the effective date for starting medical benefits are being amended to make permanent temporary rule amendments effective July 1, 2017 that follow state statutes and state that incarcerated individuals and individuals in a state hospital may receive benefits under OSIPM and QMB when temporarily released for hospital procedures; remove a provision in the definition of serious mental illness regarding the substance abuse and the likelihood that a person will no longer meet an applicable diagnosis if the substance abuse discontinues or declines; substitute the term “state hospital” to clarify OAR 461-135-0950; remove the 12-month limit on suspension of benefits for individuals entering public institutions or the state hospital; replace the name of the specific former contractor for certification services with a general statement of certification; allow eligibility to certain state hospital residents who entered the state hospital before reaching age 22 (instead of age 21); authorize a designee of a correctional facility to apply for OSIPM and QMB on behalf of a person residing in that correctional facility; specify legitimate uses of confidential information for an applicant who is a resident of a correctional facility and when that information may be disclosed; and specify that the effective date for starting medical benefits under the OSIPM program for a person released from a correctional institution is the release date or the date the person begins hospitalization outside of the correctional facility.

OAR 461-120-0310 about assignment of support rights is being amended to state that the requirement to pursue healthcare/cash medical support applies only to the individual who can legally assign the rights and not someone who cannot legally assign rights (such as a child). OAR 461-120-0315 about medical assignment is being amended to clarify that the assignment of rights is automatic and not dependent on an individual's consent. The amendment also makes a further distinction between who actually has to assign to stay eligible for the OSIPM and QMB programs and whose rights that person must assign. The changes to both rules also clarify that those whose rights are automatically assigned or must be assigned do not have to be in the OSIPM/QMB filing or benefit group – rights are and must be assigned for anyone receiving any type of medical assistance under the state plan.

OAR 461-120-0330 regarding requirements to pursue assets is being amended to clarify that the penalty for failure to comply can only be applied while it is still possible to do so and that for OSIPM, cashing out or closing would constitute a conversion of a resource. This rule is also being amended to remove the requirement to pursue assets in an individual's home country for REF and REFM, consistent with federal requirements.

OAR 461-135-0745 about eligibility of individuals in acute care settings for the OSIPM program is being amended to add specific language regarding evaluating these individuals as if they were applying for services to clarify that individuals in acute care settings are treated like those applying for or receiving services when determining financial eligibility.

OAR 461-135-0750 about eligibility for individuals in long-term care or home and community-based care for the OSIPM program is being amended to clarify that individuals should be subject to the special income limit only if they do not otherwise qualify for OSIPM.

OAR 461-135-0780 is being amended to add language regarding the treatment of a spouse of an applicant or recipient who may be eligible under the provisions of the Pickle Amendment to the Social Security Act. These changes will bring the rule into compliance with federal law.

OAR 461-135-0875 regarding retroactive eligibility for medical assistance is being amended to clarify evaluation for retroactive eligibility and in the OSIPM program address when individuals received Medicaid-covered medical services prior to the date of request. This amendment sets out policy for the QMB-DW program, when individuals paid or incurred Medicaid-covered Medicare Part A premiums, or were eligible for but not enrolled in Medicare Part A prior to the date of request and received Medicare Part A-covered services, including deceased individuals who would have been eligible for Medicaid-covered premiums had they, or someone acting on their behalf, applied. This amendment also clarifies that for the QMB-SMB and QMB-SMF programs, when individuals paid or incurred Medicaid-covered Medicare Part B premiums, or were eligible for but not enrolled in Medicare Part B prior to the date of request and received Medicare Part B-covered services, including deceased individuals who would have been eligible for Medicaid-covered premiums had they, or someone acting on their behalf, applied. This rule is also being amended to clarify that Refugee Medical (REFM) is not Medicaid. These amendments are intended to comply with federal law.

OAR 461-140-0070 about treatment of excluded income is being amended to establish that commingling of excluded assets is acceptable in APD medical programs as long as they are identifiable, and explain (for OSIPM) that if funds are made from an account containing commingled funds, the assumption is that non-excluded funds are withdrawn first. Also, if excluded funds are withdrawn, they can be added to, or built up again, by deposits of funds excluded under another rule in the 461 chapter of rules. This rule is also being amended to change the title to Treatment of Excluded Assets, since this rule deals with both income and resources. These changes align the rule with federal policy.

OAR 461-145-0010 about the consideration of the value of and income from animals in the eligibility process is being amended to add an exclusion in the OSIP, OSIPM, and QMB-DW programs for animals used in self-employment to be consistent with other rules about work-related capital assets, equipment, and inventory.

OAR 461-145-0080 about child support and cash medical support is being amended to add provisions about when to count and when to exclude child support in the OSIP, OSIPM, and QMB programs. These amendments exclude one-third of cash child support paid to an individual applying for or receiving child support; exclude child support collected by the state on behalf of children in the custody of the state; c) set out how to count other child support collected by the state on behalf of a person applying for or receiving benefits; and state when child support is allowed as an income deduction. These changes follow federal guidance and provide consistency with other Department rules.

OAR 461-145-0140 is being amended to state how the exclusion of the Earned Income Tax Credit (EITC) is limited in duration, aligning with federal regulations.

OAR 461-145-0261 is being amended to state that in the OSIP, OSIPM, and QMB programs, emergency withdrawals from an Individual Development Account are excluded, consistent with federal guidance.

OAR 461-145-0330 about loans and interest on loans is being amended to revise when certain loans are treated as resources in the OSIPM program. This amendment affects purchases of loans or notes from others, or loans made to others that either occurred prior to 2006, or occurred after 2006 and after the first continuous period of care (which is when the Department starts counting marital assets) and were not considered disqualifying. This rule is also being amended to change language that makes it appear as though only the client's life expectancy is taken into consideration when determining whether or not a loan is a disqualifying transfer. This particular change will clarify that the life expectancy of the owner of the loan is used to determine whether the requirements are met, and also clarify that if the loan is jointly owned, the repayment must be paid over either the spouse's or the client's life expectancy. These changes correct an error and clarify the rule.

OAR 461-145-0370 about the effect on financial eligibility of benefits under the Older Americans Act is being amended to remove unnecessary language about persons 55 and older. The provisions of Title V of the Older Americans Act only apply to individuals over the age of 55.

OAR 461-145-0380 about pension and retirement plans is being amended to refer to the pursuit of assets rule, and removes language that suggests the rule only applies to pension and retirement plans that are purchased with funds from other pension and retirement plans, rather than a self-funded IRA (for example). This amendment also adds language to specify that the equity value of a non-applying spouse's retirement plan would be excluded as a resource for non-service applicants/recipients. For a child, the pension fund of a parent is also excluded. These amendments clarify the rule.

OAR 461-155-0250 about income and payment standard for the OSIPM program is being amended with regard to the income standards for service settings by referring to the acute care setting rule instead of the definition of a nonstandard living arrangement as part of changes to treat individuals in acute care settings similarly to service applicants and recipients.

OAR 461-155-0600 about special needs payments for home repairs is being amended to allow the Department to grant a hardship waiver to certain low-income Medicaid clients whose homes are in need of repair.

OAR 461-155-0610 about special needs payments for moving costs is being amended to increase the maximum payment that the Department may issue a client to pay for the client's expenses associated with moving and clarify the circumstances under which a client may qualify for the payment.

OAR 461-155-0680 about special needs payments for telephone allowances is being amended to broaden the rule and allow the Department to pay a portion of the cost of either telephone or broadband service for certain clients to better address how clients currently communicate.

OAR 461-160-0620 about income deductions and client liability in the OSIPM program is being amended to eliminate the \$85 earned income deduction individuals in the Aid to the Blind subprogram, eliminate private health insurance premiums as a medical deduction, and update references to individuals with intellectual disabilities. These changes align the rule with federal requirements.

OAR 461-160-0630 about the deduction for maintaining a home for long-term care clients is being amended to change how these deductions are calculated because the rule on which this deduction is based is being repealed.

OAR 461-165-0120 about benefits for a client in an acute care hospital is being amended to specify that OSIPM recipients are evaluated under the acute care setting rule if they are expected to be in the hospital for 30 days or more and would otherwise lose OSIPM eligibility. This rule is also being amended to specify that QMB/SMB/SMF recipients' eligibility are evaluated under the rule on household groups when they enter an acute care hospital rather than treated as if they were in a nursing facility. These changes clarify the rule.

OAR 461-175-0230 about notices to individuals in nonstandard living situations is being amended to state that the continuing benefit decision notice the Department sends to increase the liability of an individual must be a timely notice, consistent with federal requirements.

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

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

Need for the Rules

OAR 461-001-0000 needs to be amended to support program requirements, make the rules consistent, and follow federal requirements. These amendments address these needs by adding definitions of “blind work expenses” “impairment related work expenses” “eligible child” “ineligible” and “ineligible child” as well as by revising the definitions of “child”, “long term care” and “nonstandard living arrangement” and “teen parent”.

OAR 461-110-0210 needs to be amended to clarify that individuals in acute care settings are treated similarly to service applicants and recipients when determining eligibility by adding a reference to the acute care setting rule along with the existing references to service settings. The service settings language needs to be changed from home and community based and nursing facility care to nonstandard living arrangements and specify that OSIPM recipients who remain in an acute care hospital for 30 days or more are no longer in the household group. This rule is also being amended to correct an error by removing the 30-day limit on household membership for the Refugee and Refugee Medical programs when the absence is due to emergent need.

OAR 461-110-0410 needs to be amended to clarify that individuals in acute care settings are treated similarly to service applicants and recipients when determining eligibility by adding a reference to the acute care setting rule along with the existing references to service settings.

OAR 461-110-0530 needs to be amended to clarify that individuals in acute care settings are treated like those applying for or receiving services when determining financial eligibility by adding a reference to the acute care setting rule along with the existing references to service settings. This rule also needs to be amended to align the rule text with current practices by indicating that individuals outside the household in the filing group may be included in the financial group,

OAR 461-115-0090, OAR 461-135-0950, and OAR 461-180-0090 need to be amended to comply with ORS 411.439 and ORS 411.447 by stating that incarcerated individuals and individuals in a state hospital may receive benefits under OSIPM and QMB when temporarily released for hospital procedures; removing a provision in the definition of serious mental illness regarding the substance abuse and the likelihood that a person will no longer meet an applicable diagnosis if the substance abuse discontinues or declines; substitute the term “state hospital” to clarify OAR 461-135-0950; removing the 12-month limit on suspension of benefits for individuals entering public institutions or the state hospital; replacing the name of the specific former contractor for certification services with a general statement of certification; allowing eligibility to certain state hospital residents who entered the state hospital before reaching age 22 (instead of age 21); authorizing a designee of a correctional facility to apply for OSIPM and QMB on behalf of a person residing in that correctional facility; specifying legitimate uses of confidential information for an applicant who is a resident of a correctional facility and when that information may be disclosed; and specifying that the effective date for starting medical benefits under the OSIPM program for a person released from a correctional institution is the release date or the date the person begins hospitalization outside of the correctional facility.

OAR 461-120-0310 and 461-120-0315 need to be amended to comply with federal policy and state statutes by stating that the requirement to pursue healthcare/cash medical support applies only to the individual who can legally assign the rights, by clarifying that the assignment of rights is automatic and not dependent on an individual’s consent, by distinguishing between who actually has to assign to stay eligible for the OSIPM and QMB programs and whose rights that person must assign, and by clarifying that those whose rights are automatically assigned or must be assigned do not have to be in the OSIPM/QMB filing or benefit group – rights are and must be assigned for anyone receiving any type of medical assistance under the state plan.

OAR 461-120-0330 needs to be amended to clarify the rule and be consistent with federal requirements by stating that the penalty for failure to comply can only be applied while it is still possible to do so and that for OSIPM, by stating that cashing out or closing would constitute a conversion of a resource, and by removing the requirement to pursue assets in an individual’s home country for REF and REFM.

OAR 461-135-0745 needs to be amended to clarify that individuals in acute care settings are treated like those applying for or receiving services when determining financial eligibility by adding specific language regarding evaluating these individuals as if they were applying for services.

OAR 461-135-0750 needs to be amended to clarify the rule by indicating that individuals are subject to the special income limit only if they do not otherwise qualify for OSIPM.

OAR 461-135-0780 needs to be amendment to comply with federal law by stating the requirements related to the treatment of the income of the spouse of a Pickle Amendment applicant or recipient in determining eligibility for Medicaid.

OAR 461-135-0875 needs to be amended to comply with federal law by clarifying evaluation for retroactive eligibility and in the OSIPM program address when individuals received Medicaid-covered medical services prior to the date of request; by setting out policy for the QMB-DW program, when individuals paid or incurred Medicaid-covered Medicare Part A premiums, or were eligible for but not enrolled in Medicare Part A prior to the date of request and received Medicare Part A-covered services, including deceased individuals who would have been eligible for Medicaid-covered premiums had they, or someone acting on their behalf, applied; by clarifying that for the QMB-SMB and QMB-SMF programs, when individuals paid or incurred Medicaid-

covered Medicare Part B premiums, or were eligible for but not enrolled in Medicare Part B prior to the date of request and received Medicare Part B-covered services, including deceased individuals who would have been eligible for Medicaid-covered premiums had they, or someone acting on their behalf, applied; and by clarifying that Refugee Medical (REFM) is not Medicaid.

OAR 461-140-0070 needs to be amended to align with federal policy regarding the commingling of excluded funds by removing the prohibition on commingling for APD medical programs.

OAR 461-145-0010 needs to be amended to align with other self-employment rules that exclude work-related capital assets, equipment, and inventory by excluding animals used in self-employment.

OAR 461-145-0080 needs to be amended to follow federal guidance and provide consistency with other Department rules by adding provisions about when to count and when to exclude child support in the OSIP, OSIPM, and QMB programs, excluding one-third of cash child support paid to an individual applying for or receiving child support, excluding child support collected by the state on behalf of children in the custody of the state, setting out how to count other child support collected by the state on behalf of a person applying for or receiving benefits, and stating when child support is allowed as an income deduction.

OAR 461-145-0140 needs to be amended to align with federal regulations by stating how the exclusion of the Earned Income Tax Credit (EITC) is limited in duration.

OAR 461-145-0261 needs to be amended to align with federal guidance by stating that in the OSIP, OSIPM, and QMB programs, emergency withdrawals from an Individual Development Account are excluded.

OAR 461-145-0330 needs to be amended to clarify the rule and correct an error by revising when certain loans are treated as resources in the OSIPM program and changing language that makes it appear as though only the client's life expectancy is taken into consideration when determining whether or not a loan is a disqualifying transfer, clarifying that the life expectancy of the owner of the loan is used to determine whether the requirements are met, and also clarifying that if the loan is jointly owned, the repayment must be paid over either the spouse's or the client's life expectancy.

OAR 461-145-0370 needs to be amended to align with federal law by removing unnecessary language about persons 55 and older.

OAR 461-145-0380 needs to be amended to clarify the rule and address the lack of clarity in the penalty for failing to convert pension and retirement plans by referring to the pursuit of assets rule, removing language that suggests the rule only applies to pension and retirement plans that are purchased with funds from other pension and retirement plans, rather than a self-funded IRA (for example), adding language to specify that the equity value of a non-applying spouse's retirement plan would be excluded as a resource for non-service applicants/recipients, and stating for a child, the pension fund of a parent is also excluded.

OAR 461-155-0250 need to be amended with regard to the income standards for service settings as part of changes to treat individuals in acute care settings similarly to service applicants and recipients by referring to the acute care setting rule instead of the definition of a nonstandard living arrangement.

OAR 461-155-0600 needs to be amended to allow the Department to support some clients who lack the financial ability to pay for needed home repairs with their own funds by granting a hardship waiver to certain low-income Medicaid clients whose homes are in need of repair.

OAR 461-155-0610 needs to be amended to clarify the rule and address the increased expense of moving by increasing the maximum payment that the Department may issue a client to pay for the client's expenses

associated with moving and more precisely describing the circumstances under which a client may qualify for the payment.

OAR 461-155-0680 needs to be amended to better address how clients currently communicate using media other than landline telephones by broadening the rule and allowing the Department to pay a portion of the cost of either telephone or broadband service for certain clients.

OAR 461-160-0620 needs to be amended to align the rule with federal requirements by eliminating the \$85 earned income deduction individuals in the Aid to the Blind subprogram, eliminating private health insurance premiums as a medical deduction, and updating references to individuals with intellectual disabilities.

OAR 461-160-0630 needs to be amended to conform to other rule changes by revising how deductions for long-term care clients for maintaining a home are calculated.

OAR 461-165-0120 needs to be amended to clarify the rule by specifying that OSIPM recipients are evaluated under the acute care setting rule if they are expected to be in the hospital for 30 days or more and would otherwise lose OSIPM eligibility and specify that QMB/SMB/SMF recipients' eligibility are evaluated under the rule on household groups when they enter an acute care hospital rather than treated as if they were in a nursing facility.

OAR 461-175-0230 needs to be amended to follow federal requirements by stating that the continuing benefit decision notice the Department sends to increase the liability of an individual must be a timely notice.

Documents Relied Upon

Social Security Policy and Operations Manual System (POMS) SI 00501.010, SI 00520.001, SI 00520.009, SI 00830.418, SI 00830.420, SI 00830.670, SI 01120.210, SI 1130.501, SI 1130.676, SI 1130.700, SI 01310.115, SI 01330.120, SI 01330.220, SI 01730.040 available at <https://secure.ssa.gov/apps10/poms.nsf/chapterlist!openview&restricttcategory=05>

DHS Policy Transmittal SPD-PT-07-034, November 29, 2007, available at <https://www.dhs.state.or.us/policy/spd/transmit/pt/2007/pt07034.pdf>

Fiscal and Economic Impact

The Department estimates that amending OAR 461-001-0000 will have a positive fiscal impact some 18 and 19 year old clients who will receive JOBS support services and a corresponding negative fiscal impact on the Department. The Department is unable to estimate the extent of this impact because local Districts stay within their operating budgets. The Department estimates that there will be no fiscal impact on other state agencies, the public, local government, and business. There are no small businesses subject to this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-110-0210, OAR 461-110-0410, OAR 461-110-0530, OAR 461-115-0090, OAR 461-120-0310, OAR 461-120-0315, OAR 461-120-0330, OAR 461-135-0745, OAR 461-135-0750, 461-135-0950, 461-140-0070, 461-145-0140, 461-145-0330, 461-145-0370, 461-145-0380, 461-155-0250, 461-160-0630, 461-165-0120, 461-180-0090 will have no fiscal impact on clients, the Department, other state agencies, the public, local government, and business. There are no small businesses subject to this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-135-0780 and OAR 461-145-0010 may have a positive impact on a few families who become eligible for OSIPM and a negative fiscal impact on the Department and the Oregon Health Authority. The average monthly cost for OSIPM long-term care service cases is estimated at \$3806 (excluding Oregon Project Independence and In Home Care services) per client. The average monthly cost for in-home services cases is estimated at \$1620 per client. The Department is unable to determine the negative fiscal impact on the Department and the Oregon Health Authority because it is unable to estimate the number of families who may benefit in the future, although the number should be low. The Department estimates that this amendment will have no fiscal impact on other state agencies, the public, local government, and business. There are no small businesses subject to this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-135-0875 may have a positive impact on a families who receive additional months of retroactive medical benefits and a negative fiscal impact on the Department and the Oregon Health Authority. The average positive fiscal impact for OSIPM long-term care service clients is estimated at \$3806 (excluding Oregon Project Independence and In Home Care services) per month. The positive fiscal impact for in-home services clients is estimated at \$1620 per month. The average monthly positive fiscal impact to QMB clients is estimated at \$134 per client. The Department is unable to determine the negative fiscal impact on the Department and the Oregon Health Authority because it is unable to estimate the number of families who may benefit in the future, although the number should be low. The Department estimates that this amendment will have no fiscal impact on other state agencies, the public, local government, and business. There are no small businesses subject to this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-145-0080 and 461-145-0261 may have a positive impact on a families who become or remain eligible for APD medical programs and a negative fiscal impact on the Department and the Oregon Health Authority. The average positive fiscal impact for OSIPM long-term care service clients is estimated at \$3806 (excluding Oregon Project Independence and In Home Care services) per month. The positive fiscal impact for in-home services clients is estimated at \$1620 per month. The average monthly positive fiscal impact to QMB clients is estimated at \$134 per client. The Department is unable to determine the negative fiscal impact on the Department and the Oregon Health Authority because it is unable to estimate the number of families who may benefit in the future, although the number should be low. The Department estimates that this amendment will have no fiscal impact on other state agencies, the public, local government, and business. There are no small businesses subject to this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-155-0600 may have a positive impact on some families who meet hardship criteria who will benefit by up to \$1000 no more often than once every 24 month. There will be a negative fiscal impact on the Department and the Oregon Health Authority which the Department is unable to determine because it is unable to estimate the number of families who will benefit in the future. The Department estimates that this amendment will have no fiscal impact on other state agencies, the public, local government, and business. There are no small businesses subject to this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-155-0610 may have a positive impact on some families who will benefit by up to \$500 per move. There will be a negative fiscal impact on the Department and the Oregon Health Authority which the Department is unable to determine because it is unable to estimate the number of families who will benefit in the future. The Department estimates that this amendment will have no fiscal impact on other state agencies, the public, local government, and business. There are no small businesses subject to this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-155-0680 may have a positive impact on some families who will benefit by up to \$25 per month. There will be a negative fiscal impact on the Department and the Oregon Health Authority which the Department is unable to determine because it is unable to estimate the number of families who will benefit in the future. The Department estimates that this amendment will have no fiscal impact on other state agencies, the public, local government, and business. There are no small businesses subject to this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-160-0620 will have a \$20 per month negative fiscal impact on individuals in the Aid to the Blind subprogram for their OSIPM liability/offset/pay in. This amendment will also have a negative fiscal impact on individuals for whom private health insurance premiums of their spouse or dependent are being counted as a deduction from their OSIPM liability/offset/pay-in; these will likely see an increase in their liability/offset/pay-in requirement which the Department is unable to estimate based on information that is centralized. The Department estimates that this amendment will have no fiscal impact on the Department, other state agencies, the public, local government, and business. There are no small businesses subject to this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-175-0230 may have a positive impact on some families who receive services for a longer period of time at a lower liability amount. The Department is unable to estimate the benefit amount to client or the corresponding negative fiscal impact on the Department and the Oregon Health Authority because it lacks centralized information to make this estimate. The Department estimates that this amendment will have no fiscal impact on other state agencies, the public, local government, and business. There are no small businesses subject to this rule. There is no cost of compliance for small business.

How were small businesses involved in the development of this rule?

Small businesses were not involved in the development of these rules but are invited to provide input during the public comment period.

Administrative Rule Advisory Committee Consulted? If no, why not?

Yes.

Definitions for Chapter 461

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

- (1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDSD), or any other agency formerly part of the Department of Human Services means the Department of Human Services (DHS), except --
 - (a) The rule in which reference occurs only regulates programs covered by OAR chapter 461.
 - (b) OCCS medical program eligibility rules are in OAR chapter 410, division 200.
- (2) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of *domestic violence* (see section (24) of this rule), sexual assault, or stalking.
- (3) "Adjusted income" means the amount determined by subtracting income deductions from *countable* (see section (18) of this rule) income (see OAR 461-140-0010). Specific rules on the deductions are in OAR chapter 461, division 160.
- (4) "Adoption assistance" means financial assistance provided to families adopting children with special needs. "Adoption assistance" may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.
- (5) "Assets" mean income and resources.
- (6) "Basic decision notice" means a *decision notice* (see section (20) of this rule) mailed no later than the date of action given in the notice.
- (7) "Blind Work Expenses" has the meaning given in OAR 461-001-0035.
- (78) "Branch office" means any Department or AAA (Area Agency on Aging) office serving a program covered by this chapter of rules.
- (89) "Budgeting" means the process of calculating the benefit level.

(910) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine *eligibility* (see section (27) of this rule) and benefit level for the *payment month* (see section (50) of this rule).

(1011) "Cafeteria plan" means a written benefit plan offered by an employer in which:

- (a) All participants are employees; and
- (b) Participants may choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Service does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:
 - (A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);
 - (B) Group term life insurance plans (up to \$50,000);
 - (C) Dependent care assistance plans; and
 - (D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).

(1112) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a *microenterprise* (see section (43) of this rule), either directly or indirectly. A "capital asset" generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.

(1213) "Caretaker" means an individual who is responsible for the care, control, and supervision of a *child* (see section (15) of this rule). The status of "caretaker" ends once the individual no longer exercises care, control, and supervision of the *child* for 30 days.

(1314) "Caretaker relative" means a *caretaker* (see section 12 of this rule) who meets the requirements of one of the following subsections:

- (a) Is one of the following relatives of the *dependent child* (see section (22) of this rule):
 - (A) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.
 - (B) Stepfather, stepmother, stepbrother, and stepsister.
 - (C) An individual who legally adopts the *child* and any individual related to the individual adopting the *child*, either naturally or through adoption.

- (b) Is or was a *spouse* (see section (62) of this rule) of an individual listed in subsection (a) of this section.
- (c) Met the definition of "caretaker relative" under subsection (a) or (b) of this section before the *child* was adopted (notwithstanding the subsequent adoption of the *child*).

(~~415~~) "Certification period" means the period for which an individual is certified eligible for a program.

(~~4516~~) "Child" includes natural, step, and adoptive children. The term "child" does not include an unborn.

- (a) In the ERDC program, a "child" need not have a biological or legal relationship to the *caretaker* but must be in the care and custody of the *caretaker*, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:

- (A) Under the age of 18; or
- (B) Under the age of 19 and in secondary school or vocational training at least half time.

- (b) In the GA and OSIP programs, a "child" is an individual under the age of 18.

- (c) In the OSIPM and QMB programs, "child" means an unmarried individual **living with a parent (see section (49) of this rule)** who is:

- (A) **Not considered a decision-maker in the household;**

- (B) **Under the age of 18; ~~or~~and**

- (BC) **Under the age of 22 and attending full-time secondary, postsecondary or vocational technical training designed to prepare the individual for employment has at least one natural or adoptive parent in the same household.**

- (d) In the REF and REFM programs, a "child" is **an individual who is not an emancipated minor and is:**

- (A) **An individual underUnder** the age of 18; or

- (B) **An individual who is** 18 years of age and attending secondary school full-time or pursuing a GED full-time.

(~~4617~~) "Community based care" is any of the following:

- (a) Adult foster care - Room and board and 24 hour care and services for the elderly or for people with disabilities 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.
- (b) Assisted living facility - A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.
- (c) In-home Services - Individuals living in their home receiving services determined necessary by the Department.
- (d) Residential care facility - A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.
- (e) Specialized living facility - Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition, or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.
- (f) Independent choices - In-Home Services program wherein the participant is given cash benefits to purchase self-directed personal assistance services or goods and services provided pursuant to a written service plan (see OAR 411-030-0020).

| (~~1718~~) "Continuing benefit decision notice" means a *decision notice* that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.

| (~~1819~~) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine *eligibility*.

| (~~1920~~) "Custodial parents" mean parents who have physical custody of a *child*. "Custodial parents" may be receiving benefits as dependent children or as caretaker relatives for their own children.

| (~~2021~~) "Decision notice" means a written notice of a decision by the Department regarding an individual's *eligibility* for benefits in a program.

| (~~2122~~) "Department" means the Department of Human Services (DHS).

| (~~2223~~) "Dependent child" in the TANF program means an individual who has not been legally emancipated and who is one of the following:

- (a) An individual who is not a *caretaker relative* (see section (13) of this rule) of a *child* in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or

- (b) A *minor parent* (see section (44) of this rule) whose parents have chosen to apply for benefits for the *minor parent*. This does not apply to a *minor parent* who is married and living with his or her *spouse*.

(~~23~~24) "Disability" means:

- (a) In the SNAP program, see OAR 461-001-0015.
- (b) In the REF, SFPSS, TA-DVS, and TANF programs, for purposes other than determining *eligibility*:
 - (A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the requirements of the program; or
 - (B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).

(~~24~~25) "Domestic violence" means the occurrence of one or more of the acts described in subsections (a) to (d) of this section between family members, intimate partners, or household members:

- (a) Attempting to cause or intentionally, knowingly, or recklessly causing physical injury or emotional, mental, or verbal abuse.
- (b) Intentionally, knowingly, or recklessly placing another in fear of imminent serious physical injury.
- (c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.
- (d) Using coercive or controlling behavior.
- (e) As used in this section, "family members" and "household members" mean any of the following:
 - (A) *Spouse*;
 - (B) *Former spouse*;
 - (C) Individuals related by blood, *marriage* (see section (42) of this rule), or adoption;
 - (D) Individuals who are cohabitating or have cohabited with each other;

(E) Individuals who have been involved in a sexually intimate or dating relationship; or

(F) Unmarried parents of a *child*.

~~(2526)~~ "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of *domestic violence*. If the facility serves other people, a portion must be used solely for victims of *domestic violence*.

~~(2627)~~ "Electronic application" is an application electronically signed and submitted through the Internet.

~~(28)~~ "Eligible child" means an unmarried individual, living with a natural or adoptive parent, who is under the age of 18, and is eligible for SSI. A child is eligible when the child files for SSI, unless the claim is denied at the initial level, even if the denial is later appealed. The individual is no longer considered an eligible child beginning the month following the month the child attains the age of 18.

~~(2729)~~ "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

~~(2830)~~ "Equity value" means *fair market value* (see section (29) of this rule) minus encumbrances.

~~(2931)~~ "Fair market value" means the amount an item is worth on the open market.

~~(3032)~~ "Family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.

~~(3133)~~ "Family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means an action or set of actions taken by an individual, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain *family stability* (see section (30) of this rule).

~~(3234)~~ "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.

~~(3335)~~ "Homeless" in the ERDC program means lacking a fixed regular and adequate nighttime residence and includes living in an emergency shelter, shared housing with others due to loss of housing or economic hardship, staying in motels, cars, parks, public places, tents, trailers, or other similar settings.

~~(36)~~ "Impairment-Related Work Expenses" have the meaning found in OAR 461-001-0035.

(3437) "Income-producing property" means:

- (a) In all programs except OSIP, OSIPM, and QMB, real or personal property that generates income for the *financial group* (see OAR 461-110-0530). Examples of "income-producing property" are:
 - (A) Livestock, poultry, and other animals.
 - (B) Farmland, rental homes (including a room or other space in the home or on the property of a member of the *financial group*), vacation homes, and condominiums.
- (b) In the OSIP, OSIPM, and QMB programs, "income-producing property" means any real or personal property not used in self-employment (see OAR 461-145-0600 and 461-145-0915) that produces income for the *financial group*. "Income-producing property" includes:
 - (A) Livestock, poultry, or other animals that produce marketable products sold by the *financial group*.
 - (B) Farmland not excluded under OAR 461-145-0220 that is farmed or rented out by the *financial group*.
 - (C) Real property other than the home (including vacation homes and condominiums), that is rented out.
- (c) In the OSIP, OSIPM, and QMB programs, "income-producing property" does not include:
 - (A) Rooms or other space for rent in the home (see OAR 461-145-0220).
 - (B) Livestock, poultry, or other animals kept for resale (see OAR 461-145-0010).

(38) "Ineligible" includes, in the OSIP, OSIPM, and QMB programs, an individual who is not receiving either SSI or TANF benefits.

(39) "Ineligible child" means a natural or adopted child of an eligible individual or of the spouse of an eligible individual, who lives in the same household with an eligible individual; and is --

(a) Under the age of 18; or

(b) Under the age of 22 and a student who is regularly attending school, college, or training designed to prepare him or her for a paying job.

(3540) "Initial month" of *eligibility* means any of the following:

- (a) In all programs, the first month a *benefit group* (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.
- (b) In all programs except the SNAP program, the first month a *benefit group* is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.
- (c) In the SNAP program:
 - (A) The first month for which the *benefit group* is certified following any period during which they were not certified to participate, except for *migrant* and *seasonal farm workers* (see OAR 461-001-0015).
 - (B) For *migrant* and *seasonal farmworkers*, the first month for which the *benefit group* is certified following any period of one month or more during which they were not certified to participate.
- (d) For a new applicant to the OSIP or OSIPM program applying for care in a *nonstandard living arrangement* (see section (45) of this rule), for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the individual would have been eligible had it not been for the disqualifying transfer of *assets* (see section (5) of this rule).
- (e) For a current recipient of the OSIP or OSIPM program receiving or applying for care in a *nonstandard living arrangement*, for the purpose of calculating the correct divisor in OAR 461-140-0296, the later of the following:
 - (A) The month the disqualifying transfer occurred.
 - (B) The month of application for *long-term care* (see section (40) of this rule) services if the individual would have been eligible had it not been for the disqualifying transfer of *assets*.

| (3641) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

| (3742) "Legally married" means a *marriage* uniting two individuals according to --

- (a) The statutes of the state where the *marriage* occurred;
- (b) Except in the SNAP program, the common law of the state in which the two individuals previously resided while meeting the requirements for common law marriage in that state; or

- (c) The laws of a country in which the two individuals previously resided while meeting the requirements for legal or cultural marriage in that country.

(3843) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a "life estate" enables the owner of the "life estate" to possess, use, and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A "life estate" is created when an individual owns property and then transfers ownership to another individual while retaining, for the rest of the individual's life, certain rights to that property. In addition, a "life estate" is established when a member of the *financial group* purchases a "life estate" interest in the home of another individual.

(3944) "Lodger" means a member of the *household group* (see OAR 461-110-0210) who---

- (a) Is not a member of the *filing group* (see OAR 461-110-0310); and
- (b) Pays the *filing group*:
 - (A) In all programs except the OSIP, OSIPM, and QMB programs, for room and board.
 - (B) In the OSIP, OSIPM, and QMB programs, for room with or without board.

(4045) "Long-term care" means the system through which the Department provides a broad range of social and health services for extended periods of time to eligible adults who are aged, blind, or have disabilities for extended periods of time. This includes nursing homes-facilities and state hospitals (Eastern Oregon and the Oregon State Hospitals).

(4146) "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. "Lump-sum income" includes:

- (a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.
- (b) Income from inheritance, gifts, winnings, and personal injury claims.

(4247) "Marriage" means the union of two individuals who are *legally married* (see section (37) of this rule).

(4348) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(4449) "Minor parent" in the ERDC and TANF programs means a *parent* under the age of 18.

(4550) "Nonstandard living arrangement" is defined as follows:

- (a) In the GA, OSIP, OSIPM, and QMB programs, an individual is considered to be in a "nonstandard living arrangement" when the individual is applying for or receiving services in any of the following locations:
 - (A) A nursing facility in which the individual receives *long-term care* services paid with Medicaid funding, except this subsection does not apply to a Medicare client in a skilled-stay nursing facility.
 - (B) An intermediate care facility for ~~the mentally retarded~~individuals with intellectual disabilities (ICF/MRID).
 - (C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.
 - (D) A *community based care* (see section (16) of this rule) setting, except a State Plan Personal Care (SPPC) setting is not considered a "nonstandard living arrangement".
- (b) In all programs except GA, OSIP, OSIPM, and QMB, "nonstandard living arrangement" means each of the following locations:
 - (A) Foster care.
 - (B) Residential Care facility.
 - (C) Drug or alcohol residential treatment facility.
 - (D) Homeless or domestic violence shelter.
 - (E) Lodging house if paying for room and board.
 - (F) Correctional facility.
 - (G) Medical institution.

(4651) "OCCS" is the Office of Client and Community Services, part of the Medical Assistance Programs under the Oregon Health Authority responsible for OCCS medical program *eligibility* policy, community outreach, OCCS Medical Program *eligibility* determinations, and the OHA Customer Service Call Center.

(4752) "OCCS Medical Programs" refers to programs for which *eligibility* policy can be found in OAR chapter 410, division 200, and includes CEC, CEM, MAA, MAF, EXT, OHP, Substitute Care, BCCTP, and MAGI Medicaid/CHIP programs, including:

- (a) MAGI Adult;
- (b) MAGI Child;

- (c) MAGI Parent or Other Caretaker Relative;
- (d) MAGI Pregnant Woman; and
- (e) MAGI CHIP.

(4853) "Ongoing month" means one of the following:

- (a) For all programs except the SNAP program, any month following the *initial month* (see section (35) of this rule) of *eligibility*, if there is no break in the program benefit of one or more calendar months.
- (b) For the SNAP program, any month in the *certification period* (see section (14) of this rule) following the *initial month of eligibility*.

(4954) "Parent" for all programs except JPI (see OAR 461-135-1260) and the SNAP program means the biological or legal mother or father of an individual or unborn. For JPI and the SNAP program, "parent" means the biological or legal mother or father of an individual.

- (a) If the mother lives with a male and either she or the male claims that he is the father of the *child* or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.
- (b) A stepparent relationship exists if:
 - (A) The individual is *legally married* to the child's biological or adoptive parent; and
 - (B) The *marriage* has not been terminated by legal separation, divorce, or death.
- (c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a "parent" if both of the following are true:
 - (A) The *child* lives with the biological parent; and
 - (B) The legal parent has given up care, control, and supervision of the *child*.

(5055) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(5156) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.

(5257) "Periodic income" means income received on a regular basis less often than monthly.

(~~5358~~) "Primary person" for all programs except the SNAP program, means the *filing group* member who is responsible for providing information necessary to determine *eligibility* and calculate benefits. The "primary person" for individual programs is as follows:

- (a) In the TANF program, the *parent or caretaker relative*.
- (b) In the ERDC program, the *caretaker*.
- (c) In the SNAP program, see OAR 461-001-0015.
- (d) In the GA, OSIP, OSIPM, QMB, REF, and REFM programs, the client or client's *spouse*.

(~~5459~~) "Qualified Partnership Policy" means a long-term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:

- (a) Issued while the individual was a resident in Oregon on January 1, 2008 or later;
or
- (b) Issued in another state while the individual was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.

(~~5560~~) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as "real property".

(~~5661~~) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(~~5762~~) "Safe homes" mean private homes that provide a few nights lodging to victims of *domestic violence*. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

(~~5863~~) "Shelter costs" mean, in all programs except the SNAP program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the SNAP program, see OAR 461-160-0420.

(~~5964~~) "Shelter-in-kind" means an agency or individual outside the *financial group* provides the shelter of the *financial group*, or makes a payment to a third party for some or all of the *shelter costs* (see section (58) of this rule) of the *financial group*. "Shelter-in-kind" does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park, or bus station.

(~~6065~~) "Sibling" means the brother or sister of an individual. "Blood-related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the *marriage* of their parents.

(~~6166~~) "Spousal support" means income paid (voluntarily, per court order, or per administrative order) by a separated or divorced *spouse* to a member of the *financial group*.

(~~6267~~) "Spouse" means an individual who is *legally married* to another individual.

(~~6368~~) "Stable income" means income that is the same amount each time it is received.

(~~6469~~) "Standard living arrangement" means a location that does not qualify as a *nonstandard living arrangement*.

(~~6570~~) "Teen parent" means, ~~for in the TANF and JOBS, REF, REFM, and TANF programs,~~ a parent under who is the age of ~~20 who has not completed a high school diploma or GED~~ 18 or 19.

(~~6671~~) "Timely continuing benefit decision notice" means a *decision notice* that informs the individual of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.

(~~6772~~) "Trust funds" mean money, securities, or similar property held by an individual or institution for the benefit of another individual.

(~~6873~~) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.

(~~6974~~) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 329A.500, 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 411.837, 412.001, 412.006, 412.014, 412.049, 413.085, 414.685

Household Group

- (1) This rule describes who is included in the household group. The household group generally consists of the individuals who live together with or without the benefit of a dwelling. For homeless individuals, the household group consists of the individuals who consider themselves living together.
- (2) A separate dwelling is not recognized for the purpose of determining the members of a household group unless the living space has, separate from any other dwelling, an access to the outside that does not pass through another dwelling, a functional sleeping area, bathroom, and kitchen facility.
- (3) Each individual in the household group who applies for benefits is an applicant. The household group and applicants form the basis for determining who is in the remaining eligibility groups.
- (4) For all programs except the SNAP program, a separate household group is established for individuals who live in the same dwelling as another household group, if all the following subsections are true:
 - (a) There is a landlord-tenant relationship between the two household groups in which the tenant is billed by the landlord at *fair market value* (see OAR 461-001-0000) for housing.
 - (b) The tenant lives independently from the landlord.
 - (c) The tenant:
 - (A) Has and uses sleeping, bathroom, and kitchen facilities separate from the landlord; or
 - (B) Shares bathroom or kitchen facilities with the landlord, but the facilities are in a commercial establishment that provides room or board or both for compensation at *fair market value*.
- (5) Individuals who live with more than one household group during a calendar month are members of the household group in which they spend more than half of their time, except as follows:
 - (a) In the ERDC program, if a *child* (see OAR 461-001-0000) lives with different caretakers during the month, the *child* is considered a member of both household groups.
 - (b) In the TANF program:

- (A) If a *parent* (see OAR 461-001-0000) sleeps at least 30 percent of the time during the calendar month in the home of the *dependent child* (see OAR 461-001-0000), the *parent* is in the same household group as the *dependent child*.
- (B) A *dependent child* is included in the household group with the *caretaker relative* (see OAR 461-001-0000), who usually has the major responsibility for care and control of the *dependent child*, if the *dependent child* lives with two household groups in the same calendar month for at least one of the following reasons:
 - (i) Education.
 - (ii) The usual *caretaker relative* is gone from the household for part of the month because of illness.
 - (iii) A family emergency.
- (c) In the SNAP program:
 - (A) The individual is a member of the household group that provides the individual more than half of his or her 21 weekly meals. If the individual is a *child*, the *child* is a member of the household group credited with providing the *child* more than half of his or her 21 weekly meals. A household group is credited with providing breakfast and lunch for each day the *child* departs that group's home for school, even if the *child* eats no breakfast or lunch at that home.
 - (B) During the month in which a resident of a *domestic violence shelter* (see OAR 461-001-0000) enters the *domestic violence shelter*, the resident may be included both in the household group he or she left and in a household group in the *domestic violence shelter*.
- (6) In the OSIPM program, individuals receiving or applying for ~~home and community-based care (see OAR 461-001-0030)~~ services in a nonstandard living arrangement (see OAR 461-001-0000) or nursing facility care who are being evaluated under OAR 461-135-0745 are each an individual household group regardless of others living in the individual's dwelling or facility.
- (7) Individuals absent from the household for 30 days or more are no longer part of the household group, except for the following:
 - (a) In all programs except the OSIPM and SNAP programs, an individual in an acute care medical facility remains in the household group unless the individual enters *long-term care* (see OAR 461-001-0000).
 - (b) In the ERDC and TANF programs:

- (A) A *caretaker relative* who is absent for up to 90 days while in a residential alcohol or drug treatment facility is in the household group.
- (B) A *child* who is absent for 30 days or more is in the household group if the *child* is:
 - (i) Absent for illness (unless the *child* is in a long-term care Title XIX facility), social service, or educational reasons;
 - (ii) In foster care, but expected to return to the household within the next 30 days.
- (c) In the ERDC program, an individual in the household group who is--
 - (A) Absent because of education, training, or employment, including long-haul truck driving, fishing, or active duty in the U.S. armed forces;
 - (B) Absent to care for an emergent need of an individual related to illness, injury, or death; or
 - (C) Absent but reasonably anticipated to return within 90 days.
- (d) In the TANF program, when a filing group (see OAR 461-110-0310 and 461-110-0330) includes more than one *caretaker relative*, a *caretaker relative* in the household group who is absent:
 - (A) Because of education, training, or employment -- including absence while working or looking for work outside the area of his or her residence, such as long-haul truck driving, fishing, or active duty in the U.S. armed forces; or
 - (B) For up to 60 days solely due to the regulations of a homeless or *domestic violence shelter* or other circumstances beyond the individual's control but who would otherwise be included in the household group.
- (e) In the REF and REFМ programs, an individual in the household group who was absent:
 - (A) For up to 90 days while in a residential alcohol or drug treatment facility;
 - (B) ~~For up to 30 days to~~To care for an emergent need of an individual related to illness, injury, or death;
 - (C) Because of education, training, or employment -- including absence while working or looking for work outside the area of his or her residence, such as long-haul truck driving, fishing, or active duty in the U.S. armed forces; or

- (D) For up to 60 days solely due to the regulations of a homeless or *domestic violence shelter* or other circumstances beyond the individual's control but who would otherwise be included in the household group.
- (f) In the REF, REFM, and TANF programs, the Department may approve one or more 30-day extensions of this time period if the Department receives sufficient information to assure the Department that the absent individual will return within the extension period.
- (8) In the OSIP-EPD and OSIPM-EPD programs, the household group consists only of the individual applying for or receiving benefits.

Stat. Auth.: ORS [329A.500](#), 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.049, 413.085, 414.685

Stats. Implemented: ORS [329A.500](#), [409.010](#), 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.001, 412.006, 412.049, 413.085, 414.685, 414.839

Filing Group; OSIPM, QMB

- (1) In the OSIPM program (except OSIPM-EPD), for applicants who live in a *standard living arrangement* (see OAR 461-001-0000), the filing group consists of each applicant and the following household members:
 - (a) The *spouse* (see OAR 461-001-0000) of an applicant.
 - (b) Each *parent* (see OAR 461-001-0000) of a *child* (see OAR 461-001-0000), if the *child* is applying and not assumed eligible.
- (2) In the OSIPM program (except OSIPM-EPD), ~~when for~~ individuals ~~live-receiving or applying for services~~ in a *nonstandard living arrangement* (see OAR 461-001-0000) ~~or who are being evaluated under OAR 461-135-0745~~, the filing group consists only of the individual applying for benefits.
- (3) In the OSIPM-EPD program, the filing group consists only of the individual applying for benefits.
- (4) In the QMB program, whether in a *standard living arrangement* or a *nonstandard living arrangement*, the filing group consists of each applicant and the following household members:
 - (a) The *spouse* of an applicant.
 - (b) Each *parent* of a *child*, if the *child* is applying and not assumed eligible.
 - (c) Each *child* of the applicant, if the applicant wants to include the *child* in the *need group* (see OAR 461-110-0630).

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

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706

~~4610-1-17~~

Financial Group

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

and the individual SSI standards: the *spouse* is not included in the "financial group" when determining income *eligibility*; however, the *spouse* is included in the "financial group" when determining resource *eligibility*.

- (c) When an individual ~~lives-is receiving or applying for services~~ in a *nonstandard living arrangement* (see OAR 461-001-0000) ~~or is being evaluated under OAR 461-135-0745~~, the "financial group" consists only of the individual applying for benefits, except that the *community spouse* (see OAR 461-001-0030) is included in the "financial group" to determine initial *eligibility*. At initial *eligibility*, the resources of the *community spouse* are considered and the provisions of OAR 461-160-0580 apply. The income of the *community spouse* is not considered in determining initial *eligibility*, and the *community spouse* is not included in any other *eligibility* group.
- (5) In the TANF program, the "financial group" consists of each individual in the filing group except the following:
- (a) A *caretaker relative*, other than a *parent*, who chooses not to be included in the *need group* and has income less than the *non-needy countable income limit standard* (see OAR 461-155-0030) for the filing group of the *caretaker relative*;
- (b) The *spouse* of a *caretaker relative*, when the *caretaker relative* meets the requirements under subsection (a) of this section;
- (c) A *dependent child* of a *caretaker relative* when the *caretaker relative* meets the requirements under subsection (a) of this section;
- (d) ~~An individual in the filing group solely due to the requirements of OAR 461-110-0310(2)(b); and~~
- (e) An individual who is eligible for and receives an SSI cash payment.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.049, 412.064, 412.124, 413.085, 414.685, 414.712

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.049, 412.064, 412.124, 414.712, 414.826, 414.839

Authorized Representatives; General

- (1) The head of household, *spouse* (see OAR 461-001-0000), or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for the program, in reporting changes, in obtaining benefits, or in using benefits.
- (2) In all programs except the SNAP program, the Department must allow a person or persons of the applicant's choice to act as the authorized representative unless the person may cause harm to the client or may be considered as having a conflict of interest.
- (3) In all programs except the SNAP program, if an authorized representative is needed but has not been designated by the client, the Department will appoint one.
- (4) In the SNAP program:
 - (a) Except as limited by sections (5) and (6) this rule, the selection of an authorized representative must be made in writing by an adult member of the household.
 - (b) The selection and authority of an authorized representative is further limited by OAR 461-115-0140.
- (5) A client who resides in a drug addiction or alcoholic treatment center identified in OAR 461-135-0550(2) may apply for SNAP program benefits only through an authorized representative. The authorized representative must be an employee of and designated by the center.
- (6) A client with a *disability* (see OAR 461-001-0015) who participates in the SNAP program while residing in a *group living facility* (see OAR 461-001-0015) may participate through an authorized representative or on his or her own behalf, at the option of the *group living facility* (see OAR 461-135-0510(2)(e)).
- (7) In the TANF program, a person not related to the dependent child may serve as authorized representative or alternate payee for not more than 60 days.
- (8) A designee of a correctional facility may apply for OSIPM and QMB on behalf of an individual, while the individual is residing in a correctional facility, for the purpose of establishing eligibility for medical assistance until the release of the individual from the correctional facility or during a period of hospitalization that occurs outside of the correctional facility.
 - (a) The designee may obtain information necessary to determine eligibility for medical assistance, including the person's Social Security number or information that is not otherwise subject to disclosure under ORS 411.320 or ORS 413.175.

(b) The information obtained under subsection (a) of this section may be used only for the purpose of assisting the person in applying for medical assistance and may not be re-disclosed without the authorization of the individual.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 411.060, 411.404, 411.447, 411.816, 412.014, 412.049

Assignment of Support Rights; Not SNAP

In all programs except the SNAP program:

- (1) To be eligible for any program funded in whole or in part with federal grants under Title IV-A (TANF) of the Social Security Act, the filing group (see OAR 461-110-0310) must assign to the state its right to receive, from any other person, child support that accrues during any time period that the group receives assistance, not to exceed the total amount of assistance paid.
- (2) To be eligible for any program funded in whole or in part with federal grants under Title IV-E of the Social Security Act, the filing group must assign to the state its right to receive, from any other person, child support that has accrued or that accrues during any time period that the group receives assistance, not to exceed the total amount of assistance paid.
- (3) To be eligible for the OSIPM program, ~~a filing group (see OAR 461-110-0410) must assign to the state the right of any Medicaid-eligible child (see OAR 461-001-0000) in the filing group to receive any cash medical support that accrues while the group receives assistance, not to exceed the total amount of assistance paid~~ an individual must assign to the state the rights to medical support of the individual, or the rights to medical support of any other individual eligible for medical assistance under the state plan for whom the individual can legally make an assignment.
- (4) Cash medical support received by the Department is retained by the Department as is necessary to reimburse the Department for OSIPM program medical assistance payments made on behalf of an individual with respect to whom such assignment was executed. To allow adequate time for reporting and payment of incurred medical services, the Department initiates reconciliation 12 months after termination of OSIPM benefits and subsequently issues any resulting refund to the individual or the individual's legal guardian.
- (5) When the Department provides benefits or services for the support of a *child* who is in a filing group in any program funded in whole or in part with a federal grant under Title IV-A (TANF) or IV-E of the Social Security Act, the right to child support for that *child* that any individual may have is deemed to be assigned to the state by operation of law.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 412.024, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 412.001, 412.024, 412.049, 413.085, 414.025, 414.685, 659.830, 743B.470

Medical Assignment

In the ~~OSIPM, QMB, and REFM~~ programs:

~~(1) — By signing the application for assistance, a client agrees to turn over the rights of each member of the *benefit group* (see OAR 461-110-0750) to reimbursement for medical care costs to the Department.~~

~~(a) — If a client or the client's *authorized representative* (see OAR 461-115-0090) refuses to assign the rights to reimbursement for medical care costs to the Department, the filing group is ineligible until the client complies with this requirement. This includes a client eligible for *long term care* (see OAR 461-001-0000) insurance payments who fails to comply as described in subsection (b) of this section.~~

(1) This rule applies to all applicants for and recipients of medical assistance offered under the state plan.

(2) To the extent that payment for covered expenses has been made under the state medical assistance program for health care items or services furnished to an individual, in any case where a third party has a legal liability to make payments, the state is considered to have acquired the rights of the individual to payment by any other party for those health care items or services. This assignment of rights is automatic in accordance with ORS 659.830 and 743B.470 and does not require the consent of any individual.

~~(b)~~

(3) When a ~~client~~an individual has ~~long term care~~long-term care insurance, the ~~client~~individual complies with the requirements of this rule by reducing the Department's share of the ~~long term~~long-term care (see OAR 461-001-0000) service costs by taking the following actions for the entire period of time that the ~~client~~individual is eligible for Department-covered ~~long term~~long-term care services:

~~(A)~~

(a) For a ~~client~~an individual in a nursing facility:

~~(i)~~

(A) Submitting the necessary paperwork to receive the ~~long term care~~long-term care insurance payments and designating the ~~long term~~long-term care facility as the payee for the ~~long term~~long-term care insurance benefits; or

~~(ii)~~

(B) When the insurance company will not pay the ~~long term care~~long-term care insurance benefits directly to the ~~long term~~long-term care facility,

submitting the necessary paperwork to receive insurance payments and then promptly turning over the ~~long-term care~~ long-term care insurance payments to the ~~long-term~~ long-term care facility upon receipt.

~~(B)~~
(b) For ~~a client~~ an individual in *community based care* (see OAR 461-001-0000):

~~(i)~~
(A) Submitting the necessary paperwork to receive the ~~long-term care~~ long-term care insurance payments and designating the Department as the payee for the ~~long-term care~~ long-term care insurance benefits; or

~~(ii)~~
(B) When the insurance company will not pay the ~~long-term care~~ long-term care insurance benefits directly to the Department, submitting the necessary paperwork to receive the insurance payments and then promptly turning over the ~~long-term care~~ long-term care insurance payments to the Department upon receipt.

(c) ~~This section of the rule does not supercede section (2) of this rule. The Department may seek payment directly from a long-term care insurer as permitted by ORS 659.830 or 743B.470.~~

(24) ~~The Department may refuse to pay medical expenses for anyone in the benefit group when another party or resource should pay first. Except as outlined in OAR 461-120-0350, as a condition of eligibility, legally-able individuals must cooperate with the Department to:~~

(a) ~~Identify any third party liable or potentially liable for medical costs paid by the Department, the Oregon Health Authority, Coordinated Care Organization (CCO), or prepaid managed care health services organization to or on behalf of an individual or any individual applying for or receiving medical assistance under the state plan for whom the individual is legally able;~~

(b) ~~Provide information about liability or other insurance that may cover or pay for medical costs paid by the Department, the Authority, CCO, or prepaid managed care health services organization to or on behalf of a medical assistance applicant or recipient;~~

(c) ~~Provide other information as required by the CCO, or prepaid managed care health services organization to assist in pursuing payment from any third party who may be liable for medical costs paid by the Department, the Authority, CCO, or prepaid managed care health services organization to or on behalf of a medical assistance applicant or recipient; and~~

(d) Comply with the personal injury claim provisions in accordance with OAR 461-195-0303.

(35) The amount the Department may collect in reimbursement is limited to the amount of medical services paid by the Department on ~~the client's~~ behalf of the individual.

(46) The Department establishes an overpayment if it is discovered after-the-fact that during any period of time ~~a client or another individual submitting a long term care~~ long-term care insurance claim is on ~~the client's~~ behalf of the individual and the individual received a ~~long term care~~ long-term care insurance payment that was not turned over to the ~~long term care~~ long-term care facility or Department as required ~~by subsection (1)(b) of~~ under this rule.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.706, 413.085, 414.231, 414.685

Stats. Implemented: ORS 409.010, 411.060, 411.404, 411.706, 414.231, 659.830, 743B.470

Requirement to Pursue Assets

- (1) In all programs, except the ERDC and SNAP programs, an individual must make a good faith effort to obtain any asset (other than support and medical coverage, which are covered in OAR 461-120-0340 and 461-120-0345, respectively) to which the individual has a legal right or claim, except as follows:
 - (a) A *parent* (see OAR 461-001-0000) or *caretaker relative* (see OAR 461-001-0000) who is exempt from participation in the JOBS program is not required to apply for unemployment insurance benefits.
 - (b) Except as specified by law, an individual applying for or receiving any program benefits from the Department is not required to apply for other programs it administers or for supplemental security income (SSI).
 - (c) An individual applying for the EA program is required to pursue, obtain, and use an asset only if the asset can be made available in time to meet the emergent need.
 - (d) An individual is not required to borrow money.
 - (e) An individual is not required to make a good faith effort to obtain any asset if the individual can show good cause for not doing so. Good cause means a circumstance beyond the ability of the individual to control.
 - (f) In the REF and REFM programs, an individual is not required to pursue assets that remain in their country of origin.
- (2) In all programs except the ERDC, OSIP, OSIPM, QMB, and SNAP programs:
 - (a) The effect of failing to comply with this rule is that everyone in the filing group is ineligible. In addition, when a REF, SFPSS, or TANF program payment ends due to the penalty described in this subsection, eligibility for and the level of SNAP benefits are determined as if the individual were receiving benefits without the effects of this rule.
 - (b) The penalty provided by subsection (2)(a) of this rule is effective until all members of the filing group comply with the requirements of section (1) of this rule.
- (3) In the OSIP, OSIPM, and QMB programs:
 - (a) ~~The requirement to pursue assets includes individuals in the benefit group (see OAR 461-110-0750) applying~~ If an individual is eligible for monthly or periodic payments from a retirement or pension plan (see OAR 461-145-0380), if the individual is eligible to apply under the terms of the plan the individual must apply for those benefits to be eligible for OSIP, OSIPM, and QMB program

benefits. This requirement does not apply to a non-applying spouse (see OAR 461-001-0000).

- (A) When an individual can choose a lump sum or monthly or periodic payments, the individual must choose monthly or periodic payments; and if the individual can choose between monthly or periodic payments, the individual must choose monthly payments.
- (B) The individual must select the option that:
 - (i) Provides payments commencing on the earliest possible date; and
 - (ii) Completes payments within the actuarial life expectancy, as published in the Periodic Life Table of the Chief Actuary of the Social Security Administration of the individual.
- (C) Where an application has been made for a lump sum withdrawal of the monies on which a potential ~~annuity annuitization~~ is based and the benefit source permits the individual to change the individual's decision and apply for the ~~annuity annuitization~~, the individual must pursue the change to be eligible for medical benefits. If the benefit source does not permit such a change, accept the individual's word that the decision is irreversible, absent evidence to the contrary.
- (D) An individual is not required to file when only a lump sum payment is available. See OAR 461-145-0380 for information on the treatment of such plans.
- (b) An individual is ineligible for benefits ~~if the individual fails to comply with the requirements of this rule.~~
- ~~(c) The penalty provided by section (3)(b) of this rule is effective until the individual complies with the requirements of section (1) of this rule and subsection (a) of this section. until one of the following occurs, whichever is earlier:~~
 - (A) The individual complies with the requirements of section (1) of this rule and subsection (a) of this section.
 - (B) The individual cashes out or closes the retirement or pension plan. The proceeds would then be evaluated as a resource under the applicable rule for the specific asset.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.087, 411.404, 411.706, 411.816, 412.006, 412.014, 412.024, 412.049, 412.124, 414.231

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.087, 411.404, 411.706, 411.816, 412.006, 412.014, 412.024, 412.049, 412.124, 414.231

Eligibility for Individuals in Acute Care Settings; OSIPM

An individual in an acute care hospital or nursing facility is ~~eligible~~ evaluated for the OSIPM program ~~if the individual~~ as follows:

- (1) ~~Meets~~ The individual must meet all non-financial eligibility requirements for OSIPM. ~~except that income is above the program standards;~~
- (2) ~~The individual considered in their own household group (see OAR 461-110-0210) and filing group (see OAR 461-110-0410). The financial group (see OAR 461-110-0530) consists only of the individual applying for benefits, except that the spouse (see OAR 461-001-0000) is included in the financial group to determine initial eligibility. At initial eligibility, the resources of the spouse are considered and the provisions of OAR 461-160-0580 apply. The income of the spouse is not considered in determining initial eligibility, and the spouse is not included in any other eligibility group.~~
- (2) ~~Has~~ The individual must have income at or below 300 percent of the full SSI standard or ~~has have~~ established a qualifying trust as specified in OAR 461-145-0540(10)(c); ~~and.~~
- (3) ~~Requires~~ The individual must require a *continuous period of care* (see OAR 461-001-0030).

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

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 413.085, 414.685

Eligibility for Individuals in Long-Term Care or Home and Community-Based Care; OSIPM

- (1) An individual who meets the requirements of all of the following subsections is eligible subject to the for OSIPM income limit specified in OAR 461-155-0250(2):
- ~~(1) Meets the eligibility requirements for the OSIPM program except that income is above the OSIPM adjusted income standard for a one person need group (see OAR 461-155-0250(3)).~~
- ~~(2) Has *countable* (see OAR 461-001-0000) income at or below 300 percent of the full SSI standard for a single individual; has established a qualifying trust as specified in OAR 461-145-0540(10)(c); or is eligible for the OSIPM EPD program.~~
- ~~(3) (a) Meets~~ The individual meets at least one of the following eligibility standards:
- ~~(a) (A)~~ (A) The criteria in OAR 411-015-0100 (except subsection (1)(b)) regarding eligibility for nursing facility care or *home and community-based care* (see OAR 461-001-0030).
- ~~(b)~~ (B) The level-of-need criteria for an ICF/MR.
- ~~(c)~~ (C) The service eligibility standards for medically fragile children in OAR 411-350-0010.
- ~~(d)~~ (D) The service eligibility standards for the CIIS (Children's Intensive In-Home Services) behavioral program in OAR 411-300-0100 to 411-300-0220.
- ~~(e)~~ (E) The service eligibility standards for the Medically Involved Children's Waiver in OAR chapter 411, division 355.
- ~~(4) (b) Resides~~ The individual resides in or will reside in one of the following locations for a *continuous period of care* (see OAR 461-001-0030) and is applying for or receiving long-term care services authorized by the Department (eligibility for OSIPM is not effective prior to the first day of the month that includes the effective date for long-term care under OAR 461-180-0040):
- ~~(a) (A)~~ (A) A Medicaid-certified nursing facility.
- ~~(b) (B)~~ (B) An intermediate care facility for the mentally retarded (ICF/MR).
- ~~(c) (C)~~ (C) A *home and community-based care* setting.
- ~~(5)~~ (5) An individual in a *home and community-based care* setting must receive Title 1915(c) waived services.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 413.085, 414.685
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404

1-17~~Eligibility for~~ Pickle Amendment Clients; OSIPMIn the OSIPM program:

- (1) ~~An individual is eligible for OSIPM under this rule and the so-called Pickle amendment (Pub. L. No. 94-566, § 503, title V, 90 Stat. 2685 (1976)).~~ The countable (see OAR 461-001-0000) SSB income of an individual is determined according to sections (2) to (4) of this rule if the individual meets all other eligibility of the following requirements, and:
- (a) Is receiving Social Security Benefits (SSB);
 - (b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and
 - (c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the individual was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB.
- (2) The SSB amount received by the individual when the individual became ineligible for SSI or OSIP is used as the individual's *countable* ~~(see OAR 461-001-0000) Social Security~~ SSB income, for the purposes of the Pickle Amendment. If the spouse (see OAR 461-001-0000) of the individual also had Social Security benefits at the time the individual lost SSI benefits, SSB amount at that time of the spouse is considered the countable income of the spouse. If the amount cannot be determined using the information provided by the SSA, it is calculated in accordance with sections (3) ~~and (5)~~ of this rule.
- ~~(3) Determine~~ The Department determines the month in which the individual was entitled to ~~Social Security~~ SSB and received SSI in the same month. ~~Use~~ The Department uses the table in section (54) of this rule to find the percentage that applies to that month. ~~Multiply~~ The Department multiplies the present amount of the ~~individual's Social Security benefits~~ SSB of the individual by the applicable percentage. If the spouse of the individual also had SSB at the time the individual lost SSI benefits, the Department adjusts the SSB of the spouse using the same multiplier that was used for the individual's calculation under this section. This amount, rounded down to the next lower whole dollar, is the individual's *countable* ~~Social Security for purposes of this rule and the Pickle Amendment~~ SSB income.
- ~~(4) Add the amount determined in accordance with section (2) or (3) of this rule to any other countable unearned income plus adjusted earned income of the individual, and if the total is less than the full SSI income standard for a single individual plus the \$20 unearned income deduction (OAR 461-160-0550), the individual is eligible for OSIPM for purposes of this rule and the Pickle amendment.~~

- ~~(a) — For spouses in the same financial group (see OAR 461-110-0530), determine the spouse's SSB amount in the year the individual stopped receiving SSI or perform the above calculation for the spouse's Social Security benefit using the same multiplier, regardless of whether or not the spouse (see OAR 461-001-0000) received SSI, combine the results and add the subtotal to all other countable unearned and adjusted earned income.~~
- ~~(b) — If the total is less than the full SSI standard for a couple plus the \$20 unearned income deduction (OAR 461-160-0550), the couple is eligible for OSIPM for purposes of this rule and the Pickle amendment. All other financial and non-financial eligibility criteria must be met.~~

(53) The following guide contains the calculations used to determine the SSB for prior years (the Department uses this table only if you cannot determine if the prior year's amount using information provided by SSA):

If SSI was Last Received During	Multiply Current SSB by
January 2015 - December 2016.....	.997
January 2014 - December 2014.....	.980
January 2013 - December 2013.....	.966
January 2012 - December 2012.....	.950
January 2009 - December 2011.....	.917
January 2008 - December 2008.....	.866
January 2007 - December 2007.....	.847
January 2006 - December 2006.....	.820
January 2005 - December 2005.....	.788
January 2004 - December 2004.....	.767
January 2003 - December 2003.....	.751
January 2002 - December 2002.....	.741
January 2001 - December 2001.....	.722
January 2000 - December 2000.....	.698
January 1999 - December 1999.....	.681
January 1998 - December 1998.....	.672
January 1997 - December 1997.....	.659
January 1996 - December 1996.....	.640
January 1995 - December 1995.....	.624
January 1994 - December 1994.....	.607
January 1993 - December 1993.....	.591
January 1992 - December 1992.....	.574
January 1991 - December 1991.....	.554
January 1990 - December 1990.....	.525
January 1989 - December 1989.....	.502
January 1988 - December 1988.....	.482
January 1987 - December 1987.....	.463
January 1986 - December 1986.....	.457
January 1985 - December 1985.....	.443
January 1984 - December 1984.....	.428

July 1982 - December 1983.....	.414
July 1981 - June 1982.....	.385
July 1980 - June 1981.....	.347
July 1979 - June 1980.....	.303
July 1978 - June 1979.....	.276
July 1977 - June 1978.....	.259
May or June 1977.....	.245

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.083, 411.404, 413.085, 414.685

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.083, 411.404, 411.704, 413.085,
414.685

~~1410-1-17~~

Specific Requirements; Retroactive Eligibility

- (1) ~~Clients~~ Individuals are evaluated for retroactive eligibility as follows:
- (a) ~~Clients applying for Medicaid are evaluated for retroactive eligibility in the OSIPM, QMB-DW, QMB-SMB, QMB-SMF, and REFM programs. In the OSIPM program, when individuals received Medicaid-covered medical services prior to the *date of request* (see OAR 461-115-0030). This includes deceased individuals who would have been eligible for Medicaid covered services had they, or someone acting on their behalf, applied.~~
 - (b) In the QMB-DW program, when individuals paid or incurred Medicaid-covered Medicare Part A premiums, or were eligible for but not enrolled in Medicare Part A prior to the *date of request* and received Medicare Part A-covered services. This includes deceased individuals who would have been eligible for Medicaid-covered premiums had they, or someone acting on their behalf, applied.
 - (c) In the QMB-SMB and QMB-SMF programs, when individuals paid or incurred Medicaid-covered Medicare Part B premiums, or were eligible for but not enrolled in Medicare Part B prior to the *date of request* and received Medicare Part B-covered services. This includes deceased individuals who would have been eligible for Medicaid-covered premiums had they, or someone acting on their behalf, applied.
 - (d) Individuals applying for medical assistance through the REFM program are evaluated for retroactive eligibility.
 - (~~be~~) ~~Clients~~ Individuals found ineligible for the OSIPM program solely because they do not meet the citizenship requirements of OAR 461-120-0125. ~~Clients~~ Individuals eligible under this subsection are eligible only for CAWEM program benefits (*see* OAR 461-135-1070).
- (2) If eligible for medical assistance retroactively, the ~~client's~~ eligibility ~~cannot of the individual may not~~ start earlier than the date indicated by OAR 461-180-0140.
- (3) In the QMB-BAS program, there are no retroactive medical benefits.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 413.085, 414.685Stats. Implemented: ORS 409.010, 411.060, 411.404, 413.085, 414.685

Eligibility for Inmates and Residents of State Hospitals

- (1) This rule sets out additional restrictions on the eligibility of inmates and residents of state hospitals for programs covered by Chapter 461 of the Oregon Administrative Rules.
- (2) Definition of an "inmate".
 - (a) An inmate is an individual living in a *public institution* (see section (3) of this rule) who is:
 - (A) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including an individual being held involuntarily in a detention center awaiting trial or an individual serving a sentence for a criminal offense;
 - (B) Residing involuntarily in a facility under a contract between the facility and a *public institution* where, under the terms of the contract, the facility is a *public institution*;
 - (C) Residing involuntarily in a facility that is under governmental control; ~~or~~
 - (D) Receiving care as an outpatient while residing involuntarily in a *public institution*; or
 - (E) In the OSIPM and QMB programs, released from the *public institution* during a temporary period of hospitalization in a medical institution outside of the correctional facility.
 - (b) An individual is not considered an inmate when:
 - (A) The individual is released on parole, probation, or post-prison supervision;
 - (B) The individual is on home- or work-release, unless the individual is required to report to a *public institution* for an overnight stay;
 - (C) The individual is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual; or
 - (D) The individual is in a *public institution* pending other arrangements as defined in 42 CFR 435.1010.
- (3) A "public institution" is any of the following:
 - (a) A state hospital (see ORS 162.135).

- (b) A local correctional facility (see ORS 169.005): a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds individuals for more than 36 hours.
- (c) A Department of Corrections institution (see ORS 421.005): a facility used for the incarceration of individuals sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.
- (d) A youth correction facility (see ORS 162.135):
 - (A) A facility used for the confinement of youth offenders and other individuals placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a residential academy and satellite, and camps and branches of those facilities; or
 - (B) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth, or youth offenders pursuant to a judicial commitment or order.
- (4) Definition of serious mental illness. An individual has a serious mental illness if the individual has been diagnosed by a psychiatrist, a licensed clinical psychologist or a certified non-medical examiner as having dementia, schizophrenia, bipolar disorder, major depression or other affective disorder or psychotic mental disorder other than a substance abuse disorder and other than a disorder that is ~~both--~~
 - ~~(a) Caused~~caused primarily by substance abuse; ~~and~~
 - ~~(b) Likely to no longer meet the applicable diagnosis if the substance abuse discontinues or declines.~~
- (5) An individual who resides in a state hospital (see subsection (3)(a) of this rule), public institution, meets the definition of a serious mental illness (see section (4) of this rule), and applies for medical assistance between 90 and 120 days prior to the expected date of the person's release from the ~~public institution~~state hospital may be found eligible for medical assistance. If the individual is determined to be eligible, the effective date of the individual's medical assistance is the date the individual is released from the institution.
- (6) ~~A~~In the OSIPM and QMB programs, a client who becomes a resident of a ~~state hospital~~state hospital has medical benefits suspended ~~for up to twelve full calendar months~~ if the client is at least 21 years of age and under 65 years of age. When a client with suspended medical benefits is no longer a resident of the ~~state hospital~~state hospital, or when the individual is admitted to a medical institution outside of the state hospital for a period of hospitalization, medical benefits are reinstated effective the first day the client is no longer a resident, if the client continues to meet eligibility for the medical program.

- (7) An individual residing in a ~~state psychiatric institution~~*state hospital* may be eligible for OSIPM benefits if the individual:
- (a) Receives services on a certified ward;
 - (b) ~~Meets level of care as certified by Acumentra~~Receives a Certificate of Need for Services from the State-authorized agency; and
 - (c) Meets one of the following:
 - (A) Is 65 years of age or older;
 - (B) Is under 21 years of age; or
 - (C) Is 21 years of age or older, if the basis of need is disability or blindness; eligibility was determined before the individual reached 21 years of age; and the individual entered the state hospital before reaching ~~21~~22 years of age.
- (8) For all programs covered under chapter 461 of the Oregon Administrative Rules:
- (a) Except as provided otherwise in this rule, an inmate of a public institution is not eligible for benefits.
 - (b) If a pregnant woman receiving medical assistance through the OSIPM program becomes an *inmate* of a *public institution*, her medical benefits are *suspended*. When the Department is informed the woman is no longer an *inmate*, her medical benefits are reinstated--effective on the first day she is no longer an *inmate*--if she is still in her protected period of eligibility under OAR 461-135-0010.
 - (~~b~~c) If an individual receiving medical assistance through the OSIPM or QMB program becomes an *inmate* of a correctional facility ~~with an expected stay of no more than 12 months~~, medical benefits are suspended ~~for up to 12 full calendar months~~ during the incarceration period. ~~When~~In the OSIPM or QMB program, when the Department is notified that an individual with suspended benefits has been released or has been admitted to a hospital outside of the public institution for a period of hospitalization, and the notification takes place within 10 days of the release, medical benefits are reinstated effective the first day the client is no longer an *inmate* if the client continues to meet eligibility for the medical program.
- (9) In the GA and SNAP programs, in addition to the other provisions of this rule, an *inmate* released from a *public institution* on home arrest, and required to wear an electronic device to monitor his or her activity, is ineligible for benefits if the correctional agency provides room and board to the individual.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, ~~411.439, 411.443, 411.445, 411.447~~, 411.816, 412.014, 412.049, 414.426, ~~2011 Or. Laws 207~~

Treatment of Excluded ~~Income~~ Assets

Unless stated otherwise in another rule in this chapter of rules:

(1) In the OSIP, OSIPM, and QMB programs:

(a) Excludable funds must be identifiable in order to be excluded. Identifiable does not require that excluded funds be kept physically apart from other funds.

(b) In the OSIP and OSIPM programs:

(A) There is a rebuttable presumption that when withdrawals are made from an account with commingled funds non-excluded funds are withdrawn first.

(B) If excluded funds are withdrawn, the excluded funds left in the account may be added to only by deposits of subsequently received funds that are excluded under the same rule or another rule in this chapter of rules.

(+2) In all programs except the OSIP, OSIPM, and QMB programs:

(a) Excluded income remains excluded as long as it is kept in a separate account and not commingled with other funds.

(-2) (b) Excluded income that is commingled in an account with funds not excluded remains excluded for six months from the date it is commingled, after which it is counted as a resource.

Stat. Auth: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.816, ~~418.100~~412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.816, ~~418.100~~412.014, 412.049, 413.085, 414.685

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Animals

- (1) Animals that are kept as pets or raised as food for the filing group (OAR 461-110-0310) are excluded.
- (2) The treatment of an animal considered *income-producing property* (see OAR 461-001-0000) is covered by the *income-producing property* rules (see OAR 461-145-0250 and 461-145-0252).
- (3) In the OSIP, OSIPM, and QMB-DW programs:
 - (a) The *fair market value* (see OAR 461-001-0000) of animals that are kept or retained for sale or resale is a *countable* (see OAR 461-001-0000) resource.
 - (b) If an animal is a source of both food and income for the filing group:
 - (A) The *fair market value* of the animal remains excluded.
 - (B) The proceeds of any sales of the animal or its products are counted as unearned income.
 - (c) Animals that are used, kept, or raised for the purpose of self-employment are excluded.
- (4) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, all animals are excluded as a resource.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685

Stats. Implemented: ORS 329A.500, 409.010, 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839

Child Support and Cash Medical Support

- (1) Child support and cash medical support paid by a non-custodial parent for a *dependent child* (see OAR 461-001-0000) or *minor parent* (see OAR 461-001-0000) in the *financial group* (see OAR 461-110-0530) are considered income of the *dependent child* or *minor parent*, whether the support is paid voluntarily or in accordance with an order to pay child support.
- (2) For the purposes of this rule:
 - (a) “Absent parent” means a parent (see OAR 461-001-0000) whose parental rights have not been legally severed or a stepparent currently legally married (see OAR 461-001-0000) to a parent of a child (see OAR 461-001-0000) who does not live in the same household as the child.
 - (ab) "Disregard" means child support, up to \$50 per *dependent child* or *minor parent* per *financial group* per month and not to exceed \$200 per *financial group* per month, that is not counted as income of the client. "Disregard" includes current child support only.
 - (bc) "Pass-through" means child support, up to \$50 per *dependent child* or *minor parent* per *financial group* per month and not to exceed \$200 per *financial group* per month, that is sent to the client before any remaining amount of current child support is withheld by the State. "Pass-through" includes current child support only.
- (3) In the ERDC program, child support is considered *countable* (see OAR 461-001-0000) unearned income if it is received by the *financial group* or is *countable* under OAR 461-145-0280. Otherwise it is excluded.
- (4) In the SNAP program, child support and cash medical support are treated as follows:
 - (a) Child support payments the group receives that must be assigned to the Department to maintain TANF eligibility are excluded, even if the group fails to turn the payments over to the Department.
 - (b) Child support payments received by a *filing group* (see OAR 461-110-0370) with at least one member working under a TANF JOBS Plus agreement are excluded, except:
 - (A) It is considered *countable* unearned income in the calculation of the wage supplement; and

- (B) Any *pass-through* pursuant to section (2) of this rule is considered *countable* unearned income.
 - (c) All other child support, including any *pass-through* pursuant to section (2) of this rule, is considered *countable* unearned income.
 - (d) Cash medical support is considered *countable* unearned income except to the extent it is used to reimburse (see OAR 461-145-0440) an actual medical cost.
 - (e) Payments made by a non-custodial parent to a third party for the benefit of the *financial group* are treated in accordance with OAR 461-145-0280.
- (5) Except as provided otherwise in section (8) of this rule, in the TANF program:
- (a) In determining initial *eligibility* (see OAR 461-001-0000), except for *disregard* pursuant to section (2) of this rule, child support received by the Oregon Department of Justice, Division of Child Support (DCS) is considered *countable* unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.
 - (b) In determining on-going *eligibility*, except for clients working under a TANF JOBS Plus agreement and except for child support passed through to the client and disregarded pursuant to section (2) of this rule, child support received by the DCS is considered *countable* unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.
 - (c) For clients working under a TANF JOBS Plus agreement:
 - (A) Child support is excluded in determining *countable* income.
 - (B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.
 - (C) All child support paid directly to the client is considered *countable* unearned income in the calculation of the wage supplement.
 - (d) All other child support payments:
 - (A) Paid directly to the *financial group* that are turned over to the Department or to the DCS are considered *countable* unearned income except for any amount of *pass-through* and *disregard* pursuant to section (2) of this rule.
 - (B) Paid directly to the *financial group* that are not turned over to the Department or to the DCS are considered *countable* unearned income.

- (C) Paid to a third party for the benefit of the *financial group* are considered *countable* unearned income. This includes but is not limited to payments made by a non-custodial parent to a third party for rent, mortgage, utilities, or child care.
- (e) Cash medical support is excluded in determining *countable* income.
- (6) In the OSIP, OSIPM, and QMB programs, ~~all~~ child support and cash medical support paid to the *financial group* are considered *countable* unearned income. ~~Child support and cash medical support paid by the financial group are not deductible from income, except as follows:-~~
 - (a) The Department excludes one-third of all cash child support paid to an individual who is applying for or receiving OSIP, OSIPM, or QMB. The Department excludes all in-kind child support paid to the individual.
 - (b) Child support collected from an *absent parent* (see section (2) of this rule) by the State on behalf of a *child* in the custody of the State of Oregon (such as foster care) that is not given to the *child* or the custodial *parent* of the *child* is excluded. Such payments that are given to the individual or the custodial *parent* of the *child* are treated according to subsection (a) of this section.
 - (c) Child support payments collected by the State of Oregon that are given to the individual or to the custodial *parent* are counted in accordance with subsection (a) of this section.
 - (d) Child support and cash medical support paid by the *financial group* are not deductible from income except as provided in OAR 461-160-0550 and OAR 461-160-0551.
- (7) In the SFPSS program, notwithstanding section (5) of this rule, for on-going *eligibility* and benefit determination:
 - (a) Except for *disregard* pursuant to section (2) of this rule, child support is considered *countable* unearned income.
 - (b) Cash medical support is excluded in determining *countable* income.
 - (c) Payments made by a non-custodial parent to a third party for the benefit of the *financial group* are considered *countable* unearned income. This includes but is not limited to payments made by a non-custodial parent to a third-party for rent, mortgage, utilities, or child care.
- (8) For on-going *eligibility* and benefit determination for TANF clients in a two-parent household:

- (a) Except for *disregard* pursuant to section (2) of this rule, child support is considered *countable* unearned income.
- (b) Cash medical support is excluded in determining *countable* income.
- (c) Payments made by a non-custodial parent to a third party for the benefit of the *financial group* are considered *countable* unearned income. This includes but is not limited to payments made by a non-custodial parent to a third party for rent, mortgage, utilities, or child care.
- (d) For a *filing group* (see OAR 461-110-0330) with at least one member working under a TANF JOBS Plus agreement:
 - (A) Child support is excluded in determining *countable* income.
 - (B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.
 - (C) All child support paid directly to the client is considered *countable* unearned income in the calculation of the wage supplement.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.816, 412.009, 412.014, 412.049, 413.085, 414.685
Stats. Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.816, 412.009, 412.014, 412.049, 413.085, 414.685

461-145-0140

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Earned Income Tax Credit (EITC)

There are federal and state earned income tax credit (EITC) programs for low-income families.

- (1) An EITC may be received in one of two ways:
 - (a) As one annual payment received at the time of the normal income tax returns.
 - (b) As an advance in the employee's paycheck.
- (2) The EITC is excluded from *assets* (see OAR 461-001-0000) in the month of receipt and then for a maximum of 12 calendar full months starting with the month following the month of receipt of the refund or payment. All funds remaining after the 12-month period are counted as a resource.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.404, 411.706, 411.816, 412.049, 413.085, 414.231, 414.685

Stats. Implemented: ORS 329A.500, 4090.010, 411.060, 411.083, 411.404, 411.706, 411.816, 412.049, 414.231

Individual Development Account (IDA)

- (1) An Individual Development Account (IDA) is a trust-like savings account established under P.L. 105-285 designed to help low-income individuals save for specified purposes. The individual makes deposits from his or her earnings, and these are matched by a combination of government and private-sector funds.
- (2) For eligibility determinations in all programs:
 - (a) Except for SNAP, deposits from the account holder's earnings are excluded from gross earned income. For SNAP, the deposit remains countable earned income.
 - (b) Matching deposits from government and private-sector funds are excluded from income.
 - (c) The IDA savings account is excluded from resources.
 - (d) Interest earned by the IDA savings account is excluded from income.
- (3) For client liability calculations (see OAR 461-160-0610), all income deposited into an IDA savings account is counted as earned income.
- (4) ~~In all programs except the OSIP, OSIPM, and QMB programs, if~~ a client makes an emergency withdrawal from the IDA savings account, that income is counted as lump-sum income. In the OSIP, OSIPM, and QMB programs, emergency withdrawals from an IDA savings account are excluded.

Stat. Auth.: ORS 329A.500, 509.050, 411.060, 411.404, 411.700, 411.816, 412.014, 412.049, 413.085, 414.685~~414.042~~

Stats. Implemented: ORS 411.060, 411.700, 411.404, 411.816, 412.014, 412.049, ~~414.042~~413.085, 414.685

Loans and Interest on Loans

- (1) This rule covers proceeds of loans, loan repayments, and interest earned by a lender. If the proceeds of a loan are used to purchase an asset, the asset is evaluated under the other rules in this division of rules.
- (2) For purposes of this rule:
 - (a) In the OSIP, OSIPM, and QMB programs:
 - (A) "Bona fide loan agreement" means an agreement that --
 - (i) Is enforceable under state law;
 - (ii) Is in effect at the time the cash proceeds are provided to the borrower; and
 - (iii) Includes an obligation to repay and a feasible repayment plan.
 - (B) "Negotiable loan agreement" means a loan agreement in which the instrument ownership and the whole amount of money expressed on its face can be transferred from one person to another (i.e., sold) at prevailing market rates.
 - (b) In all programs:
 - (A) "Reverse-annuity mortgage" means a contract with a *financial institution* (see OAR 461-001-0000) under which the *financial institution* provides payments against the equity in the home that must be repaid when the homeowner dies, sells the home, or moves.
 - (B) The proceeds of a home equity loan or *reverse-annuity mortgage* (see paragraph (A) of this subsection) are considered loans.
- (3) For payments that a member of the *financial group* (see OAR 461-110-0530) receives as a borrower to be treated as a loan:
 - (a) In the OSIP, OSIPM, QMB, and SNAP programs, there must be an oral or written loan agreement, and this agreement must state when repayment of the loan is due to the lender.
 - (b) In programs other than the OSIP, OSIPM, QMB, and SNAP programs, there must be a written loan agreement, and this agreement must be signed by the borrower and lender, dated before the borrower receives the proceeds of the loan, and state when repayment of the loan is due to the lender.

- (4) Payments for a purported loan that do not meet the requirements of section (3) of this rule are counted as unearned income.
- (5) When a member of a *financial group* receives cash proceeds as a borrower from a loan that meets the requirements of section (3) of this rule:
 - (a) In all programs, educational loans are treated according to OAR 461-145-0150.
 - (b) In the ERDC, REF, REFM, SNAP, and TANF programs, the loan is excluded. If retained after the month of receipt, the loan proceeds are treated in accordance with OAR 461-140-0070.
 - (c) In the OSIP, OSIPM, and QMB-DW programs:
 - (A) If the loan is a *bona fide loan agreement* (see paragraph (2)(a)(A) of this rule), the money provided by the lender is not income but is counted as the borrower's resource if retained in the month following the month of receipt (notwithstanding OAR 461-140-0070).
 - (B) If the loan is not a *bona fide loan agreement*, the money provided by the lender is counted as income in the month received and is counted as a resource if retained in the month following the month it was received.
 - (d) In the QMB-BAS, QMB-SMB, and QMB-SMF programs:
 - (A) If the loan is a *bona fide loan agreement*, the money provided by the lender is not considered income.
 - (B) If the loan is not a *bona fide loan agreement*, the money provided by the lender is counted as income in the month received.
- (6) In the OSIPM program, if a client or a ~~spouse-spouse~~ (see OAR 461-001-0000) of a client uses funds to purchase a mortgage or to purchase or lend money for a promissory note or loan:
 - (a) In a transaction occurring on or after July 1, 2006:
 - (A) The balance of the payments owing to the client or ~~spouse-spouse~~ of the client is a transfer of assets for less than *fair market value* (see OAR 461-001-0000), unless all of the following requirements are met:
 - (i) The total value of the transaction is being repaid to the client or ~~spouse-spouse~~ of the client within three months of the ~~client's~~ life expectancy per ~~that person's~~the actuarial life expectancy of that individual as established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration. If the loan, promissory note, or mortgage are jointly owned by the client

and their spouse, the requirements of this section are met if the transaction is repaid according to the life expectancy of either the client or their spouse.

- (ii) Payments are made in equal amounts over the term of the transaction without any deferrals or balloon payments.
 - (iii) The contract is not cancelled upon the death of the individual receiving the payments under this transaction.
- (B) If the loan results in a disqualification and the disqualification period has been served, payments against the principal and interest are treated as unearned income.
- (b) In a transaction occurring before July 1, 2006, or for a transaction occurring on or after July 1, 2006, that does not result in a disqualification in subsection (a) of this section, the loan is treated as follows:
- (A) Interest income is treated as unearned income.
 - (B) ~~The loan is counted as a resource if:~~
 - ~~(i) The financial group includes a client in a nonstandard living arrangement (see OAR 461-001-0000) and the client's spouse;~~
 - ~~(ii) The transaction is on or after the date of the first continuous period of care (see OAR 461-001-0030); and~~
 - ~~(iii) The amount of the loan plus other resources transferred exceeds the largest amount in OAR 461-160-0580(2)(f).~~
 - ~~(C) For all other loans:~~
 - ~~(i)~~ If the loan is both a *negotiable loan agreement* (see paragraph (2)(a)(B) of this rule) and a *bona fide loan agreement*, the loan is counted as a resource valued at the outstanding principal balance.
 - ~~(C)~~ ~~(ii)~~ If the loan does not qualify under ~~subparagraph (i)~~ paragraph (B) of this subsection, payments against the principal are counted as unearned income.
- (7) In the OSIP and QMB-DW programs:
- (a) Interest income is treated as unearned income.

- (b) If the loan is both a *negotiable loan agreement* and a *bona fide loan agreement*, the loan is counted as a resource of the lender valued at the outstanding principal balance.
 - (c) If the loan does not qualify under subsection (b) of this section, the payments against the principal are counted as income to the lender.
- (8) In the QMB-BAS, QMB-SMB, and QMB-SMF programs:
- (a) Interest income is treated as unearned income.
 - (b) Payments against the principal of all loans are excluded as income.
- (9) In all programs other than the OSIP, OSIPM, and QMB programs:
- (a) The interest payment is counted as unearned income.
 - (b) The payment of principal is excluded.

Stat. Auth.: ORS [329A.500](#), 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS [329A.500](#), 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839

Older Americans Act

- (1) In all programs except the SNAP program, benefits under Title III of the Older Americans Act of 1965 (Nutrition Program for the Elderly) are excluded. In the SNAP program, these benefits are considered unearned income.
- (2) In all programs except the SNAP program:
 - (a) A wage or salary paid ~~to persons 55 years of age and older~~ under Title V of the Older Americans Act of 1965 (Experience Works, American Association of Retired Persons, National Association for Spanish-Speaking Elderly, National Council on Aging, National Council on Black Aging, National Council of Senior Citizens, National Urban League, U.S. Forest Service) is considered earned income.
 - (b) Payments ~~to an individual 55 years of age and older~~ under Title V of the Older Americans Act of 1965 that are not a wage or salary are excluded.
- (3) In the SNAP program, payments under Title V of the Older Americans Act of 1965 are excluded.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.083, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 329A.500, 409.010, 411.060, 411.083, 411.404, 411.816, 412.014, 412.049

Pension and Retirement Plans

- (1) Pension and retirement plans include the following:
 - (a) Benefits employees receive only when they retire. These benefits can be disbursed in lump-sum or monthly payments.
 - (b) Benefits that employees are allowed to withdraw when they leave a job before retirement.
 - (c) The following retirement plans ~~if purchased by an individual with funds from the plans~~ authorized by section 401 of the Internal Revenue Code of 1986:
 - (A) Traditional Defined-Benefit Plan.
 - (B) Cash Balance Plan.
 - (C) Employee Stock Ownership Plan.
 - (D) Keogh Plan.
 - (E) Money Purchase Pension Plan.
 - (F) Profit-Sharing Plan.
 - (G) Simple 401(k).
 - (H) 401(k).
 - (d) Retirement plans ~~purchased by an individual with funds from plans~~ authorized by section 403 of the Internal Revenue Code of 1986 at subsections (a) or (b).
 - (e) The following retirement plans and annuities ~~if purchased by an individual with funds from the plans~~ authorized by section 408 of the Internal Revenue Code of 1986 at subsections (a), (b), (c), (k), (p), or (q), or at section 408A:
 - (A) Individual Retirement Annuity.
 - (B) Individual Retirement Account (IRA).
 - (C) Deemed Individual Retirement Account or Annuity under a qualified employer plan.
 - (D) Accounts established by employers and certain associations of employees.

- (E) Simplified Employee Pension (SEP).
 - (F) Simple Individual Retirement Account (Simple-IRA).
 - (G) Roth IRA.
 - (f) The following retirement plans offered by governments, nonprofit organizations, or unions:
 - (A) 457(b) Plan.
 - (B) 501(c)(18) Plan.
 - (C) Federal Thrift Savings Plan under 5 USC 8439.
 - (g) In all programs except the OSIP, OSIPM, and QMB programs, an annuity purchased by an individual with funds from a plan authorized under subsection (c), (d), or (f) of this section.
- (2) An ~~annuity purchased by the spouse (see OAR 461-001-0000) of an individual with funds from annuitized~~ a retirement plan described in subsection (1)(e) of this rule, ~~purchased by the spouse (see OAR 461-001-0000)~~, is not considered a retirement plan and is treated in accordance with OAR 461-145-0020 and OAR 461-145-0022.
- (3) Except as provided in subsection (c) of this section, benefits an individual receives from pension and retirement plans are treated as follows:
- (a) Monthly payments are counted as unearned income.
 - (b) All payments not covered by subsection (a) of this section are counted as *periodic income* (see OAR 461-001-0000 and 461-140-0110) or *lump-sum income* (see OAR 461-001-0000 and 461-140-0120).
 - (c) In the OSIP, OSIPM, and QMB-DW programs, if the *equity value* (see OAR 461-001-0000) of the pension or retirement plan is counted as a resource under section (4) of this rule, any payments received are considered the conversion of a resource and are not counted as income.
- (4) In the OSIP, OSIPM, and QMB-DW programs:
- (a) Except for an annuity purchased with funds from a retirement plan described in subsection (1)(e) of this rule:
 - (A) The *equity value* of a pension or retirement plan is excluded as a resource if the individual is eligible for monthly or periodic payments under the

terms of the plan and has applied for those payments in accordance with OAR 461-120-0330. When an individual is permitted to choose or change a payment option, the individual must select the option that --

- (i) Provides payments commencing on the earliest possible date; and
- (ii) Completes payments within the actuarial life expectancy, as published in the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration, of the individual.

(B) ~~The~~ Except when OAR 461-120-0330 has resulted in ineligibility, the equity value of all pension and retirement plans not covered by paragraph (A) of this subsection that allows an individual to withdraw funds, minus any penalty for withdrawal, is counted as a resource.

(b) The *equity value* of an ~~annuity purchased with funds from a~~ annuitized retirement plan described in subsection (1)(e) of this rule is excluded as a resource if it meets the payout requirements of OAR 461-145-0022(10)(c). Otherwise, the *equity value* is counted as a resource.

(c) For an individual in a *standard living arrangement* (see OAR 461-001-0000), the equity value of pension and retirement plans owned by a non-applying *spouse or parent* (see OAR 461-001-0000) ~~are~~ is excluded as a resource. Dividends and interest earned on pension funds owned by a non-applying *spouse or parent* are excluded as income.

(5) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, dividends and interest earned on pension funds owned by a non-applying *spouse* are excluded as income.

(6) In the SNAP program, the value of retirement accounts identified in sections 401(a), 401(k), 403(a), 403(b), 408, 408(k), 408(p), 408A, 457(b), ~~or~~ 501(c)(18), or 529A of the Internal Revenue Code, ~~or in~~ are excluded as resources. The value of retirement accounts designated as a Federal Thrift Savings Plan account, IRA, myRA, Roth IRA, SEP, Simple IRA, and any other retirement plan designated as tax-exempt under a successor or similar provision of the Internal Revenue Code of 1986 are excluded resources.

(7) In all programs except the OSIP, OSIPM, QMB, and SNAP programs, the *equity value* of a pension and retirement plan that allows an individual to withdraw funds before retirement, minus any penalty for early withdrawal, is counted as a resource.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049

Income and Payment Standard; OSIPM

This track changes document does not include other changes to this rule identified in the June 2017 Notice of Proposed Rulemaking Hearing currently anticipated to go into effect on September 1, 2017.

- (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 461-135-0745 or OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in ~~section (4)~~sections (3) or (5) 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				
Adjusted No. in Household	One Person in Need Group		Two People in Need Group	
	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

- (4) An individual, other than one identified in section (1), (2), or (6) 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				
Adjusted No. in Household	One Person in Need Group		Two People in Need Group	
	One	Two or More	Two	Three or More
AB/AD/OAA	735.00	490.00	1,103.00	735.34

- (5) 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.
- (6) 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

Special Need; Home Repairs; OSIP and OSIPM

In the OSIP and OSIPM programs, the Department will authorize a special need payment for home repairs for homeowners or buyers as a one-time special need within the following limits:

- (1) The repairs must be needed to remove a physical hazard to the health and safety of the client.
- (2) Payment for repairs authorized by this rule---
 - (a) Is limited to the least expensive means possible;
 - (b) May not exceed \$1,000 in any 24-month period; and
 - (c) When the home is jointly owned, is limited to a percentage of the cost of the repairs equal to the percentage of client ownership.
- (3) The repairs must cost less than moving to another home.
- (4) Payment is limited to the lowest possible cost that will provide adequate facilities. The client must provide three competitive bids for the repairs, unless there are not three providers of the service in the local area.
- (5) Before approving payment for repairs or new installations, the Department must consider the use value and determine whether it is consistent with the service plan for the client to remain in the house.
- (6) Providers of the repairs or new installations must ensure that the work being completed meets current building codes.
- (7) Payment is only made for home adaptations performed by a licensed and bonded construction contractor.
- (8) Repairs or replacements include, but are not limited to:
 - (a) Electrical wiring that does not constitute conversion to electrical space heating but that is needed:
 - (A) To avoid condemnation; or
 - (B) To remove a definite fire or shock hazard as documented by appropriate public officials.

- (b) Plumbing--but not including the costs of plumbing items with which the house is not already equipped except that a toilet may be paid for when newly required by the creation or extension of a sewer district. Examples of what plumbing-related items may be covered include:
 - (A) Toilets and sinks.
 - (B) Cleaning or replacing septic tanks or cesspools.
 - (C) Installing sewer connections from house to street--but not sewer installation--if required by the creation of a new sewer district or the extension of an existing district.
- (c) Repair or replacement of existing electric pumps for wells needed to continue the water supply. This does not include drilling a new well.
- (d) Heating equipment--repair of heating stoves, furnaces and water heaters and, if repair is not possible, replacement with the least expensive adequate equipment.
- (e) Repair of roofs.
- (f) Repair or replacement of steps and repair of floors.
- (9) A client with a life estate is not eligible for this special need allowance. The individual who will benefit from the life estate, following the death of the client, is considered responsible for the home repairs.
- (10) When a home is jointly owned by an *institutionalized spouse* (see OAR 461-001-0030) receiving in-home services under OAR chapter 411 division 030 and a *community spouse* (see OAR 461-001-0030), section (2)(c) of this rule may be waived by the Department if requiring the *community spouse* to pay a percentage of the costs of the repairs would impose an undue hardship on the client.

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

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

Special Need; Moving Costs; OSIP and OSIPM

For clients who are 18 years of age or older in the OSIP and OSIPM programs:

- (1) The Department will authorize payment for the cost of moving a client's household effects as a one-time special need if the requirements of at least one of the following subsections are met:
 - (a) Moving is essential to provide nonhazardous housing. "Hazardous" housing means a building so deteriorated and unsafe that it is uninhabitable or subject to condemnation. If no official certification to that effect can be obtained, the condition of the dwelling must have been seen by a Department employee and documented in the case record.
 - (b) The client has been evicted for reasons other than his or her own neglect or failure to make rent or house payments.
 - (c) The move is necessary to protect the safety of the client and is a result of the client being the victim of domestic violence or protective services domestic violence (see OAR 461-001-0000) or abuse (see OAR 411-020-0002).
 - (d) For a client in a *nonstandard living arrangement* (see OAR 461-001-0000), ~~the client must a~~ move is necessary because the level of ~~needed~~-services of the client increases or decreases.
 - (e) The needs of the client would be better met out of state.
- (2) Payment for moving costs authorized by this rule--
 - (a) May be authorized for not more than one move in any 12-month period;
 - (b) Is limited to the least expensive means possible; and
 - (c) ~~Cannot~~May not exceed ~~\$500~~\$1000 in any 12-month period.
- (3) Payments necessary for a one-time move may be made over a period not to exceed 30 consecutive days.
- (4) A filing group that has received a payment for moving costs under this rule is not eligible for a moving cost payment again until the first day of the 12th month following the first receipt by the filing group of the most recent payment ~~that was made for the most recent month for moving costs.~~

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.704, 411.706

In the OSIPM program:

- (1) The Department provides a ~~telephone-communication~~ allowance ~~for a client to clients meeting the requirements of at least one of the following subsections if the client is 18 years of age or older and unable to leave the residence of the client due to a documented medical condition without the assistance of another person:~~
 - (a) ~~Clients~~ receiving SSI~~;~~
 - (b) ~~Clients whose a client with an~~ adjusted income is less than the OSIPM program standard under OAR 461-155-0250~~;~~ ~~or a client~~
 - (c) ~~Clients~~ receiving in-home services ~~if the client is 18 years of age or older and is unable to leave his or her residence without assistance due to a documented medical condition under OAR chapter 411 division 030.~~
- (2) The ~~telephone-communication~~ allowance may cover the following costs:
 - (a) The least expensive appropriate monthly telephone service or the basic monthly rate, whichever is less.
 - (b) The cost of telephone adaptive equipment, if the client has a medically documented need (for instance, TDD, a special headset, dialing mechanism, or emergency response system).
 - (c) Necessary landline telephone installation charges.
 - (d) Broadband internet service.
- (3) ~~An SSI eligible client or a~~ A client with an adjusted income less than the OSIPM program standard granted described in section (1) of this rule is ineligible for a telephone communication allowance must apply unless the client applies for or receives a payment payments through the Oregon Telephone Lifeline Assistance Program (OTAP)-program.
- (4) Communication allowances are limited to no more than \$25 per month per client.
- (5) Each client eligible under section (1) of this rule may receive a single communication allowance. The communication allowance is valid for either telephone service or broadband service.

Stat. Auth.: [ORS 409.050](#), 411.060, 411.070, [411.404](#), 411.706, [413.085](#), [414.685](#)
Stats. Implemented: [ORS 409.010](#), 411.060, 411.070, [411.404](#), 411.704, 411.706

Income Deductions and Client Liability; Long-Term Care Services or Home and Community-Based Care; OSIPM

In the OSIPM program:

- (1) Deductions from income are made for an individual residing in or entering a long-term care facility or receiving *home and community-based care* (see OAR 461-001-0030) as explained in subsections (3)(a) to (3)(h) of this rule.
- (2) Except as provided otherwise in OAR 461-160-0610, the liability of the individual is determined according to subsection (3)(i) of this rule.
- (3) Deductions are made in the following order:
 - (a) One standard earned income deduction of \$65 is made from the earned income in the OSIPM ~~AD and OSIPM OAA~~ programs. ~~The deduction is \$85 in the OSIPM AB program.~~
 - (b) The deductions under the plan for self-support as allowed by OAR 461-145-0405.
 - (c) One of the following need standards:
 - (A) A \$60.18 personal needs allowance for an individual receiving long-term care services.
 - (B) A \$90 personal needs allowance for an individual receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.
 - (C) For an individual who receives *home and community-based care*:
 - (i) Except as provided in subparagraph (ii) of this paragraph, the OSIPM maintenance standard.
 - (ii) For an individual who receives in-home services, the OSIPM maintenance standard plus \$500.
 - (d) A *community spouse* (see OAR 461-001-0030) monthly income allowance is deducted from the income of the *institutionalized spouse* (see OAR 461-001-0030) to the extent that the income is made available to or for the benefit of the *community spouse*, using the following calculation.

- (A) Step 1--Determine the maintenance needs allowance. \$2,030 is added to the amount over \$609 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$3,022.50 whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the SNAP program (see OAR 461-160-0420). If an all-inclusive rate covers items that are not allowable shelter expenses, including meals or housekeeping in an assisted living facility, or the rate includes utilities, to the extent they can be distinguished, these items must be deducted from the all-inclusive rate to determine allowable shelter expenses.
 - (B) Step 2--Compare maintenance needs allowance with community spouse's countable income. The *countable* (see OAR 461-001-0000) income of the *community spouse* is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.
 - (C) Step 3--If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.
- (e) A dependent income allowance as follows:
- (A) For a case with a *community spouse*, a deduction is permitted only if the monthly income of the eligible dependent is below \$2,030. To determine the income allowance of each eligible dependent:
 - (i) The monthly income of the eligible dependent is deducted from \$2,030.
 - (ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.
 - (B) For a case with no *community spouse*:
 - (i) The allowance is the TANF adjusted income standard for the individual and eligible dependents.
 - (ii) The TANF standard is not reduced by the income of the dependent.
- (f) Costs for maintaining a home if the individual meets the criteria in OAR 461-160-0630.

- (g) Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. ~~This includes the public and private health insurance premiums of the community spouse and the individual's dependent.~~
- (h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.
- (i) The individual's liability is determined as follows:
 - (A) For an individual receiving *home and community-based care* (except an individual identified in OAR 461-160-0610(4)), the liability is the actual cost of the *home and community-based care* or the adjusted income of the individual, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for *home and community-based care*. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.
 - (B) For an individual who resides in a nursing facility, a state psychiatric hospital, an Intermediate Care Facility for ~~the Mentally Retarded People~~ with Intellectual Disabilities, or a mental health facility, there is a liability as described at OAR 461-160-0610.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.065, 414.685
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.065, 414.685

461-160-0630

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Deduction for Maintaining a Home; Long-Term Care Client

In the OSIP and OSIPM programs, a single client in long-term care is eligible for a home maintenance deduction for up to six months if:

- (1) A physician has documented that the client is likely to return home within six months;
- (2) The amount of the deduction is reasonable in relation to ~~the applicable OSIP shelter standard~~\$451; and
- (3) The Department determines that maintaining the home is an essential part of a plan for the client's relocation to a less restrictive living situation.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 413.085, 414.685

Stats. Implemented: ORS 409.010, 411.060, 411.404

Benefits for a Client in an Acute Care Hospital

- (1) In the REF, REFM, and TANF programs, regular monthly benefits continue when a client enters an acute care hospital. The monthly benefits remain unchanged until the client returns home or enters some other living arrangement. An authorized representative designated by the client or the branch may be used if necessary.
- (2) In the ERDC, ~~and GA, OSIP, OSIPM, and QMB~~ programs, regular monthly benefits continue if a client will be in the acute care hospital for less than 30 days. If the client will be in the acute care hospital for 30 days or more or until death, the client's needs are determined as if the client were in a nursing facility.
- (3) In the OSIPM program:
 - (a) Individuals in a *standard living arrangement* (see OAR 461-001-0000) are considered to be in their own *household group* after the individual has been in the acute care hospital for 30 days or more (see OAR 461-110-0210).
 - (b) Individuals who will be in an acute care hospital for 30 days or more are evaluated under OAR 461-135-0745 if any of the following are true:
 - (A) The individual was residing in a *standard living arrangement* and will no longer meet the eligibility requirements for OSIPM in their own *household group*.
 - (B) The individual was receiving OSIPM-EPD and will no longer meet the specific requirements in OAR 461-135-0725.
 - (c) The individual was receiving services in a *nonstandard living arrangement* (see OAR 461-001-0000) and would not qualify for OSIPM in the absence of *home and community-based care* (see OAR 461-001-0030).
- (4) In the QMB program, individuals in an acute care hospital are evaluated in accordance with the *household group* rule (see OAR 461-110-0210(7)).
- (35) In the SNAP program, regular monthly benefits continue if the client will be in his or her own home 50 percent of the time or more. If the client will be in an institution for more than 50 percent of a calendar month, the client is not eligible for SNAP benefits.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.404, 411.816, 412.049, 413.085, 414.685

Stats. Implemented: ORS 329A.500, 409.050, 411.060, 411.404, 411.816, 412.049

Notice Situation; Nonstandard Living Situations

- (1) In the SNAP program:
 - (a) A *timely continuing benefit decision notice* (see OAR 461-001-0000) is sent to terminate, suspend, or reduce benefits if the notice occurs as a result of any of the following situations:
 - (A) A client has been admitted or committed to an institution.
 - (B) A client has been placed in foster care, skilled nursing care, intermediate care, or long term hospitalization.
 - (C) A client is placed in official custody or a correctional facility.
 - (D) A client enters a drug or alcohol residential treatment facility.
 - (E) A client leaves a drug or alcohol residential treatment facility without reapplying for SNAP benefits.
 - (b) No *decision notice* (see OAR 461-001-0000) is required if the Department determines that a resident of a *group living* (see OAR 461-001-0015) facility or a drug or alcohol treatment center is ineligible as a result of one of the following actions taken against the center or facility:
 - (A) Disqualification by Food and Nutrition Services (FNS) as an authorized representative.
 - (B) Loss of certification with the Department.
 - (c) A resident of a facility that is disqualified or loses its certification as described in subsection (b) of this section may still qualify for SNAP benefits through a separate application.
- (2) Except as provided in section (3) of this rule, for all programs except the SNAP program, a *basic decision notice* (see OAR 461-001-0000) is sent to terminate, suspend, or reduce benefits in each of the following situations:
 - (a) The client has been admitted or committed to an institution, or the client loses Medicaid eligibility while in the institution.
 - (b) The client has been placed in skilled nursing care, intermediate care, or long-term hospitalization.

- (c) The client is placed in official custody or a correctional facility.
- (3) In the OSIPM program, a client receiving *home and community-based care* (see OAR 461-001-0030) or long term care services is sent --
 - (a) *A timely continuing benefit decision notice* in each of the following situations:
 - (A) A reduction or closure of services occurs as the result of a process of reevaluating both the functional impairment levels of a client and the requirements of a client for assistance in performing activities of daily living.
 - (B) Services are closing because the client has not paid the client liability.
 - (C) The client receives benefits in the OSIP-IC or OSIPM-IC program, and benefits will end under OAR 411-030-0100.
 - (D) There is a change in special needs as described in OAR 461-180-0040.
 - (E) When there is an increase in the client liability as described in OAR 461-160-0610 and OAR 461-160-0620
 - ~~(b) — A continuing benefit decision notice (see OAR 461-001-0000) when there is an increase in the client liability.~~
 - (eb) A *basic decision notice* when there is a decrease in the client liability.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.101, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685
Stats. Implemented: ORS 411.060, 411.085, 411.095, 411.099, 411.101, 411.103, 411.111, 411.816, 412.014, 412.049

Effective Dates; Initial Month Medical Benefits

The effective date for starting medical benefits for an eligible client is as follows:

- (1) In the OSIPM and QMB-DW programs:
 - (a) Except as provided for in subsections (b) to (h) of this section:
 - (A) If the client meets all eligibility requirements on the *date of request* (see OAR 461-115-0030), it is the first day of the month that includes the *date of request*. An OSIPM program client who is *assumed eligible* under OAR 461-135-0010(5) meets "all eligibility requirements" for the purposes of this section as follows:
 - (i) Effective the first day of the month of the initial SSI payment if the client is age 21 or older.
 - (ii) Effective the first day of the month prior to the month of the initial SSI payment if the client is under the age of 21.
 - (B) If the client does not meet all eligibility requirements on the *date of request*, but meets all requirements after the *date of request*, within the application processing time frames of OAR 461-115-0190, it is the first day of the month that includes the date that all eligibility requirements are met.
 - (b) If the client does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new *date of request*.
 - (c) Except as provided for in subsections (d) and (e) of this section, for a new applicant who is an *inmate* (see OAR 461-135-0950) on any day of the month during the month that the applicant is determined to meet all eligibility requirements, the effective date is determined in accordance with subsections (a) and (b) of this section, except that coverage is not in effect for any day during the month that the applicant is an *inmate* other than the date of incarceration and the date of release.
 - (d) The effective date for an individual residing in a *public institution* (see OAR 461-135-0950) meeting the requirements of OAR 461-135-0950 regarding applications received by individuals with a serious mental illness is determined in accordance with OAR 461-135-0950.

- (e) The effective date for an individual meeting the eligibility requirements of OAR 461-135-0950 regarding residents of a state psychiatric institution is the date that all eligibility requirements are met, including other chapter 461 eligibility requirements, if those requirements are met within the application processing time frames of OAR 461-115-0190. Otherwise the requirements of subsection (b) of this section apply.
 - (f) The effective date for an *inmate* or a resident of state hospital with suspended benefits that will be reinstated is determined in accordance with OAR 461-135-0950. If benefits will not be reinstated the *inmate* is considered a new applicant and the effective date is determined in accordance with subsection (c) of this section.
 - (g) The effective date for a new applicant who is receiving Medicaid in another state on the *date of request*, but meets the requirements of OAR 461-165-0030 regarding receipt of medical benefits in another state is:
 - (A) The *date of request* if all eligibility requirements are met on the *date of request* or after the *date of request*, but during the month that includes the *date of request*.
 - (B) If all eligibility requirements are not met during the month that includes the *date of request* the effective date is determined in accordance with paragraph (1)(a)(B) and subsection (b) of this section.
 - (h) The effective date for an applicant receiving Medicaid in another state prior to the *date of request*, but during the month that includes the *date of request*, is the day following the day that Medicaid benefits end in the other state if all eligibility requirements are met during the month that includes the *date of request*. If all requirements are not met in the month that includes the *date of request* the effective date is determined in accordance with paragraph (1)(a)(B) and subsection (b) of this section.
- (2) In the OSIPM program, if an individual has been released from a correctional institution and is determined eligible for OSIPM, the effective date of beginning the individual's medical assistance is the date the individual is released from the correctional facility or the date the individual begins the period of hospitalization outside of the correctional facility.
- (3) In the QMB-BAS program, it is the first of the month after the *benefit group* (see OAR 461-110-0750) has been determined to meet all QMB-BAS program eligibility criteria and the Department receives the required verification.
- (34) In the QMB-SMB and QMB-SMF programs, it is --

- (a) The first of the month in which the *benefit group* meets all program eligibility criteria and the Department receives the required verification; or
- (b) The first of the month in which the Low Income Subsidy (LIS) information is received by the Social Security Administration (SSA), if the SMB or SMF program application was generated by the electronic transmission of LIS data from the SSA and the *benefit group* meets all program eligibility criteria.

(45) In the REFM program:

- (a) Except as provided in subsection (b) of this section:
 - (A) If the individual meets all eligibility requirements on the *date of request* (see OAR 461-115-0030), it is the *date of request*.
 - (B) If the individual does not meet all eligibility requirements on the *date of request*, it is the first day following the *date of request* that all eligibility requirements are met.
- (b) If the individual does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new *date of request*.

(56) Retroactive eligibility is authorized under certain circumstances in some medical programs (see paragraph (1)(a)(A) of this rule, OAR 461-135-0875, and 461-180-0140).

Stat. Auth.: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 413.085, 414.685, 414.839

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.439, 411.447, 411.704, 411.706, 413.085, 414.685, 414.839