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PERMANENT ADMINISTRATIVE RULES

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August 11, 2017 by the

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

461

Chapter Number

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to become effective September 1, 2017.

Rulemaking Notice was published in the July 1, 2017 Oregon Bulletin.

Rule Caption: *Amending rules relating to requirements for self-sufficiency clients and providers*

AMEND: 461-145-0540, 461-165-0160, 461-170-0011, 461-170-0101

REPEAL: 461-145-0540(T), 461-165-0160(T), 461-170-0011(T), 461-170-0101(T)

ORS 329A.500, 409.050, 411.060, 411.070, 411.122, 411.083, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Stat. Auth.

7 USC 2015(o), 42 USC 1396p(d)(4)(A), 7 CFR 273.12, 7 CFR 273.24

Other Auth.

ORS 329A.500, 409.010, 411.060, 411.070, 411.083, 411.122, 411.404, 411.706, 411.816, 411.825, 411.837, 412.014, 412.049, 413.085, 414.685, 414.826, 414.839

Stats. Implemented

Rule Summary

OAR 461-145-0540 relating to the treatment of trusts is being amended to make permanent the temporary rule amendment adopted on March 13, 2017 that reinstated the treatment of revocable trusts in the ERDC, REF, REFM, and TANF programs in effect prior to 2016 to align the ERDC and TANF programs with the SNAP program, and aligned the REF and REFM programs with the TANF program. The amendment counts trust payments as unearned income in these four programs.

OAR 461-165-0160 about direct payments to child care providers is being amended to make permanent the temporary rule amendment adopted on March 24, 2017 that allows licensed providers to receive reimbursement for care provided prior to their approval date so long as the client was eligible for child care services. Licensed providers have complete background checks through their licensing process.

OAR 461-170-0011 regarding the changes a client in the SNAP program must report is being amended to include any time limit county as an area in Oregon whose residents must report if their work hours drop below 20 hours a week. This rule is also being amended to add change in pregnancy status as a condition that must be reported for the Refugee Medical (REFM) program. OAR 461-170-0101 regarding when a SNAP household may use the simplified reporting system is being amended to include any time limit county as an area in Oregon whose residents may have a less than 6-month certification period and use simplified reporting. Oregon is required by federal law to implement SNAP time limits in certain counties as the economy improves. The rule changes in the SNAP program make permanent temporary amendments adopted March 10, 2017 that initially affected clients in Clackamas County.

Trusts

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

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

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

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

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

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

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

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

| Stat. Auth.: ORS [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](#), 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685, 414.839

Direct Provider Payments; General Information

- (1) The Department makes payments on behalf of eligible clients to the providers they select to care for their children. The payments are made directly to the provider. To be eligible for payment, a provider must:
 - (a) Charge Department clients at a rate no higher than the rate charged other customers;
 - (b) Provide the Department his or her social security number (SSN) or IRS identification number; and
 - (c) Meet the requirements of OAR 461-165-0180.
- (2) Payments to a client's provider are subject to each of the following limitations:
 - (a) A payment is made only for child care already provided.
 - (b) Payment is made for the amount charged to the client but may not exceed the rate authorized in OAR 461-155-0150.
 - (c) No payment will be authorized unless the client has designated a primary provider.
 - (d) No payment will be made for less than one dollar.
 - (e) ~~A~~ Except as provided otherwise in subsection (f) of this section, a payment is made only for child care provided on or after the date the designated provider has met the requirements to be listed and paid through the Department.
 - (f) A designated child care provider who the Department approves to be listed and paid through the Department may receive payment for child care provided prior to obtaining Department approval if the provider met the other Department requirements and was licensed under OAR 414-205-0000 to 414-205-0170, OAR 414-350-0000 to 414-350-0405, or OAR 414-300-0000 to 414-300-0415.
- (3) In the ERDC and TANF programs, the Department may issue a payment to an eligible provider during a month for which child care is being provided to meet an unexpected need of the provider related to the care of a covered child. The payment may be made if, without the payment, continued care by the same provider would be jeopardized and the client could not immediately obtain child care from another provider.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.070, 411.122, 412.049

Stats. Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.122, 412.049

Changes That Must Be Reported

- (1) A change in employment status is considered to occur as follows:
 - (a) For a new job, the change occurs the first day of the new job.
 - (b) For a job separation, the change occurs on the last day of employment.
- (2) A change in source of income is considered to occur as follows:
 - (a) For earned income, the change occurs upon the receipt by the individual of the first paycheck from a new job or the first paycheck reflecting a new rate of pay.
 - (b) For unearned income, the change occurs the day the individual receives the new or changed payment.
- (3) An individual must report, orally or in writing, the following changes:
 - (a) In the ERDC program, an individual must report the following changes within 10 days of occurrence:
 - (A) A change in child care provider.
 - (B) A change in employment status.
 - (C) A change in mailing address or residence.
 - (D) A change in membership of the filing group (see OAR 461-110-0350).
 - (E) A member of the filing group is discharged from the U.S. military and returning from active duty in a military war zone.
 - (F) A change in income above the ERDC income limit as defined in OAR 461-155-0150(5)(b) that is expected to continue.
 - (b) In the SNAP program:
 - (A) An ABAWD residing in one of the time limit counties (see OAR 461-135-0520), who is employed and assigned to CRS or SRS ~~who resides in Multnomah or Washington County and is employed,~~ must report a change in work hours when work hours are below 20 hours per week. This change must be reported within 10 days of occurrence.
 - (B) An individual assigned to CRS must report any of the following changes within 10 days of occurrence:

- (i) A change in earned income of more than \$100.
 - (ii) A change in unearned income of more than \$50.
 - (iii) A change in source of income.
 - (iv) A change in membership of the filing group (see OAR 461-110-0370) and any resulting change in income.
 - (v) A change in residence and the shelter costs in the new residence.
 - (vi) A change in the legal obligation to pay child support.
 - (vii) When the sum of cash on hand, stocks, bond, and money in a bank or savings institution account reaches or exceeds program resource limits.
 - (viii) Acquisition or change in ownership of a non-excluded vehicle.
- (C) An individual assigned to SRS must report when the monthly income of the filing group exceeds the SNAP *countable* (see OAR 461-001-0000) income limit by the tenth day of the month following the month of occurrence.
- (D) An individual assigned to TBA is not required to report any changes.
- (c) For Employment Payments (see OAR 461-135-1270) and JPI (see OAR 461-135-1260), an individual must follow the same reporting requirements as a SNAP client assigned to CRS, SRS, or TBA reporting systems (see OAR 461-170-0010).
- (d) In the GA, OSIP, OSIPM, and QMB programs, an individual must report all changes that may affect *eligibility* (see OAR 461-001-0000) within 10 days of occurrence, including any of the following changes:
- (A) A change in employment status.
 - (B) A change in health care coverage.
 - (C) A change in membership of the *household group* (see OAR 461-110-0210).
 - (D) A change in marital status.
 - (E) A change in residence.
 - (F) Except for QMB-BAS, QMB-SMB, and QMB-SMF, a change in resources.

- (G) A change in source or amount of income.
- (e) In the REF, SFPSS, and TANF programs, an individual assigned to CRS must report any of the following changes within 10 days of occurrence:
 - (A) Acquisition or change in ownership of a non-excluded vehicle.
 - (B) A change in earned income more than \$100.
 - (C) Employment separation.
 - (D) A change in membership of the *household group* (see OAR 461-110-0210).
 - (E) A change in marital status or other changes in membership of the filing group.
 - (F) A change in mailing address or residence.
 - (G) A change in pregnancy status of any member of the filing group.
 - (H) A change in source of income.
 - (I) A change in unearned income more than \$50.
 - (J) A change in who pays the shelter costs if the costs will be paid by a non-custodial *parent*.
 - (K) Sale or receipt of a resource that causes total resources to exceed program resource limits.
- (f) In the REFM program, an individual must report the following changes within 10 days of occurrence:
 - (A) A change in membership of the *household group* (see OAR 461-110-0210).
 - (B) A change in residence.
 - (C) A change in pregnancy status of any member of the filing group.

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

Stats. Implemented: ORS 329A.500, 409.010, 409.050, 411.060, 411.070, 411.081, 411.404, 411.704, 411.706, 411.816, 411.825, 411.837, 412.014, 412.049, 413.085, 414.685, 414.826

461-170-0101
Simplified Reporting System (SRS); SNAP

Eff. ~~1-1-16~~ 1-17

In the SNAP program:

- (1) OAR 461-170-0101 to 461-170-0104 establish and explain the Simplified Reporting System (SRS).
- (2) Except for an ABAWD (see OAR 461-135-0520) who resides in ~~Multnomah or Washington County~~ one of the time limit counties (see OAR 461-135-0520) and who is certified for a four-month period, a filing group (see OAR 461-110-0310 and 461-110-0370) certified to receive SNAP program benefits for less than six months may not participate in SRS.
- (3) A filing group with a member working under a JOBS Plus agreement may not participate in SRS.

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

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.816, 412.049