

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

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on
October 4, 2017 by the

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

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Rules Coordinator	Address	Telephone	Email
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to become effective October 4, 2017 through March 31, 2018.*

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

Rule Caption: Revising rule about liens

In the Matter of: Amending OAR 461-195-0305

AMEND: 461-195-0305

ORS 409.050, 411.060, 413.085, 414.685, 416.510-416.610

Stat. Auth.

42 USC § 1396a(a)(25), 42 USC § 1396k(a)(1)(A), 42 USC § 1396p(a)(1)(A)(ii), Pub L 114-10,
§ 220, 129 Stat 154 (2015), 42 CFR § 433.137, 42 CFR § 433.138, 42 CFR § 433.145.

Other Auth.

ORS 409.010, 411.060, 413.085, 414.685, 416.510-416.610

Stats. Implemented

Rule Summary

OAR 461-195-0305 about liens of the Department, the Oregon Health Authority, coordinated care organization, or prepaid managed care health services organization is being amended to remove its postponement of the start of the 180-day time period to foreclose a lien; clarify the meaning of the word “incurred” when referring to incurred medical, surgical and hospital expenses; remove the rebuttable presumption that all settlement, compromise or judgment proceeds are allocated to medical expenses; clarify that foreclosure may be commenced when

funds are disbursed to an agent of the recipient; indicate that this rule also applies to any coordinated care organization or prepaid managed care health service organization that received an assignment of a lien, and identify other rules that define terms used in this rule. These changes align the rule with the legal authority of the Department and the Oregon Health Authority, and some are needed to comply with federal law (Public Law 114-10, Section 220 that takes effect on October 1, 2017).

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

Need for the Rules

OAR 461-195-0305 needs to be amended to align with the legal authority of the Department and the Oregon Health Authority under state and federal law by removing its postponement of the start of the 180-day time period to foreclose a lien; clarifying the meaning of the word “incurred” when referring to incurred medical, surgical and hospital expenses; removing the rebuttable presumption that all settlement, compromise or judgment proceeds are allocated to medical expenses; clarifying that foreclosure may be commenced when funds are disbursed to an agent of the recipient; indicating that this rule also applies to any coordinated care organization or prepaid managed care health service organization that received an assignment of a lien, and identifying other rules that define terms used in this rule.

Documents Relied Upon

None

Justification of Temporary Rules

The Department finds that failure to act promptly by amending OAR 461-195-0305 will result in serious prejudice to the public interest, the Department, and the Oregon Health Authority. The Department needs to proceed by temporary rule at this time to comply with federal law changes taking effect on October 1, 2017 as well as other laws about agency authority.

Approved for Filing:

Mike McCormick

Date

Lien of the Department, Coordinated Care Organization, or Prepaid Managed Care Health Services Organization

- (1) Whenever a *recipient* (see OAR 461-195-0301) has a *claim* (see OAR 461-195-0301) for damages for a *personal injury* (see OAR 461-195-0301), the ~~Department~~ Department (see OAR 461-195-0301) shall have a lien upon the amount of any *judgment* (see OAR 461-195-0301) in favor of a *recipient* or amount payable to the *recipient* under a *settlement* (see OAR 461-195-0301) or *compromise* (see OAR 461-195-0301) as a result of that *claim* for all *assistance* (see OAR 461-195-0301) received from the date of the injury to---
 - (a) The date of satisfaction of the *judgment* favorable to the *recipient*; or
 - (b) The date of the payment under the *settlement* or *compromise*.
- (2) The person or public body, agency or commission bound by the *judgment*, *settlement*, or *compromise* shall be responsible for immediately informing the ~~Department's~~ Personal Injury Liens Unit (see OAR 461-195-0310 for address) when a *judgment* has been issued or a *settlement* or *compromise* has been reached so that the exact amount of the ~~Department's~~ lien of the Department may be determined. For the purposes of this rule, immediately means within ten calendar days. ~~If the Department is not timely notified, the 180 day limitation in ORS 416.580(1) does not begin to run until the Department's Personal Injury Liens Unit has actual notice of a settlement, compromise, or judgment.~~
- (3) The lien ~~will~~ does not attach to the amount of any *judgment*, *settlement*, or *compromise* to the extent of the attorney fees, costs and expenses which the ~~Recipient~~ recipient incurred in order to obtain that *judgment*, *settlement*, or *compromise*.
- (4) The lien ~~will~~ does not attach to the amount of any *judgment*, *settlement*, or *compromise* to the extent of medical, surgical and hospital expenses ~~personally~~ incurred by ~~such the~~ recipient on account of the *personal injury* giving rise to the *claim*, for which *assistance* was not provided or paid. ~~For purposes of OAR 461-195-0301 to 461-195-0350, personally incurred expenses are limited to those expenses not covered by the Department, and for which the client is personally liable at the time of judgment, settlement, or compromise. personal injuries for which the recipient had a claim or action~~ (see OAR 461-195-0301). "Incurred" refers only to those medical, surgical and hospital expenses the recipient has paid or is legally obligated to pay at the time of the judgment, settlement, or compromise, excluding any expenses that a third party will reimburse the recipient.
- (5) The ~~Department's~~ lien of the Department must be satisfied or specific approval must be given by the ~~Department's~~ Department staff of the Personal Injury Liens ~~Unit's staff~~ Unit before any portion of the *claim judgment*, *settlement*, or *compromise* is released to the *recipient*. ~~There is a rebuttable presumption that the entire proceeds from any judgment,~~

~~settlement, or compromise, are, unless otherwise identified, in payment for medical services.~~ The ~~Department~~ Department shall have a cause of action against any person, public body, agency, or commission bound by the *judgment, settlement, or compromise* who releases any portion of the *claim judgment, settlement, or compromise* to the *recipient* or the agent of the recipient before meeting this obligation.

(6) This rule applies to any lien assigned by the Department under OAR 461-195-0321.

Stat. Auth.: ORS 409.050, 411.060, 413.085, 414.685, 416.510-416.610

Stats. Implemented: ORS ~~25.020, 25.080, 409.020, 409.010~~, 411.060, 413.085, 414.685, 416.510-416.610