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

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Rules Coordinator Address Telephone Email Address

Rule Caption: Amending rules relating to APD medical program eligibility


Submit Comments: Written comments may be submitted until Wednesday, May 24, 2017 at 5:00 p.m. via email to robert.trachtenberg@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: Monday, May 22, 2017 at 11:30 am
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


ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

OAR 461-115-0700 about required verifications is being amended to shift the burden of verification primarily on the Medicaid agency and the use of electronic sources. Under this amendment, the Department may not require individuals to provide documentation unless to what they self-attest is not “reasonably compatible” with information the Department can obtain electronically (if available). Reasonable compatibility is reached when any differences between individuals’ self-attestation and verification the Department receives electronically do not make a difference in eligibility. Reasonable compatibility does not apply to individuals who are being evaluated for long-term-care and are subject to a potential service liability, as the federal rules mandate the Department to consider all income otherwise disregarded in determining eligibility in the post-eligibility treatment of income. This change also outlines in rule the methods and types of verification the Department will accept. These changes align with federal law.

OAR 461-115-0704 about required verification of citizenship and alien status in the OSIPM and QMB programs is being adopted to set out Department policy on verification methods and the 90-day reasonable opportunity period to align with federal law.

OAR 461-120-0010 about residency requirements is being amended to state that an individual is considered a resident in the OSIPM and QMB programs if the individual entered Oregon with a job commitment or looking for work, and is not receiving benefits from another state.

OAR 461-120-0310 about assignment of support rights, OAR 461-120-0315 about medical assignment, OAR 461-120-0345 about pursuit of healthcare and cash medical support, and OAR 461-120-0350 about good cause for not complying with requirements to pursue child support, health care coverage, and medical support are being amended to clarify that the requirement to actually assign the rights and pursue healthcare/cash medical support applies only to the individuals who can legally assign right of themselves or others, not the person whose rights that individual can legally assign who cannot legally assign his or her own rights (such as a child, for example). These amendments also clarify that those whose rights must be assigned do not have to be in the OSIPM or QMB filing group, rather, rights must be assigned for anyone receiving any type of Medicaid under the state plan. These amendments distinguish between who actually has to assign to stay eligible for OSIPM and QMB, and whose rights that person must assign. The responsibility to pursue health insurance and cash medical support is based on who is legally able to assign rights for whom. OAR 461-120-0345 is also being amended to support current practices by adding the QMB programs. These amendments align the Department with federal policy and prepare the Department for the implementation of Integrated Eligibility.

OAR 461-135-0832 and OAR 461-135-0835 about limits on estate claims and definitions used in estate administration rules are being amended to make permanent temporary rule changes effective February 13, 2017 and implement an adverse Oregon Supreme Court decision by amending the definition of “estate” with respect to the collection of payments for assistance provided and limit when the Department collects against the spouse of a recipient. OAR 461-135-0835 about limits on estate claims is also being amended to remove the word "probate" from the definition of "probate estate" to bring the rule in line with ORS 416.350 which directs recovery against the "estate" of a spouse of the Medicaid recipient under certain circumstances.
OAR 461-145-0040 about burial arrangements and burial funds is being amended to clarify the rule and make it consistent with federal manual sections on the topic.

OAR 461-145-0050 about burial spaces and merchandise is being amended to revise when the cost of these items provides an exclusion from client assets considered in determining eligibility. These changes clarify the rule and make the policy consistent with federal law and manuals on the topic.

OAR 461-145-0108 about dividends, interest and royalties is being amended to add for the OSIP, OSIPM and QMB programs how dividends and interest income is treated. This amendment also establishes and clarifies how royalty income is treated in the OSIP, OSIPM, and QMB programs, and clarifies that royalties include compensation paid to the owner for the use of property, usually copyrighted material or natural resources, such as coal, oil, or natural gas. These amendments bring the Department into compliance with federal manuals on this topic.

OAR 461-145-0110 about the effect on eligibility of payments under the Domestic Volunteer Services Act (VISTA, RSVP, SCORE, ACE) is being amended to clarify when payments under Title I of the Domestic Volunteer Services Act of 1973 are excluded for the OSIP, OSIPM, and QMB programs, bringing the rule into compliance with federal guidance in the SSA POMS at SI 00830.610.

OAR 461-145-0145 about educational accounts is being amended to add APD medical programs and their treatment of this asset type to the rule.

OAR 461-145-0150 about educational income is being amended to state an exclusion for certain VA educational benefits and clarify how other types of education income are treated, aligning APD medical programs with current federal policy.

OAR 461-145-0210 about the effects of gifts and winnings on eligibility is being amended to change how these items are treated. Under these amendments, the value of a gift card or certificate is income in the month it is received if the gift card or certificate can be used to purchase food or shelter or can be resold (with a rebuttable presumption that the gift card or certificate can be resold). In the OSIP, OSIPM, and QMB programs, if an individual is offered a choice between an in-kind item and cash, the cash amount is considered unearned income regardless of how the individual chooses to take the item; and gambling losses are not subtracted from gambling winnings in determining the individual’s countable income. These changes are intended to comply with federal guidance on these topics.

OAR 461-145-0240 about income-producing sales contracts and OAR 461-145-0460 about sale of a resource are being amended to remove the provisions that apply to treatment of these assets that originate prior to October 12, 2012. These changes are intended to streamline eligibility processes.

OAR 461-145-0285 about Japanese-American restitution payments is being adopted to establish for the OSIP, OSIPM and QMB programs that Japanese-American restitution payments are excluded from income and resources. This rule also establishes how income is treated for payments to a survivor, that restitution payments from the Canadian Government are excluded income, and that interest earned on unspent Japanese-American and Japanese-Canadian restitution payments is excluded from income and resources. This rule is being adopted to follow federal law.

OAR 461-145-0320 about life insurance is being amended to state that burial insurance that generates a cash surrender value is treated in the same manner that this rule treats life insurance. This rule is also being amended to state that when the ownership or beneficiary of a life insurance policy has been irrevocably assigned and designated for burial, it is treated in accordance with OAR 461-145-0040 and not counted towards the $1500
life insurance limit. This amendment also states when the face value of term life insurance policies are not counted in determining if the life insurance exclusion limit is exceeded.

OAR 461-145-0348 about mineral rights is being adopted to define this term and explain how the Department treats mineral rights property and income generated from mineral rights when determining eligibility. This rule aligns the Department with federal guidance.

OAR 461-145-0435 about the effect of refunds on eligibility decisions is being amended to cover the treatment of rebates and fill in gaps that currently exist in treatment of different types of refunds and rebates for APD programs, based on federal policy.

OAR 461-145-0440 about the effect of reimbursements on eligibility decisions is being amended to indicate that a reimbursement for an item already covered by benefits is counted as unearned income. This clarifies the rule and comports with federal law.

OAR 461-145-0510 about the effect of SSI benefits in the determination of eligibility is being amended to set out the policy of the Department about how to treat SSI when the SSI recipient is in the financial group of an individual not assumed eligible. This amendment aligns with federal policy, prepares the Department for the implementation of Integrated Eligibility, and supports current practices.

OAR 461-145-0520 about stocks, bonds, and other securities is being amended to state that in the OSIPM and QMB-DW programs, the value of a savings bond issued by the United States Department of the Treasury is excluded during the minimum retention period. This amendment also clarifies for all other programs, the value of a savings bond issued by the United States Department of the Treasury is excluded during the minimum retention period if the owner has received a denial of a request for a hardship waiver based on financial need. These amendments align the Department with federal policy.

OAR 461-155-0551 about special needs payments for home adaptations to accommodate a client’s physical condition is being repealed to prevent duplication of rules.

OAR 461-155-0580 about special need allowances for laundry, OAR 461-155-0600 about special need payments for home repairs, OAR 461-155-0620 about property taxes, OAR 461-155-0630 about community based care, OAR 461-155-0670 about special diet allowances, OAR 461-155-0688 about drug co-pay coverage, and OAR 461-160-0551 about income deductions are being amended to use terms more consistently with other rules, making them easier to follow. OAR 461-155-0600 is also being amended to state that the home adaptations covered must be performed by a licensed and bonded contractor. OAR 461-155-0670 is also being amended to indicate that the rule does not apply to the OSIP program, that special diet allowances must be reauthorized on an annual basis (instead of reviewed at 6-month intervals), and clarify statements about the amount of the special diet allowance adopted by temporary rule effective April 1, 2017.

OAR 461-155-0640 about restaurant meals is being repealed because the rule is not needed.

OAR 461-160-0590 about assessment of resources and the community spouse provision for the OSIP and OSIPM programs is being amended to state that either the community spouse or the institutional spouse has a right to an administrative hearing, clarify which issues surrounding the resource assessment process are hearable, and clarify the requirements that apply to properly submit such hearing requests.

OAR 461-160-0620 about income deductions and client liability for long-term care services and waivered services is being amended to update the minimum community spouse income allowance (Minimum Monthly Maintenance Needs Allowance or MMMNA) and the community spouse monthly housing allowance which are published by the federal government each year. This amendment keeps Oregon in line with current federal
standards for Department Medicaid programs and changes to the MMMNA and community spouse monthly housing allowance under the Spousal Impoverishment laws.

OAR 461-160-0780 about determining adjusted income for the OSIP-EPD and OSIPM-EPD programs is being amended to indicate that countable earned income (not gross earned income) is used in the process of reaching adjusted income. This changes aligns the rule with current practices.

OAR 461-165-0030 about concurrent and duplicate benefits is being amended to correct an inadvertent omission of MAGI Child to the programs that may coexist with Medicare Savings Programs. This rule is also being amended to state that the QMB-DW and QMB-SMF programs may not coexist with other Medicaid programs, aligning this rule with OAR 461-135-0730.

OAR 461-170-0120 about monthly change reports is being repealed because this rule is no longer needed.

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 461-115-0700 needs to be amended to align the Department with federal policy surrounding verification methods, which changed as a result of the Affordable Care Act and prepare the Department for the Integrated Eligibility implementation by stating the methods and types of verification the Department will accept and shifting the burden of verification primarily on the Medicaid agency and the use of electronic sources.

OAR 461-115-0704 needs to be adopted to align the Department with federal policy by setting out verification methods for non-financial eligibility requirements and implementing the reasonable opportunity period language, which is currently applied in practice but not in rule. Adding all the necessary changes to 461-115-0700 would make it excessively long and cumbersome; therefore, a new rule was adopted.

OAR 461-120-0010 needs to be amended to align with federal law by stating that an individual is considered a resident in the OSIPM and QMB programs if the individual entered Oregon with a job commitment or looking for work, and is not receiving benefits from another state.

OAR 461-120-0310, OAR 461-120-0315, OAR 461-120-0345, and OAR 461-120-0350 need to be amended to align with federal policy and prepare the Department for the Integrated eligibility implementation by clarifying that the requirement to actually assign the rights and pursue healthcare/cash medical support applies only to the individuals who can legally assign right of themselves or others, not the person whose rights that individual can legally assign who cannot legally assign his or her own rights (such as a child, for example); by clarifying that those whose rights must be assigned do not have to be in the OSIPM or QMB filing group, rather, rights must be assigned for anyone receiving any type of Medicaid under the state plan; and by distinguishing between who actually has to assign to stay eligible for OSIPM and QMB, and whose rights that person must assign. OAR 461-120-0345 also needs to be amended to support current practices by adding the QMB programs.
OAR 461-135-0832 and OAR 461-135-0835 need to be amended to implement an adverse Oregon Supreme Court decision by amending the definition of “estate” with respect to the collection of payments for assistance provided and limit when the Department collects against the spouse of a recipient. OAR 461-135-0835 also needs to be amended because the use of "probate estate" as opposed to "estate" does not comply with ORS 416.350 regarding estate recovery claims against the assets of the deceased spouse of a Medicaid recipient. Deleting the word “probate” will bring the rule into compliance with ORS 416.350 by verifying that estate recovery is asserted against non-probate assets as well as probate assets.

OAR 461-145-0040 needs to be amended to clarify the rule and make it consistent with federal manual sections on the topic. The rule amendment clarifies that burial insurance that generates a cash surrender value to which the owner has access is considered life insurance and how it is treated. The amended rule also clarifies that burial insurance that does not generate a cash surrender value or generates cash surrender value to which the owner does not have access is considered an irrevocable arrangement and how it is treated. The amended rule clarifies the calculation that determines the exclusion for a burial fund.

OAR 461-145-0050 needs to be amended to comply with federal law by revising when the cost of burial spaces and merchandise provides an exclusion from client assets considered in determining eligibility.

OAR 461-145-0108 needs to be amended to bring the Department into compliance with federal manuals by adding for the OSIP, OSIPM and QMB programs how dividends and interest income is treated, by establishing and clarifying how royalty income is treated in the OSIP, OSIPM, and QMB programs, and clarifying that royalties include compensation paid to the owner for the use of property, usually copyrighted material or natural resources, such as coal, oil, or natural gas.

OAR 461-145-0110 needs to be amended to bring the rule into compliance with federal guidance in the SSA POMS at SI 00830.610 by clarifying when payments under Title I of the Domestic Volunteer Services Act of 1973 are excluded for the OSIP, OSIPM, and QMB programs.

OAR 461-145-0145 about educational accounts needs to be amended to set out the effect of these accounts on eligibility for APD medical programs by adding APD medical programs and their treatment of this asset type to the rule.

OAR 461-145-0150 needs to be amended to align APD medical programs with current federal policy by stating an exclusion for certain VA educational benefits and clarifying how other types of education income are treated.

OAR 461-145-0210 needs to be amended to comply with federal guidance by treating the value of a gift card or certificate is income in the month it is received if the gift card or certificate can be used to purchase food or shelter or can be resold (with a rebuttable presumption that the gift card or certificate can be resold). Additionally, in the OSIP, OSIPM, and QMB programs, if an individual is offered a choice between an in-kind item and cash, the cash amount is considered unearned income regardless of how the individual chooses to take the item; and gambling losses are not subtracted from gambling winnings in determining the individual’s countable income.

OAR 461-145-0240 and OAR 461-145-0460 need to be amended to streamline eligibility processes by removing the provisions that apply to treatment of these assets that originate prior to October 12, 2012.

OAR 461-145-0285 needs to be adopted to comply with federal law by establishing for the OSIP, OSIPM and QMB programs that Japanese-American restitution payments are excluded from income and resources, how income is treated for payments to a survivor, that restitution payments from the Canadian Government are excluded income, and that interest earned on unspent Japanese-American and Japanese-Canadian restitution payments is excluded from income and resources.
OAR 461-145-0320 needs to be amended to follow federal guidance by stating that burial insurance that generates a cash surrender value is treated in the same manner that this rule treats life insurance; that when the ownership or beneficiary of a life insurance policy has been irrevocably assigned and designated for burial, it is treated in accordance with OAR 461-145-0040 and not counted towards the $1500 life insurance limit; and when the face value of term life insurance policies are not counted in determining if the life insurance exclusion limit is exceeded.

OAR 461-145-0348 needs to be adopted to align the Department with federal guidance by defining the term “mineral rights” and explaining how the Department treats mineral rights property and income generated from mineral rights when determining eligibility.

OAR 461-145-0435 needs to be amended to align with federal policy and prepare for the implementation of Integrated Eligibility by covering the treatment of rebates and filling in gaps that currently exist in treatment of different types of refunds and rebates for APD programs.

OAR 461-145-0440 needs to be amended to clarify the rule and comply with federal law by indicating that a reimbursement for an item already covered by benefits is counted as unearned income.

OAR 461-145-0510 needs to be amended to align with federal policy, prepare the Department for the implementation of Integrated Eligibility, and support current practices by setting out the policy of the Department about how to treat SSI when the SSI recipient is in the financial group of an individual not assumed eligible.

OAR 461-145-0520 needs to be amended to align the Department with federal policy by stating that in the OSIPM and QMB-DW programs, the value of a savings bond issued by the United States Department of the Treasury is excluded during the minimum retention period. This amendment also clarifies the rule by stating for all other programs, the value of a savings bond issued by the United States Department of the Treasury is excluded during the minimum retention period if the owner has received a denial of a request for a hardship waiver based on financial need.

OAR 461-155-0551 needs to be repealed to prevent duplication of rules. This topic is now covered in OAR 411-035-0055.

OAR 461-155-0580, OAR 461-155-0600, OAR 461-155-0620, OAR 461-155-0630, OAR 461-155-0670, OAR 461-155-0688, and OAR 461-160-0551 need to be amended to be clarified and conform with current practices by using terms more consistently with other rules. OAR 461-155-0600 also needs to be amended by stating that the home adaptations covered must be performed by a licensed and bonded contractor. OAR 461-155-0670 also needs to be amended by indicating that the rule does not apply to the OSIP program, that special diet allowances must be reauthorized on an annual basis (instead of reviewed at 6-month intervals), and clarify statements about the amount of the special diet allowance adopted by temporary rule effective April 1, 2017.

OAR 461-155-0640 needs to be repealed removing an unnecessary rule that has not been used by clients for two years.

OAR 461-160-0590 needs to be amended to reduce uncertainty about hearing rights and hearing requirements for community and institutional spouses by stating that either the community spouse or the institutional spouse has a right to an administrative hearing, stating which issues surrounding the resource assessment process are hearable, and clarifying the requirements that apply to properly submit such hearing requests.
OAR 461-160-0620 needs to be amended because the Department is required to adjust its post-eligibility treatment of income deduction amounts as a result of this congressionally approved change. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the MMMNA and community spouse monthly housing allowance under the Spousal Impoverishment laws.

OAR 461-160-0780 needs to be amended to correct the rule and conform with current practices by indicating that countable earned income (not gross earned income) is used in the process of reaching adjusted income.

OAR 461-165-0030 needs to be amended to correct an inadvertent omission by adding MAGI Child to the programs that may coexist with Medicare Savings Programs. This rule also needs to be amended to align rule OAR 461-135-0730 by stating that the QMB-DW and QMB-SMF programs may not coexist with other Medicaid programs.

OAR 461-170-0120 about monthly change reports needs to be repealed because DHS no longer uses a monthly reporting system and this rule is no longer needed.

**Documents Relied Upon**


*Nay v. Dept. of Human Services* available at [http://www.publications.ojd.state.or.us/docs/S062978.pdf](http://www.publications.ojd.state.or.us/docs/S062978.pdf)

**Fiscal and Economic Impact**


The Department estimates that amending OAR 461-135-0832 and OAR 461-135-0835 will have a negative impact on the Department of up to $1,575,000 a year in state general fund while benefitting the estates of about 100 former Department clients per year by an average of $30,000 and resulting in additional legal fee revenue to the Oregon Department of Justice of up to $75,000 per year. There is no fiscal impact on local government, other state agencies, and business. No small businesses are subject to these rules. There is no cost of compliance for small business.
The Department estimates that adopting OAR 461-145-0285 and amending OAR 461-115-0700, OAR 461-120-0010, OAR 461-145-0040, OAR 461-145-0050, OAR 461-145-0110, OAR 461-145-0320, OAR 461-145-0435, and OAR 461-145-0520 will have a positive fiscal impact on clients and a negative fiscal impact on the Department. The Department is unable to estimate the fiscal impact of amending OAR 461-115-0700 because it does not centrally track clients denied for not providing verification. The Department is unable to estimate the extent of this impact for OAR 461-120-0010 because it does not centrally track the denials to applicants and termination related to residency. The Department is unable to estimate the extent of this impact for OAR 461-145-0040 because it does not centrally track the effect of burial arrangement expenses and burial funds on eligibility decisions. The Department is unable to estimate the extent of this impact for OAR 461-145-0050 because it does not centrally track the effect of burial space and merchandise expenses on eligibility decisions. The Department is unable to estimate the extent of this impact for OAR 461-145-0110 because it does not centrally track the effect of VISTA, University Year of Action, and Urban Crime Prevention payments on eligibility decisions. The Department is unable to estimate the extent of this impact for OAR 461-145-0285 because it does not centrally track the effect of Japanese-American restitution payments on eligibility decisions. The Department is unable to estimate the extent of this impact for OAR 461-145-0320 because it does not centrally track the effect of life insurance on eligibility decisions. The Department is unable to estimate the extent of this impact for OAR 461-145-0435 because it does not centrally track the effect of refunds and rebates on eligibility decisions. The Department is unable to estimate the extent of this impact for OAR 461-145-0520 because it does not centrally track the effect of savings bonds on eligibility decisions. The Department estimates this amendment will have no fiscal impact on other state agencies, the public, local government, or business. No small businesses are subject to these rules. There is no cost of compliance for small business.

The Department estimates that adopting OAR 461-145-0348 and amending OAR 461-145-0108, OAR 461-145-0210, OAR 461-145-0240, OAR 461-145-0440, and OAR 461-145-0460 may have a negative fiscal impact on clients and a positive fiscal impact on the Department. The Department is unable to estimate the extent of this impact for OAR 461-145-0348 because it does not centrally track the effect of mineral rights on eligibility decisions. The Department is unable to estimate the extent of this impact for OAR 461-145-0108 because it does not centrally track the effect of dividends, interest, and royalties on eligibility decisions. The Department is unable to estimate the extent of this impact for OAR 461-145-0210 because it does not centrally track the effect of gifts and winnings on eligibility decisions. The Department is unable to estimate the extent of this impact for OAR 461-145-0240 because it does not centrally track the effect of income-producing sales contracts from prior to October 1, 2012 on eligibility decisions. The Department is unable to estimate the extent of this impact for OAR 461-145-0440 because it does not centrally track the effect of reimbursements in the context of benefit coverage on eligibility decisions. The Department is unable to estimate the extent of this impact for OAR 461-145-0460 because it does not centrally track the effect of income from sales of resources that occurred prior to 2013 on eligibility decisions. The Department estimates this amendment will have no fiscal impact on other state agencies, the public, local government, or business. No small businesses are subject to these rules. There is no cost of compliance for small business.

The Department is unable to accurately estimate the fiscal impact of amending OAR 461-160-0620 on the Department and on clients because the 2017 MMMNA and community spouse monthly housing allowance are not yet known. Some clients will receive a slight reduction in their service liability; therefore, it would have a positive fiscal impact on clients and a negative fiscal impact on the Department. However, a portion of the increased liability amounts the Department collected as a result of the January 2017 COLA will be “corrected” by the increase in the MMMNA and community spouse monthly housing allowance in July. In other words, some clients were required to make increased service payments as a result of the 2017 SSA COLA but a subset of these clients will see a reduction of their service liability in July as a result of this amendment, assuming the MMMNA and housing allowance will increase. The Department estimates that these amendments will have no fiscal impact on other state agencies, local government, and business including small business. There is no cost of compliance for small business. No small businesses are subject to this rule.
The Department estimates that amending OAR 461-165-0030 will have no fiscal impact on clients and a positive (but small) fiscal impact on the Department and the Oregon Health Authority (by reducing cases in which eligibility staff place clients in state-buy-in with no federal match rather than a Medicare Savings Program with a 64.38% federal match). The Department is unable to estimate the extent of this impact because it lacks information on the number of families affected. The Department estimates this amendment will have no fiscal impact on other state agencies, the public, local government, or business. No small businesses are subject to these rules. 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, except no Rules Advisory Committee was used for OAR 461-165-0030 because these changes simply corrected internal inconsistencies.
In the GA, OSIP, OSIPM, and QMB programs:

(1) Except as provided in section (2) of this rule, all eligibility factors, including identity, must be verified at initial application, when there is a change to any factor, and whenever eligibility for benefits becomes questionable.

(2) In the OSIP, OSIPM, and QMB-DW programs, if the total reported value of gross "liquid resources" of the financial group (see OAR 461-110-0530) is less than $400, verification of the value of "liquid resources" is only required if questionable. For the purposes of this rule, "liquid resources" include cash as well as other resources that can be converted to cash within 20 business days, except that the cash surrender value of a life insurance policy is not considered a liquid resource. See OAR 461-115-0704 for the requirements to provide verification of citizenship and immigration status.

(3) Methods of verifying information include the following:

(a) Electronic. Information available and provided to the Department from an electronic source, including but not limited to:

(A) State Wage Information Collection Agency (SWICA).
(B) Internal Revenue Service.
(C) Social Security Administration.
(D) State Unemployment Compensation agency.
(E) State agencies administering programs under Title 1, 10, 14, or 16 of the Social Security Act.
(F) SNAP agencies.
(G) Other insurance affordability programs.
(H) The Department of Treasury.

(b) Self-attestation. Information provided orally or in writing by or on behalf of an individual.
(c) Documentation. Documentary evidence provided by or on behalf of the individual, or obtained by the Department from a third-party.

(4) Information needed to determine eligibility must be provided by the individual requesting benefits, or on behalf of the individual by:

(a) A family member living in the home who is at least 18 years of age;

(b) An authorized representative (see OAR 461-115-0090); or

(c) If the individual is a minor or incapacitated, someone acting responsibly for that individual.

(5) The Department must allow the individual a reasonable amount of time to provide additional information, if necessary.

(6) Financial Eligibility,

(a) For purposes of this rule, “reasonably compatible” means that two different sources of information differ, but both result in the individual being either eligible or ineligible.

(b) In the OSIP, OSIPM, and QMB-DW programs, if the total reported self-attested value of gross "liquid resources" of the financial group (see OAR 461-110-0530) is less than $400, further verification of the value of "liquid resources" is only required if questionable. For the purposes of this rule, "liquid resources" include cash as well as other resources that can be converted to cash within 20 business days, except that the cash surrender value of a life insurance policy is not considered a liquid resource.

(c) The Department must request information relevant to verifying eligibility from available electronic sources.

(d) Except as provided for in subsection (f) of this section, the Department must use the information it receives from an electronic source to verify eligibility without requiring additional documentation if the information provided by self-attestation is reasonably compatible (see subsection (b) of this section) with the information received by the Department electronically.

(e) The Department may request additional documentation from the individual if:

(A) The information is not available to the Department electronically; or

(B) The information provided by self-attestation is not reasonably compatible with the information received electronically and the individual or person
acting on the individual’s behalf could not provide a statement which reasonably explains the discrepancy.

(f) For individuals receiving or applying for long-term-care (see OAR 461-001-0000) and subject to the provisions of OAR 461-160-0610, the Department may request additional documentation from the individual if the information provided by self-attestation differs from the information the Department receives from an electronic source.

(7) Identity.

(a) Except as provided for in subsections (c) and (d) of this section, individuals must provide documentation to verify identity.

(b) The Department must accept the following as proof of identity, provided such document has a photograph or other identifying information sufficient to establish identity, such as name, age, sex, race, height, weight, eye color, or address:

(A) Driver’s license issued by a State or Territory.

(B) School identification card.

(C) U.S. military card or draft record.

(D) Identification card issued by the Federal, State, or local government.

(E) Military dependent identification card.

(F) U.S. Coast Guard Merchant Mariner card.

(G) For children under age 19, a clinic, doctor, hospital, or school record, including preschool or day care records.

(H) Two other documents containing consistent information that corroborates an applicant’s identity. Such documents can include employer identification cards; high school, high school equivalency, and college diplomas; marriage certificates; divorce decrees; and property deeds or titles.

(c) The Department may accept the finding of identity from a federal or another state agency for the purposes of public assistance, law enforcement, internal revenue or tax bureau, or corrections, if the agency has verified and certified the identity of the individual.

(d) If the individual does not have any document specified in subsection (b) of this section, and identity cannot be verified under subsection (c) of this section, the
Department must accept an affidavit signed, under penalty of perjury, by a person other than the individual who can reasonably attest to the applicant’s identity. Such affidavit must contain the individual’s name and other identifying information described in subsection (b) of this section.

(8) Social Security Numbers. The Department must verify that the SSN furnished by an individual was issued to that individual. Acceptable sources of verification must show a correct Social Security number, including but not limited to:

(a) Social Security card.

(b) Social Security award letters or other correspondence or forms bearing the individual’s SSN.

(c) Medicare card, if the individual is receiving Medicare off his or her own record.

(d) Information provided electronically to the Department from the Social Security Administration.

(e) Wage stubs or unemployment records.

(f) IRS forms or letters.

(9) Residency, age, date of birth, household size. The Department may accept self-attestation as verification of residency, age, date of birth, and household size, unless the statement differs from information available to the Department electronically or otherwise, in which case the Department may require the individual to provide documentation.

(10) If the Department is unable to verify information electronically or from a third party, the Department will accept, on a case-by-case basis, self-attestation to verify all eligibility criteria, except citizenship and immigration status, under the following circumstances:

(a) Documentation does not exist at initial application or redetermination; or

(b) Documentation is not reasonably available at initial application or redetermination, such as in the case of homelessness, domestic violence, or natural disaster.

(11) The Department may not deny, close, or reduce benefits if verification available to the Department is incompatible or absent, and the Department did not request additional information from the individual.

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685, 414.839
THIS IS A NEW RULE

(1) The Department must verify an individual’s declaration of citizenship or qualified alien status (see OAR 461-120-0130).

(2) The Department must verify citizenship through one of the following:

   (a) A U.S. passport, including a U.S. Passport Card issued by the Department of State, without regard to any expiration date as long as such passport or Card was issued without limitation.

   (b) A Certificate of Naturalization.

   (c) A Certificate of U.S. Citizenship.

   (d) A valid state-issued driver's license if the state issuing the license requires proof of U.S. citizenship, or obtains and verifies a SSN from the applicant who is a citizen before issuing such license.

   (e) Documentary evidence issued by a Federally recognized Indian Tribe identified in the Federal Register by the Bureau of Indian Affairs within the U.S. Department of the Interior, and including Tribes located in a state that has an international border, which --

      (A) Identifies the federally-recognized Indian Tribe that issued the document;

      (B) Identifies the individual by name; and

      (C) Confirms the individual's membership, enrollment, or affiliation with the Tribe.

   (f) Documents described in subsection (e) of this section include, but are not limited to:

      (A) A Tribal enrollment card.

      (B) A Certificate of Degree of Indian Blood.

      (C) A Tribal census document.

      (D) Documents on Tribal letterhead, issued under the signature of the appropriate Tribal official, that meet the requirements of subsection (e) of this section.
(g) A data match with the Social Security Administration.

(3) If an individual does not provide documentary evidence from the list in section (2) of this rule, the following must be accepted as satisfactory evidence to establish citizenship if also accompanied by an identity document listed OAR 461-115-0700(5):

(a) A U.S. public birth certificate showing birth in one of the 50 States, the District of Columbia, Guam, American Samoa, Swain's Island, Puerto Rico (if born on or after January 13, 1941), the Virgin Islands of the U.S. or the CNMI (if born after November 4, 1986, (CNMI local time)). The birth record document may be issued by a State, Commonwealth, Territory, or local jurisdiction. If the document shows the individual was born in Puerto Rico or the Northern Mariana Islands before the applicable date referenced in this paragraph, the individual may be a collectively naturalized citizen. The following will establish U.S. citizenship for collectively naturalized individuals:

(A) Puerto Rico: Evidence of birth in Puerto Rico and the applicant's statement that the applicant was residing in the U.S., a U.S. possession, or Puerto Rico on January 13, 1941.

(B) Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI)):

(i) Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. Territory or possession on November 3, 1986, (NMI local time) and the applicant's statement that the applicant did not owe allegiance to a foreign State on November 4, 1986 (NMI local time).

(ii) Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration before January 1, 1975, and the applicant's statement that he or she did not owe allegiance to a foreign State on November 4, 1986 (NMI local time).

(iii) Evidence of continuous domicile in the NMI since before January 1, 1974, and the applicant's statement that he or she did not owe allegiance to a foreign State on November 4, 1986 (NMI local time). Note: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

(b) At state option, a cross match with a state vital statistics agency documenting a record of birth.
(c) A Certification of Report of Birth, issued to U.S. citizens who were born outside the U.S.

(d) A Report of Birth Abroad of a U.S. Citizen.

(e) A Certification of birth in the United States.

(f) A U.S. Citizen I.D. card.

(g) A Northern Marianas Identification Card issued by the U.S. Department of Homeland Security (or predecessor agency).

(h) A final adoption decree showing the child's name and U.S. place of birth, or if an adoption is not final, a Statement from a State-approved adoption agency that shows the child's name and U.S. place of birth.

(i) Evidence of U.S. Civil Service employment before June 1, 1976.

(j) U.S. Military Record showing a U.S. place of birth.

(k) A data match with the SAVE Program or any other process established by DHS to verify that an individual is a citizen.


(m) Medical records, including, but not limited to, hospital, clinic, or doctor records or admission papers from a nursing facility, skilled care facility, or other institution that indicate a U.S. place of birth.

(n) Life, health, or other insurance record that indicates a U.S. place of birth.

(o) Official religious record recorded in the U.S. showing that the birth occurred in the U.S.

(p) School records, including pre-school, Head Start and daycare, showing the child's name and U.S. place of birth.

(q) Federal or State census record showing U.S. citizenship or a U.S. place of birth.

(r) If the applicant does not have one of the documents listed in subsection (c) or (A) through (Q) of this subsection, he or she may submit an affidavit signed by another individual under penalty of perjury who can reasonably attest to the applicant's citizenship, and that contains the applicant's name, date of birth, and place of U.S. birth. The affidavit does not have to be notarized.
The following individuals who make a declaration of citizenship are exempt from the requirement to provide documentary evidence of citizenship:

(a) Individuals receiving SSI.
(b) Individuals entitled to or enrolled in any part of Medicare.
(c) Individuals receiving SSDI.
(d) Individuals who are in foster care and who are assisted under Title IV-B of the Act, and individuals who are beneficiaries of foster care maintenance or adoption assistance payments under Title IV-E of the Act.
(e) Newborns of an assumed eligible individual (see OAR 461-135-0010).

The Department must attempt to verify a declaration by or on behalf of an individual of qualified alien status using an electronic service.

(a) The Department must promptly resolve all discrepancies between the electronic information and information provided by the or on behalf of the individual and resubmit corrected information through the electronic service.

(b) For purposes of verifying the veteran and active duty exemption from the five-year waiting period (see OAR 461-120-0125), the Department must verify that:

(A) The individual is an honorably discharged veteran;
(B) The individual is in active military duty status; or
(C) The individual is a spouse, unmarried dependent child, or an un-remarried surviving spouse of such a person.

(c) If the Department is unable to verify status under subsection (b) of this section, the Department may accept self-attestation (see OAR 461-115-0700).

Individuals who declare non-qualified or undocumented alien status and who meet the criteria of OAR 461-135-1070 are not required to present a Social Security number or verify alien status.

The Department must retain a record of having verified citizenship or alien status according to the applicable retention period.

Unless a change in citizenship or qualified alien status has been reported, the Department may not re-verify or require the individual to re-verify at redetermination or upon a subsequent application following a break in coverage.
If the Department cannot promptly verify citizenship or qualified alien status, the Department:

(a) Must provide a reasonable opportunity period (see section (10) of this rule); and may not delay, deny, reduce, or terminate benefits for an individual who is otherwise eligible during the reasonable opportunity period.

(b) If a reasonable opportunity period is provided and the individual is otherwise eligible, the Department may approve benefits effective the month of in which the date of request falls.

Reasonable opportunity period:

(a) The Department must provide a reasonable opportunity period to individuals who declare citizenship or qualified alien status which the Department cannot independently verify.

(b) During this period, the Department must continue efforts to verify the individual’s citizenship or qualified alien status.

(c) Notice of the reasonable opportunity period must be sent that is accessible to those with limited English proficiency and individuals with disabilities.

(d) The Department must assist individuals declaring citizenship who do not have an SSN with obtaining an SSN and attempt to verify citizenship once it is obtained.

(e) The Department must provide the individual with information about how to contact the electronic data source so that the individual can try to resolve inconsistencies that prevented electronic verification and then pursue electronic verification once the individual reports the inconsistencies have been resolved.

(f) The reasonable opportunity period begins on the date the reasonable opportunity period notice is received by the individual, which is considered to be 5 days after the date of the notice, unless the individual can show that the individual did not receive the notice within the 5-day period.

(g) The reasonable opportunity period ends either when the Department verifies citizenship or qualified alien status, or 90 days from the date the notice is received, whichever is earlier (which may be extended if the individual is making a good faith effort or the Department needs more time).

(h) If the reasonable opportunity period ends and the verification has not been received, the Department must take action within 30 days to terminate eligibility.

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685, 414.839
(1) To be eligible for benefits, an individual must be a resident of Oregon.

(2) Except as provided otherwise in OAR 461-120-0030 and this rule, an individual is a resident of Oregon if the individual lives in Oregon.

(3) There is no minimum amount of time an individual must live in Oregon to be a resident. However, the individual must intend to remain in Oregon except in the following situations:

   (a) EA may be issued to help an individual return to a former state of residence.

   (b) In the OSIPM, QMB, and REFM programs, when an individual is presumed incapable of forming an intent to reside under OAR 461-120-0050.

   (c) In the OSIPM, QMB, REF, and TANF programs, an individual is considered a resident if the individual entered Oregon with a job commitment or looking for work, and is not receiving benefits from another state.

   (d) The SNAP program does not require intent to remain to establish residency.

   (e) In the TA-DVS program, to the extent permitted under OAR 461-135-1200.

(4) An individual is not a resident if the individual is in Oregon solely for a vacation.

(5) An individual continues to be a resident of Oregon during a temporary period of absence if the individual intends to return when the purpose of the absence is completed; and, in the TANF program, the individual remains in the household group under OAR 461-110-0210.

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, individuals must assign to the state their rights, or the rights of any other individual eligible for Medicaid under the state plan for whom he or she can legally make an assignment, to medical support and to payment for medical care from any third party, not to exceed the total amount of assistance paid.

(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.

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
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. Except as outlined in OAR 461-120-0350, by signing the application for assistance, an individual agrees to turn over the individual’s rights, or the rights of any other individual eligible for Medicaid benefits administered by the Department or the Oregon Health Authority for whom he or she can legally make an assignment, to reimbursement for medical care costs to the Department or the Oregon Health Authority.

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

(b) When a clientan individual has long term care insurance, the client individual complies with the requirements of this rule by reducing the Department’s share of the long term care service costs by taking the following actions for the entire period of time that the client individual is eligible for Department-covered long term care services:

(A) For a clientan individual in a nursing facility:

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

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

(B) For a clientan individual in community based care (see OAR 461-001-0000):
(i) Submitting the necessary paperwork to receive the long term care insurance payments and designating the Department as the payee for the long term care insurance benefits; or

(ii) When the insurance company will not pay the 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 insurance payments to the Department upon receipt.

(2) The Department may refuse to pay medical expenses for anyone in the benefit group receiving Medicaid when another party or resource should pay first.

(3) 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.

(4) 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 insurance claim on the client's behalf received a long term care insurance payment that was not turned over to the long term care facility or Department as required by subsection (1)(b) of this rule.

Stats. Implemented: ORS 409.010, 411.060, 411.404, 411.706, 413.085, 414.231, 414.685, 414.839
This rule explains the obligation of clients to obtain health care coverage and cash medical support for members in the OSIPM program. Individuals applying for or receiving benefits under the OSIPM or QMB programs to obtain health care coverage and cash medical support for any individual receiving Medicaid under the state plan for which the individual can legally assign rights (see OAR 461-120-0310).

(1) Unless excused from the requirements of subsection (d) of this section or for good cause defined in OAR 461-120-0350,

(a) Each adult client individuals must assist cooperate with the Department and the Division of Child Support of the Department of Justice in establishing paternity for each of his or her children and obtaining an order directing the non-custodial parent (see OAR 461-001-0000) of a child (see OAR 461-001-0000) receiving Medicaid through OHA or DHS to provide: the identity of the parents (see OAR 461-001-0000) of any child (see OAR 461-001-0000) receiving Medicaid under the state plan for which the individual can legally assign rights.

(a) Cash medical support for that child; and

(b) Health care coverage for that child.

(b) Individuals must cooperate with obtaining cash medical support.

(c) Each adult client individual must make a good faith effort to obtain available coverage under Medicare. In the OSIPM program, the applicant is not required to enroll in Medicare Part A coverage if all of the following are true:

(aA) The applicant will incur a cost for the coverage.

(bB) The applicant is otherwise ineligible for QMB-BAS.

(cC) The applicant does not have a service liability in excess of the Part A premium.

(d) The Department may not refer a case for medical support enforcement when the referral is based solely on health care services provided through an Indian Health Program to a child who is eligible for health care services from the Indian Health Service.
Each adult client individual must make a good faith effort to obtain available coverage under Tri-Care.

To be eligible for the OSIPM and QMB-BAS programs, once informed of the requirement, an individual who is able to must apply for, accept, and maintain cost-effective, employer-sponsored health insurance (see OAR 461-155-0360). In the OSIPM and QMB-BAS programs, the client individual is not required to incur a cost for the health insurance.

An individual who fails to meet an applicable requirement in sections (1), (2), or (3) of this rule is ineligible.

In the case of an individual failing to meet the requirements of section (1) of this rule, the Department applies the penalty after providing the client with notice and opportunity to show the provisions of OAR 461-120-0350 apply.

The penalty provided by this rule ends when the client individual meets the requirements of this rule.

The penalty does not apply to individuals who are not legally able to assign rights on behalf of themselves.

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 412.001, 412.024, 412.049, 413.085, 414.025, 414.685
Clients Excused for Good Cause from Compliance with Requirements to Pursue Child Support, Health Care Coverage, and Medical Support

(1) **A-**In all programs except the OSIPM and QMB programs, a client is excused from the requirements of OAR 461-120-0340(1) and 461-120-0345(1)(a) if:

(a) The client's compliance would result in emotional or physical harm to the dependent child (see OAR 461-001-0000) or to the caretaker relative (see OAR 461-001-0000). The statement of the caretaker relative alone is prima facie evidence that harm would result;

(b) The child was conceived as a result of incest or rape and efforts to obtain support would be detrimental to the dependent child. The statement of the caretaker relative alone is prima facie evidence on the issues of conception and detrimental effect to the dependent child;

(c) Legal proceedings are pending for adoption of the needy child; or

(d) The parent is being helped by a public or licensed private social agency to resolve the issue of whether to release the child for adoption.

(2) In the OSIPM and QMB programs, an individual is excused from the requirements of OAR 461-120-0315 and 461-120-0345 if any of the following subsections are applicable:

(a) The individual’s compliance would result in emotional or physical harm to the individual, the spouse, or any child on whose behalf cooperation is required. The statement of the individual or spouse serves as prima facie evidence that harm would result.

(b) The child was conceived as a result of incest or rape and efforts to cooperate would be detrimental to the child, the individual, or the spouse. The statement of the individual serves as prima facie evidence on the issues of conception and the detrimental effects on the child, individual, or spouse.

(c) Legal proceedings are pending for adoption of the child.

(d) The parent is being helped by a public or licensed private social agency to resolve the issue of whether to release the child for adoption.

(e) The individual is pregnant.

(23) In the REFM program, a pregnant client is excused from the requirements of OAR 461-120-0345.
Effective July 18, 1995, for purposes of these rules (OAR 461-135-0832 to 461-135-0847) and ORS 93.268, 410.075, 411.620, 411.630, 411.694, 411.708, 411.795, 416.310, 416.340, and 416.350 the terms listed below have the meanings ascribed to them herein; provided, however, as used in these rules, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 USC 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department applies the definitions and procedures set forth in these rules to recoveries and claims made pursuant to ORS 411.708, 411.795, 416.310, 416.340, and 416.350.

1) "Assets" means all income and resources of an individual, including any income or resources to which the individual is entitled to at the time of death, including any income or resources to which the individual is entitled, but does not receive, because of action: by the individual; the individual's spouse (see OAR 461-001-0000); by a person, including a court or administrative body with legal authority to act in place of or on behalf of the individual; or by any person, including any court or administrative body, acting at the direction or upon the request of the individual.

2) "Assign" means a person who acquires an interest in real or personal property or an asset pursuant to a written or oral assignment of such real or personal property or asset from a person with the legal right to assign it.

3) "Assistance" means general assistance and public assistance as defined in ORS 411.010 and medical assistance as defined in ORS 414.025.

4) "Bona fide purchaser for value" means any person who provides consideration, including money or property, to a seller or transferor of real property or personal property equal to the fair market value of the real or personal property sold or transferred.

5) "Child under age 21" means the deceased recipient's natural or adopted son or daughter who is under 21 years of age throughout the time the Department seeks to enforce its claim.

6) "Child with a disability" means the deceased recipient's natural or adopted son or daughter of any age, who meets SSI disability criteria throughout the time the Department seeks to enforce its claim, and who presents evidence to the Department substantiating the disability within two years after the Department initially asserts its claim.

7) "Child with a visual impairment" means the deceased recipient's natural or adopted son or daughter, of any age, who, within two years after the Department initially asserts its
claim, substantiates blindness throughout the time the Department seeks to enforce its claim by presenting evidence of:

(a) Vision of 20/200 or less in the better eye with a corrective lens;

(b) A limitation in vision field to an angle of 20 degrees or less; or

(c) Meeting any other SSI criteria for blindness.

(8) "Consideration furnished test" means the method by which the ownership of real or personal property is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed $2,500 and the other $7,500 to the purchase price of a $10,000 property in 1960; in 1995, the property is appraised at $50,000. The co-owner who contributed $2,500 is considered to own 25% of the property in 1995.

(9) "Convincing evidence" includes, but is not limited to:

(a) Recorded documents of title.

(b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.

(c) Tax statements or returns.

(d) Records of banking, financial or other similar institutions.

(e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.

(f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(10) "Date of request" means the date an individual or someone authorized on behalf of the individual contacts the Department or uses another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. It starts the application process.

(11) "Department" means the Department of Human Services, the Oregon Health Authority, or both.
(12) "Domestic partner" means an individual joined in a domestic partnership as defined in ORS 106.310.

(13) "Estate" means with respect to the collection of payments made for medical assistance provided prior to on or after July 18, 1995:

(a) For recipients who die prior to October 1, 2008, all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's spouse and any successor-in-interest to the recipient's spouse, through:

(Aa) Tenancy by the entirety;

(Bb) Joint tenancy;

(Cc) Tenancy in common;

(Dd) Not as tenants in common, but with the right of survivorship;

(Ee) Life estate;

(Ff) Transfer on death deed;

(Gg) Living trust;

(Hh) Annuity purchased on or after April 1, 2001; or

(i) Other similar arrangement.

(b) For recipients who die on or after October 1, 2008, all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death of the recipient, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's spouse and any successor-in-interest to the recipient's spouse, through:

(A) Tenancy by the entirety;

(B) Joint tenancy;

(C) Tenancy in common;

(D) Not as tenants in common, but with the right of survivorship;
(E) **Life estate;**

(F) **Transfer on death deed;**

(G) **Living trust;**

(H) **Annuity purchased on or after April 1, 2001; or**

(I) **Other similar arrangement, includes, but is not limited to, an interspousal transfer of assets, including one facilitated by a court order, which occurred no earlier than 60 months prior to the first date of request established from the recipient's and the recipient's spouse's applications, or at any time thereafter, whether approved, withdrawn, or denied, for the medical assistance program.**

(14) “General Assistance” means “general assistance” as defined in ORS 411.010.

(15) “Heir” means any individual, including the surviving spouse, who is entitled under **intestate succession** to the real property, personal property, and assets of a decedent who died wholly or partially **intestate.**

(16) “Interest” means any form of legal, beneficial, equitable or ownership interest.

(17) “Interspousal transfer” means any transfer, or chain of transfers, that effectively transfers title or control of an asset, or an interest in an asset, from one spouse to another, including: direct transfers between spouses, transfers from one or both spouses to a trust, and transfers from one trust to another trust.

(18) “Intestate” means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(19) “Intestate succession” means succession to real property, personal property or assets of a decedent who dies intestate or partially intestate.

(20) “Joint tenancy” means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(21) “Legal title” means legal ownership by a person.

(22) “Life estate” means an interest in real or personal property that terminates upon the death of a measuring life.

(23) “Living trust” means a revocable or irrevocable inter vivos trust funded with assets to which the recipient is legally entitled.
"Medical Assistance" (MA) is defined in ORS 414.025 and incorporated by this reference.

"Medical institution" means a facility that provides care and services equivalent to those received in a nursing facility. "Medical institution" does not apply to home and community-based care (see OAR 461-001-0030), in-home services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

"Medicare cost sharing" means medical assistance funds used to pay Medicare premiums, coinsurance, copayments and deductibles.

"Ownership documents" mean any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale, or other similar documents evidencing ownership or legal title held by a person.

"Permanently institutionalized" means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.

"Person" means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

"Personal property" means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

"Probate estate" means all real property, personal property, or other assets included in a decedent's estate as it is defined by applicable state probate law.

"Real property" means all land wherever situated, including improvements and fixtures thereon, and every estate, Interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties. "Real property" includes property conveyed by the individual to, subsequently acquired by, or traceable to, a person, including the individual's surviving spouse and any successor-in-interest to the individual's surviving spouse, if the "real property" may be included in the individual's, or the individual's surviving spouse's, estate, as defined in this rule.

"Recipient of property" means:

(a) Any survivor, heir, assign, devisee under a will, beneficiary of a trust, transferee or other person to whom real property, personal property or other assets pass
upon the death of the decedent either by law, *intestate succession*, contract, will, trust instrument or otherwise; and

(b) Any subsequent transeree of such *real property, personal property, or asset*, or proceeds from the sale thereof, through any form of conveyance, that is not a *bona fide purchaser for value*.

(34) "Survivor" means any *person* who, as a co-tenant, is automatically entitled to an expanded share of *real or personal property* upon the death of a fellow co-tenant.

(35) "Survivorship" means an interest in *real or personal property* that expires upon the death of an individual whereby the Interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(36) "Tenancy in common" means ownership of *real or personal property* by an individual together with one or more other persons which ownership *interest* shall not pass by *survivorship* upon the death of the individual.

(37) "Time of death" means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall *time of death* be construed to mean a time after which an *interest* in *real or personal property* or other *assets* may:

(a) Pass by *survivorship* or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(38) "Transfer on death deed" has the meaning set out in ORS 93.949.

(39) "Value" means the fair market value. Fair market value is the price at which *real or personal property* would change hands between a willing buyer and a willing seller. In the event the *real or personal property* was not reported to the Department by the deceased Medicaid recipient, the "value" would be established based on its fair market value at the time of discovery.

The Estate Administration Unit is designated and authorized to administer the estate recovery program for the Oregon Health Authority and the Department of Human Services, and to present and file claims for payment. The Manager and Assistant Manager of the Estate Administration Unit, Estate Administrators, Assistant Estate Administrators, and Accounts Receivable Specialist are authorized to present, file, and resolve claims for the Estate Administration Unit. The Manager or Assistant Manager may designate other individuals to present, file, or resolve claims. This rule sets out some of these claims.

For the OSIP program (see OAR 461-101-0010):

(a) The amount of any payments or benefits, including an overpayment (see OAR 461-195-0501), are a claim against the probate estate (see OAR 461-135-0832) of any deceased recipient.

(b) The claim for correctly paid payments or benefits under OSIP are deferred until the death of the spouse (see OAR 461-001-0000) or domestic partner (see OAR 461-135-0832), if any, of the deceased recipient.

(c) If the deceased recipient has no probate estate, the enforcement of the claim has been deferred, or there are insufficient resources in the probate estate to pay the claim in full, the probate estate of the spouse or domestic partner of the deceased recipient, if any, is charged for any payments or benefits paid under OSIP to the deceased recipient, the spouse, or domestic partner.

(d) The claim for correctly paid payments or benefits under OSIP may not be enforced if the deceased recipient is survived by a child under age 21 (see OAR 461-135-0832), a child with a disability (see OAR 461-135-0832), or a child with a visual impairment (see OAR 461-135-0832); and the child survives to the closing of the probate estate.

(e) Transfers of real or personal property without adequate consideration, by recipients of payments or benefits under OSIP, are voidable and may be set aside under ORS 411.620.

(f) Except when there is a surviving spouse or domestic partner, or a surviving child under age 21, a child with a disability, or a child with a visual impairment, the amount of any payments or benefits provided is a claim against the estate (see OAR 461-135-0832) in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

For General Assistance (see OAR 461-135-0832):
(a) The amounts of any payments or benefits, including overpayments, are a claim against the *probate estate* of any deceased recipient. The amount includes the state’s monthly contribution, paid prior to January 1, 2014, to the federal government for the recipient’s Medicare Part D prescription drug coverage. Effective July 1, 2016, any correctly paid benefits under Oregon Laws 2016, chapter 93, section 1 are excluded, except than an *overpayment* of benefits under Oregon Laws 2016, chapter 93, section 1 is included in a claim against the *probate estate*.

(b) The claim for correctly paid payments or benefits under the *General Assistance* program is deferred until the death of the *spouse* or *domestic partner*, if any, of the deceased recipient.

(c) If the deceased recipient has no *probate estate*, the enforcement of the claim has been deferred, or there are insufficient resources in the *probate estate* to pay the claim in full, then the *probate estate* of the *spouse* or *domestic partner* of the deceased recipient, if any, is charged for any payments or benefits to the deceased recipient, the *spouse*, or *domestic partner*.

(d) The claim for correctly paid payments or benefits under the *General Assistance* program may not be enforced if the deceased recipient is survived by a *child under age 21*, a *child with a disability*, or a *child with a visual impairment*; and the child survives to the closing of the *probate estate*.

(e) Except when there is a surviving *spouse* or *domestic partner*, or a surviving *child under age 21*, a *child with a disability*, or a *child with a visual impairment*, the amount of any assistance paid is a claim against the *estate* in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

(4) For *Medical Assistance* (MA, as defined in OAR 461-135-0832):

(a) In determining the extent of the *estate resources* subject to the claim of the Department for correctly paid benefits, except as provided in subsection (b) of this section, the Department must disregard resources in an amount equal to the *value* (see OAR 461-135-0832) of resources excluded in the most recent eligibility determination under OAR 461-160-0855, based on payments received under a *qualified partnership policy* (see OAR 461-001-0000). The disregard of resources specific to the estate recovery claim applies to MA benefits received after the effective date of the MA eligibility determination in which a *qualified partnership policy* was considered and approved. The amount of any MA incurred in a prior MA eligibility period where *qualified partnership policy* benefits were not considered is not subject to the estate resource disregard.

(b) There is no disregard of resources under subsection (a) of this section if the recipient, or the *spouse* of the recipient, at any time transferred the *value* of the
qualified partnership policy excluded resource amount to another individual for
less than fair market value prior to the death of the recipient or the recipient's
spouse, or exhausted the disregarded resource amount by purchasing things of
value to the recipient or the recipient's spouse while either was living.

(c) The amount of any incorrectly paid payments or benefits, excluding an
administrative error overpayment, are a claim, against the probate estate of any
deceased recipient.

(d) The claim for correctly paid payments or benefits under MA is deferred until the
death of the surviving spouse, if any, of the deceased recipient. After the death of
a surviving spouse, the deferred claim of the deceased recipient is a claim against
the following assets (see OAR 461-135-0832) or their proceeds in the probate
estate of the spouse.

(A) For a recipient who died prior to October 1, 2008, the Department has a claim
against the probate estate of the spouse for medical assistance (see OAR 461-
135-0832) paid to the recipient, but only to the extent that the spouse received
property or other assets from the recipient through any of the following:

(iA) Probate.

(iiB) Operation of law.

(B) For a recipient who dies on or after October 1, 2008, the Department has a
claim against the probate estate of the recipient's spouse for medical assistance
paid to the recipient, but only to the extent that the recipient's spouse received
property or other assets from the recipient through any of the following:

(i) Probate.

(ii) Operation of law.

(iii) An interspousal transfer (see OAR 461-135-0832), including one
facilitated by a court order, which occurs:

(I) Before, on, or after October 1, 2008; and

(II) No earlier than 60 months prior to the first date of request
(see OAR 461-135-0832) established from the applications
for MA of the recipient and the recipient's spouse, or at any
time thereafter, whether approved, withdrawn, or denied.
(e) The claim for correctly paid payments or benefits under MA may not be enforced if the deceased recipient is survived by a child under age 21, a child with a disability, or a child with a visual impairment.

(f) For recipients who are not permanently institutionalized (see OAR 461-135-0832):

(A) The amount of any payments or benefits paid prior to October 1, 1993 to or on behalf of a recipient 65 years of age or older are a claim against the probate estate of any deceased recipient.

(B) The amount of any payments or benefits, paid on or after October 1, 1993 and prior to July 18, 1995, to or on behalf of a recipient 55 years of age or older are a claim against the probate estate of any deceased recipient.

(C) The amount of any payments or benefits, paid on or after July 18, 1995 and prior to October 1, 2013, to or on behalf of a recipient 55 years of age or older are a claim against the estate of any deceased recipient. All correctly made payments on or after January 1, 2010 for Medicare cost sharing (see OAR 461-135-0832) are excluded from a claim.

(D) The amount of any payments or benefits, paid October 1, 2013 or later, to or on behalf of a recipient 55 years of age or older, during the time the Department was paying any of the cost of care of the individual in a nursing facility, home and community based care (see OAR 461-001-0030), or in home services through the State Plan Personal Care Services (see OAR 411-034-0010), are a claim against the estate of any deceased recipient. All correctly made payments on or after January 1, 2010 for Medicare cost sharing are excluded from a claim.

(g) For permanently institutionalized individuals, a claim includes amounts calculated according to subsection (f) of this section and the following:

(A) The amount of any payments or benefits before July 18, 1995 to or on behalf of a recipient who was permanently institutionalized is a claim against the probate estate of the deceased recipient.

(B) The amount of any payments or benefits paid between July 19, 1995 through September 30, 2013 to or on behalf of a recipient who was permanently institutionalized is a claim against the estate of the deceased recipient.

(C) The amount of any payment for services provided in a nursing facility, an intermediate care facility for an individual with intellectual or developmental disabilities, a psychiatric institution, or other medical institution (see OAR 461-135-0832) paid after September 30, 2013 to or
on behalf of a recipient who was permanently institutionalized is a claim against the estate of the deceased recipient.

(5) The amount paid, for a recipient age 55 or older, after December 31, 2013, to the federal government for the recipient’s Medicare Part D prescription drug coverage is a claim against the estate of the deceased recipient.

(6) For trusts that comply with OAR 461-145-0540(10) and (11), the maximum distribution to the Department is the total of all MA payments or benefits paid to or on behalf of the deceased recipient. Subsections (4)(d) and (4)(e) of this rule do not apply to this section.

Stats. Implemented: ORS 93.969, 125.495, 411.404, 411.620, 411.630, 411.708, 411.795, 413.085, 416.310, 416.350, Or Laws 2016, ch 93
Burial Arrangements and Burial Funds

(1) The following definitions apply to this rule:

(a) "Burial arrangement" means an agreement with an entity (such as a funeral agreement (which means an arrangement made with a licensed funeral provider), burial insurance, or a burial trust designating a funeral director as the beneficiary) that makes allowance for establishing provisions for payment of an individual's burial costs. A "burial arrangement" does not include a burial space, which is covered in OAR 461-145-0050, or a burial fund (see subsection (b) of this section).

(b) "Burial fund" means an identifiable fund set aside for a client's burial costs. A "burial fund" does not include a burial space, which is covered in OAR 461-145-0050, or a burial arrangement (see subsection (a) of this section).

(2) Except as provided in subsection (e) of this section, a burial arrangement is treated as follows:

(a) In the ERDC, REF, REFM, SNAP, and TANF programs, the equity value (see OAR 461-001-0000) of one prepaid burial arrangement for each member of the filing group (see OAR 461-110-0310) is excluded.

(b) For grandfathered OSIP and OSIPM clients (see OAR 461-125-0330(2), 461-125-0370(1)(b), and 461-135-0771), up to $1,000 in combined equity value of each burial arrangement with a licensed funeral director (plus accrued interest) and life insurance policies are excluded. The amount of combined cash and equity value of all life insurance and burial arrangements that exceeds $1,000 is counted as a resource.

(c) In the OSIP, OSIPM, and QMB-DW programs, the amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs is excluded.

(d) In all programs not listed in subsection (a) of this section and for OSIP and OSIPM clients not covered by subsection (b) of this section, a burial arrangement is treated in the manner as the program treats a burial fund under section (3) of this rule.

(e) Burial insurance that generates a cash surrender value to which the owner has access is considered life insurance and is treated in accordance with OAR 461-145-0320 and, as applicable, subsection (b) of this section.

(f) Burial insurance that does not generate a cash surrender value, or generates cash surrender value to which the owner does not have access, is considered an irrevocable arrangement and treated in accordance with subsection (c) of this section.
(3) A burial fund is treated as follows:

(a) In the OSIP, OSIPM, and QMB-DW programs:

(A) A burial fund may be established only from financial means such as cash, burial contracts, bank accounts, stocks, bonds, or life insurance policies.

(B) A burial fund is counted as a resource if it is commingled with assets unrelated to a burial. The amount set aside for burial must be in a separate account to be excluded from resource consideration.

(C) A burial fund may be established if the countable (see OAR 461-001-0000) resources of a client exceed allowable limits. A burial fund is excluded from the resource calculation to the extent allowed in paragraph (D) of this subsection.

(D) The following calculation determines the exclusion for a burial fund:

(i) Up to $1,500 of a burial fund may be excluded from resources for each of the following:

(I) The client.

(II) The client's spouse.

(ii) The amount in subparagraph (i) of this paragraph is reduced by the total of the following amounts:

(I) The face value of life insurance policies owned by the client that have already been excluded from resources. This does not include term life insurance policies that do not generate a cash surrender value.

(II) The amount in an irrevocable burial trust or any other irrevocable arrangement designated to cover burial costs, including the face value of burial insurance considered an irrevocable arrangement (see subsection (2)(f) of this rule). Burial costs do not include burial spaces or merchandise (see OAR 461-145-0050).

(E) All interest earned on an excluded burial fund or increases in the value of an excluded burial arrangement if left in the fund is excluded from income.

(b) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, a burial fund is excluded as a resource.
(c) In all programs not listed in subsections (a) or (b) of this section, a burial fund is counted as a resource.

(4) There is no overpayment for the time period during which the burial arrangement or burial fund existed if a client ---

(a) Cancels an excluded burial arrangement; or

(b) Uses an excluded burial fund for any purpose other than burial costs.

(5) If an asset originally used as a burial arrangement or burial fund is converted to other uses, the asset is treated under the other applicable rules.

Burial Spaces and Merchandise

(1) Burial spaces include conventional grave sites, crypts, mausoleums, urns, and other repositories that are traditionally used for the remains of deceased individuals. Burial spaces also include headstones and the opening and closing of the grave.

(a) In the ERDC, REF, REFM, SNAP, and TANF programs, the equity value (see OAR 461-001-0000) of one burial space is excluded as a resource for each member of the financial group (see OAR 461-110-0530).

(b) In the OSIP, OSIPM, and QMB-DW programs, the equity value of a burial space is excluded as a resource if owned by the client and designated for the client, the spouse (see OAR 461-001-0000) of the client, minor and adult children, siblings, parents, and the spouse of any of these individuals.

(2) Burial merchandise includes, but is not limited to, caskets, liners, burial vaults, markers, and foundations. The equity value of burial merchandise is excluded as a resource if owned by the client and designated for —

(a) In the ERDC, REF, REFM, SNAP, and TANF programs, a member of the financial group.

(b) In the OSIP, OSIPM, and QMB-DW programs, the client, the spouse of the client, minor and adult children, siblings, parents, and the spouse of any of these individuals.

For the purpose of this rule, burial spaces include conventional gravesites, crypts, mausoleums, urns, niches, burial vaults, and other repositories that are traditionally used for the remains of deceased individuals. Burial spaces also include headstones and the opening and closing of the gravesite, and the reasonable and necessary improvements or additions to such spaces. Burial merchandise includes, but is not limited to, urns, caskets, liners, headstones, markers, plaques and foundations.

In the ERDC, REF, REFM, SNAP, and TANF programs, the Department excludes as a resource the equity value (see OAR 461-001-0000) of all burial space or merchandise for each member of the financial group (see OAR 461-110-0530), except that for burial space and merchandise that serves the same purpose, only one item per individual is excluded.

In the OSIP, OSIPM, and QMB-DW programs, the Department excludes as a resource the equity value (see OAR 461-001-0000) of a burial space and merchandise if owned by the client and designated for the client, the spouse (see OAR 461-001-0000) of the client, minor and adult children, siblings, parents, and the spouse of any of these individuals —
except that for burial space and merchandise that serves the same purpose, only one item per individual is excluded.

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

(a) Unless otherwise stated in chapter 461 of the Oregon Administrative Rules, dividends and interest income is treated as unearned income except as follows: dividends and interest earned on mutual funds and securities, including stocks, bonds, educational savings bonds, and certificates of deposit (CDs), are excluded as income. Interest earned on other assets is treated according to the rule for that asset.

(b) Interest income and dividends earned on funds in a bank account are excluded as income (see OAR 461-145-0030).

(b) Royalties include compensation paid to the owner for the use of property, usually copyrighted material or natural resources, such as coal, oil, or natural gas, which normally are extracted from the ground. Except as provided in paragraphs (A) and (B) of this subsection, royalties are treated as unearned income.

(A) Royalties received as part of a business or trade are treated in accordance with OAR 461-145-0915;

(B) Royalties received by an individual in connection with any publication of the individual’s work are treated as earned income (see OAR 461-145-0130).

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

(a) Dividends are counted as unearned income.

(b) Interest income is counted as unearned income.

(c) Royalties are counted as unearned income, except that royalties are counted as earned income if the client is actively engaged in the activity from which the royalties are accrued.
Domestic Volunteer Services Act (VISTA, RSVP, SCORE, ACE)

In all Department programs covered by Chapter 461 of the Oregon Administrative Rules, with respect to federal programs under the Domestic Volunteers Service Act of 1973 (Pub. L. No. 93-113):

(1) Payments under Title I --- VISTA, University Year of Action, and Urban Crime Prevention --- are treated as follows:

(a) In the ERDC, OSIP, OSIPM, QMB, REF, REF, and TANF programs, these payments are excluded, except that in the ERDC, REF, REF, and TANF programs, these payments are counted as earned income if the total value of all compensation is equal to or greater than compensation at the state minimum wage.

(b) In all programs except the ERDC, OSIP, OSIPM, QMB, REF, REF, and TANF programs:

(A) The payments are excluded if the client is receiving Department program benefits when they join the Title I program. The exclusion of payments continues until the client has a break in receiving Department benefits of more than one month.

(B) The payments are counted as earned income for clients who joined the Title I program before applying for Department program benefits.

(2) Payments are excluded for programs under Title II (National Older Americans Volunteer Programs), which include:

(a) Retired Senior Volunteer Program (RSVP) Title II, Section 201.

(b) Foster Grandparent Program Title II, Section 211.

(c) Older American Community programs.

(d) Senior Companion Program.

(3) Payments are excluded for programs under Title III (National Volunteer Programs to Assist Small Businesses and Promote Volunteer Service by Persons with Business Experience), which include:

(a) Service Corps of Retired Executives (SCORE) Title III, Section 302.

(b) Active Corps of Executives (ACE) Title III, Section 302.
Stats. Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.083, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685
Educational Account

(1) The Individual Education Account (IEA) is an asset accrued by JOBS Plus participants. The IEA is excluded while it accumulates, while it is saved, and when it is withdrawn for educational purposes.

(2) In the OSIP and OSIPM programs:

(a) Funds in a Qualified Tuition Programs under Section 529 of the Internal Revenue Code are treated as follows:

(A) They are a countable (see OAR 461-001-0000) resource to the individual who owns the account.

(B) They are excluded as a resource for the beneficiary, unless the beneficiary is also the owner.

(b) Funds in a Coverdell Education Savings Accounts are treated as follows:

(A) They are excluded as a resource to the designated beneficiary.

(B) If the contributor is not a designated beneficiary, funds deposited into the account are no longer the resource of the contributor beginning with the month after the month the cash is transferred. The transfer may be considered a disqualifying transfer of resources by the contributor under OAR 461-140-0210 and 461-140-0220.

(c) Distributions from a Coverdell Education Savings Account to a designated beneficiary are treated as follows:

(A) They are excluded as income in the month of receipt.

(B) If the excluded distribution is retained into the month following the month of receipt, it is excluded as a resource for nine months beginning with the month after the month of receipt.

(C) If the beneficiary spends any portion of a distribution for a purpose other than the educational expenses of the beneficiary, or no longer intends to use the funds for the educational expenses of the beneficiary, the non-education portion of the funds is countable as unearned income at the earlier of the following:

(i) The month the funds are spent.
(ii) The month the beneficiary no longer intends to use the funds for educational expenses.

(D) If a countable distribution is retained into the month following the month of receipt, it is a countable resource of the designated beneficiary.

(d) Other funds or gifts set aside to pay educational expenses are treated in accordance with subsection (c) of this section, except that the exclusion does not apply to any portion set aside or actually used for food or shelter. See OAR 461-145-0150 for information on other types of educational income.

(23) In the SNAP program, the value of funds in a qualified tuition program under section 529 of the Internal Revenue Code or in a Coverdell education savings account is excluded.


Stats. Implemented: ORS 411.060, 411.816, 412.049, 413.085, 414.025, 414.685
Educational Income

(1) Educational income is income designated specifically for educational expenses. To be considered educational income, the income must be received by one of the following:

(a) A student at a recognized institution of post-secondary education. Post-secondary education is education offered primarily to individuals 18 years of age or older. Admission may --- but does not necessarily --- require a high school diploma or equivalent.

(b) A student at a school for individuals with disabilities.

(c) A student in a vocational education program.

(d) A student in a program that provides for completion of requirements for a secondary school diploma or the equivalent.

(2) To determine the amount of educational income to exclude, education expenses listed in the financial aid award letter are used unless one of the following is true:

(a) The student provides verification of amounts different from those listed in the award letter, in which case the verified amounts from the student are used.

(b) The student receives child care benefits --- ERDC or other child care subsidies. The amount the student actually pays for child care (including the ERDC copay) is excluded as educational income instead of the amount shown in the award letter.

(c) The student states that actual transportation costs exceed the amount allowed for the expense in the award letter. In that situation, the number of miles to and from school is multiplied by $0.20. The product or the amount from the award letter, whichever is greater, is excluded.

(3) The following items are excluded:

(a) Educational income authorized by the Carl D. Perkins Vocational and Applied Technology Education Act or Title IV of the Higher Education Act or made available by the Bureau of Indian Affairs (BIA).

(b) All income from educational loans.

(c) In the OSIP, OSIPM, and QMB programs, the augmented portion of a shelter stipend from the Department of Veterans Affairs designated for the individual’s dependent.
(4) Except as provided in section (5) of this rule, the cost of the following items from remaining educational funds (including non-Title IV work study, externship (see OAR 461-001-0015), graduate assistantship (see OAR 461-001-0015), graduate fellowship (see OAR 461-001-0015) wages, and internship (see OAR 461-001-0015)) is excluded:

(a) Tuition, mandatory fees, books and supplies, transportation, required rental or purchase of equipment or materials charged to students enrolled in a specific curriculum, other miscellaneous personal expenses (except room and board), and loan originator fees and insurance premiums required to obtain an educational loan.

(b) In all programs except ERDC --- dependent care.

(5) For a participant in the Parents as Scholars (PAS) component of the JOBS program who has been approved for PAS pursuant to OAR 461-190-0199, all remaining educational funds, including those funds intended for room and board, are excluded.

(6) In all programs covered by chapter 461 of the Oregon Administrative Rules, after allowing exclusions, the remaining income is treated as follows:

(a) Income received through work study (including work study provided through a VA program or other educational program), fellowships and teaching-assistant positions not excluded by section (3) or (4) of this rule is earned income.

(b) Educational income not covered by subsection (a) of this section is prorated over the period it is intended to cover. If the client has already received the income, the prorated amount is counted monthly beginning with the first month of the period. If the client has not received the income at the time the determination is made, the prorated income is counted starting in the month the client expects to receive it.

(7) Educational awards paid under the National and Community Service Trust Act of 1993 (including AmeriCorps) are treated in accordance with OAR 461-145-0365.

(8) In the OSIP, OSIPM, and QMB programs, distributions from a Coverdell Education Savings account are treated in accordance with OAR 461-145-0145.

Gifts and Winnings

(1) For the purposes of this rule:

(a) *Gifts* are items given to or received by an individual on or for a special occasion, such as a holiday, birthday, graduation, or wedding. Gifts are not given or received on a regular basis.

(b) *Winnings* are prizes given to an individual in a contest, game of chance, or similar event. Winnings in the form of money may be distributed periodically (e.g., monthly) or in a lump-sum.

(2) In the ERDC program, *gifts* and *winnings* are excluded.

(3) In all programs except the ERDC program:

(a) In-kind *gifts* and *winnings* are treated according to the rule applicable to the specific type of asset. In the OSIP, OSIPM, and QMB programs, if an individual is offered a choice between an in-kind item and cash, the cash amount is considered unearned income, even if the individual chooses the in-kind item and regardless of the value, if any, of the in-kind item.

(b) *Gifts* and *winnings* in the form of money are treated as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120). In the OSIP, OSIPM, and QMB programs, gambling losses are not subtracted from gambling winnings in determining the individual’s *countable* income (see OAR 461-001-0000).

(c) *Gifts* and *winnings* in the form of money are treated as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120). In the OSIP, OSIPM, and QMB programs, gambling losses are not subtracted from gambling winnings in determining the individual’s *countable* income (see OAR 461-001-0000).

(4) For employment-related items, see OAR 461-145-0130.

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The *equity value* (see OAR 461-001-0000) of an income-producing sales contract is treated as follows:

(a) In the OSIPM and QMB-DW programs for contracts originating on or after October 1, 2012:

(A) Except for a contract resulting from the sale of a home, that is treated in accordance with paragraph (B) of this subsection, it is a *countable* (see OAR 461-001-0000) resource valued at the outstanding principal balance of the contract unless the individual provides convincing evidence of a lower cash value or there is a legal bar to the sale of the contract. If there is a legal bar to the sale of the contract, the *equity value* of the contract is a transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client) for less than *fair market value* (see OAR 461-001-0000).

(B) The *equity value* of a contract resulting from the sale of a home is excluded if the entire principal portion of the payments received from the contract is used to purchase another home within three calendar months of receipt of the payments. Otherwise the *equity value* is treated in accordance with paragraph (A) of this subsection.

(b) Except as provided for in subparagraph (a) of this section, it is excluded.

(2) In all programs, income received from a sales contract is treated as provided in OAR 461-145-0460.

Japanese-American Restitution Payments; OSIP, OSIPM, QMB

THIS IS A NEW RULE

In the OSIP, OSIPM, and QMB programs:

(1) The following restitution payments are excluded from income and resources:

   (a) Restitution payments made by the U.S. Government to individual Japanese-Americans, or the spouse or parent of an individual of Japanese ancestry.

   (b) Payments to a survivor of a deceased recipient under subsection (a) of this section.

   (c) Restitution payments from the Canadian Government to individual Japanese-Canadians who were interned or relocated during World War II.

(2) Interest earned on payments covered by section (1) of this rule is excluded from income and resources.

Benefits paid on a life insurance policy are counted as unearned income in the month received and a resource if retained into the following month.

(a) The Department counts benefits as received when the insured individual dies or when the insured individual is eligible for and receives accelerated payments before death, such as when the insured individual has a terminal illness.

(b) When the payment is a lump sum due to the death of the insured individual a deduction is allowed, not to exceed $1,500, for the cost of the deceased individual's last illness and burial if these costs were not otherwise insured.

Burial insurance that has generated a cash surrender value is treated in the same manner that this rule treats life insurance.

When the ownership or beneficiary of a life insurance policy has been irrevocably assigned and designated for burial, it is treated in accordance with OAR 461-145-0040 and is not counted towards the $1,500 life insurance limit.

The value of a life insurance policy is treated as follows:

(a) All term insurance that has no cash surrender value is excluded.

(b) In all programs except OSIP, OSIPM, and QMB-DW, the cash surrender value of the life insurance policy is excluded.

(c) In the OSIP, OSIPM, and QMB-DW programs:

(A) For the purposes of this subsection, the following definitions apply:

(i) "Cash surrender value" means the equity that the policy acquires over time.

(ii) "Dividend" means a payment of surplus company earnings from the insurer.

(iii) "Dividend accumulation" means a dividend left with the insurer to accumulate interest that may be withdrawn without affecting the policy's face value or cash surrender value.

(iv) "Dividend addition" means the amount of insurance purchased with a dividend that increases the policy's death benefit and cash surrender value.
(v) "Face value" means the amount of the death benefit contracted for at the time the policy was purchased and does not include a dividend addition added after purchase of the policy.

(vi) "Viatical settlement" means an agreement allowing a third party to acquire a life insurance policy from a terminally ill individual at an agreed-upon percentage of the life insurance policy's face value.

(B) The cash surrender value of life insurance policies owned by the financial group (see 461-110-0530) is excluded if the total face value of all policies for the insured individual is less than or equal to $1,500. If the total face value of all policies for the insured individual is more than $1,500, the entire cash surrender value are counted as a resource to the owner of the policies. The total face value does not include any dividend addition. A dividend accumulation must count as a resource even if the face value of the policy that generated the dividend accumulation is excluded.

(C) The face value of term life insurance policies excluded under subsection (a) of this section are not counted in determining if the $1,500.00 life insurance exclusion limit is exceeded.

(CD) The cash surrender value of a policy acquired through a viatical settlement is excluded.


In the OSIP, OSIPM, and QMB programs:

(1) Mineral rights represent ownership interest in natural resources such as coal, oil, or natural gas, which normally are extracted from the ground.

(2) Mineral rights are treated as follows:

   (a) If the individual owns the property to which the mineral rights pertain, the current market value of the property is assumed to include the value of the mineral rights and is treated in accordance with OAR 461-145-0420.

   (b) If the individual does not own the land to which the mineral rights pertain, the current market value of the mineral rights is counted as a resource.

   (c) Income received from mineral rights, including compensation paid to the owner for the use or lease of property or natural resources, is considered royalty income and treated in accordance with OAR 461-145-0108.

Refunds and Rebates

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

   (a) Rebates, refunds, and other returns of money an individual did not already pay are counted as unearned income in the month received.

   (b) Rebates, refunds, and other returns of money an individual already paid are excluded as income.

   (c) Rebates that constitute a return on an individual’s investment are treated in accordance with OAR 461-145-0108.

   (d) Income and property tax refunds are treated in accordance with OAR 461-145-0530.

(2) Exclude In all programs except the OSIP, OSIPM, and QMB programs, the Department excludes the following refunds in the month they are received:

   (a) Refunds on merchandise that was purchased or received as a gift.

   (b) Refunds of utility and rental deposits.

(2) Count In all programs except the QMB program, the Department counts any refund amount remaining after the month of receipt as a resource.

Stats. Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685
(1) For the treatment of USDA meal reimbursements, see OAR 461-145-0570.

(2) The reimbursement (see OAR 461-001-0000) of a business expense for an individual who is self-employed is treated as self-employment income (see OAR 461-145-0910, 461-145-0915, and 461-145-0920).

(3) Except as provided in sections (1) and (2) of this rule, a reimbursement is treated as follows:

   (a) In the ERDC program, a reimbursement is excluded, except that a reimbursement for child care from a source outside of the Department is counted as unearned income.

   (b) In the SNAP program:

      (A) A reimbursement in the form of money for a normal household living expense, such as rent or payment on a home loan, personal clothing, or food eaten at home, is unearned income.

      (B) Any other reimbursement is treated as follows:

         (i) An in-kind reimbursement is excluded.

         (ii) A reimbursement in the form of money is excluded if used for the identified expense, unless the expense is covered by program benefits.

         (iii) A reimbursement is 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) if not used for the identified expense.

         (iv) A reimbursement for an item already covered by the benefits of the benefit group (see OAR 461-110-0750) is counted as periodic income or lump-sum income.

   (c) In the SNAP program, an expenditure by a business entity that benefits a principal (see OAR 461-145-0088) is counted as earned income (see OAR 461-145-0130).

   (d) In all programs except the ERDC and SNAP programs, a reimbursement is treated as follows:
(A) An in-kind reimbursement is excluded.

(B) A reimbursement in the form of money is excluded if used for the identified expense, unless the expense is covered by program benefits.

(C) A reimbursement is counted as periodic income or lump-sum income if not used for the identified expense.

(D) A reimbursement for an item already covered by the benefits of the benefit group is counted as periodic income or lump-sum income unearned income.

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685
Sale of a Resource

(1) In the ERDC program, all proceeds from the sale of a resource are excluded as income and as a resource.

(2) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, for the sale of a resource (including a home):

(a) For the sale of a resource (except a home) originating prior to October 12, 2012:

   (A) All proceeds received on a monthly or other periodic basis are counted as unearned income.

   (B) All proceeds received on a lump-sum basis are excluded as income.

(b) For the sale of a home originating prior to October 1, 2012 all proceeds are excluded as income.

(c) For a sale of a resource (including a home) originating on or after October 1, 2012:

   (A) The interest portion of proceeds is counted as unearned income.

   (B) The principal portion of proceeds is excluded as income.

(3) In the OSIPM, and QMB-DW programs:

(a) The principal portion of proceeds from the sale of a resource (other than a home) received on a monthly or other periodic basis is counted as a resource.

(b) The principal portion of proceeds from the sale of a resource (other than a home) received on a lump-sum basis are treated as follows:

   (A) If the proceeds are from the sale of an excluded resource, the amount reinvested in another excluded resource is excluded, and the remainder is counted as a resource.

   (B) Proceeds from all other sales are counted as a resource.

(c) The interest portion of proceeds from the sale of a resource (other than a home) received on a monthly, other periodic, or lump-sum basis is counted as unearned income.
(d) Proceeds from the sale of a home of the financial group (see OAR 461-110-0530) are treated as follows:

(A) Principal payments, including lump-sum payments, are excluded for three full calendar months from the date of receipt if the financial group intends to use the proceeds to buy another home or for associated costs including:

(i) Down payments.

(ii) Settlement costs.

(iii) Loan processing fees and points.

(iv) Moving expenses.

(v) Necessary repairs to or replacement of the new home's structure or fixtures (including roof, furnace, plumbing, built-in appliances) that are identified and documented prior to occupancy.

(vi) Mortgage payments.

(B) For the purposes of paragraph (A) of this subsection, funds obligated by contract during these three full calendar months are also excluded.

(C) Interest payments are counted as unearned income.

(e) For individuals eligible for OSIPM under OAR 461-135-0771, the proceeds from the sale of the home of the financial group, if the financial group intends to use them to buy another home (paragraphs (d)(A) and (d)(B) of this section set out the scope of use of excluded proceeds), are treated as follows:

(A) Principal payments, including lump-sum payments, are excluded for 12 full calendar months from the date of receipt.

(B) Interest payments are counted as unearned income.

(f) Proceeds from the sale of a home that are not reinvested in another home are treated as follows:

(A) Principal payments are counted as a resource.

(B) Interest payments are treated as unearned income.

(34) In the REF, REFM, and TANF programs:
(a) Proceeds from the sale of an excluded resource to the extent reinvested in another excluded resource are excluded as income and as a resource.

(b) All proceeds from the sale of the resource are counted as unearned income, unless excluded in subsection (a) of this section.

(45) In all programs except the ERDC, QMB-BAS, QMB-SMB, QMB-SMF, REF, REFM, and TANF programs, proceeds from the sale of a resource are treated as follows:

(a) Proceeds from the sale of a resource (other than a home) received:

   (A) Received on a monthly or other periodic basis are counted as unearned income; except that in the OSIPM and QMB-DW programs for a sale originating on or after October 1, 2012 all proceeds that are principal are counted as a resource.

   (B) Proceeds from the sale of a resource (other than a home) received on a lump-sum basis are treated as follows, except that in the OSIPM and QMB-DW programs for a sale originating on or after October 1, 2012 all proceeds that are interest are treated as unearned income:

      (i) If the proceeds are from the sale of an excluded resource, the amount reinvested in another excluded resource is excluded, and the remainder is counted as a resource.

      (ii) All other sales are counted as a resource.

      (iii) If the proceeds put the benefit group (see OAR 461-110-0750) over the resource limit, the proceeds are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(b) Proceeds from the sale of the home of the financial group (see OAR 461-110-0530) are excluded for three months if

   (A) If the financial group intends to use the proceeds (subparagraphs (A)(i) and (A)(ii) of this subsection set out the scope of use of excluded proceeds in the OSIP and QMB-DW programs) to buy another home, except as follows: are excluded for three months and counted as a resource thereafter.

   (B) If not reinvested in another home, are treated as a resource.

   (C) Interest received monthly or on another periodic basis from the sale of a home is counted as unearned income.
(A) In the OSIPM (except for clients eligible under OAR 461-135-0771) and QMB-DW programs for a home sold on or after October 1, 2012:

(i) Principal payments, including lump-sum payments, are excluded for three full calendar months from the date of receipt if the financial group intends to use the proceeds to buy another home or for associated costs including:

(I) Downpayments;

(II) Settlement costs;

(III) Loan processing fees and points;

(IV) Moving expenses;

(V) Necessary repairs to or replacement of the new home's structure or fixtures (including roof, furnace, plumbing, built-in appliances) that are identified and documented prior to occupancy; and

(VI) Mortgage payments.

(ii) For the purposes of subparagraph (i) of this paragraph, funds that are obligated by contract during these three full calendar months are also excluded.

(iii) Interest payments are counted as unearned income.

(B) For clients eligible for OSIPM under OAR 461-135-0771, the proceeds from the sale of the financial group's home, if the financial group intends to use them to buy another home (subparagraphs (A)(i) and (A)(ii) of this subsection set out the scope of use of excluded proceeds), are treated as follows:

(i) For a home sold prior to October 1, 2012, the proceeds are excluded for 12 full calendar months.

(ii) For a home sold on or after October 1, 2012:

(I) Principal payments, including lump-sum payments, are excluded for 12 full calendar months from the date of receipt.

(II) Interest payments are counted as unearned income.

(d) The proceeds from the sale of a home that are not reinvested in another home are counted as a resource, except as follows:
(A) In the OSIPM and QMB-DW programs for a home sold on or after October 1, 2012:

(i) Principal is counted as a resource.

(ii) Interest payments are counted as unearned income.

(B) In the SNAP program, the proceeds are treated as lump-sum income (see OAR 461-001-0000) under OAR 461-140-0120.

(e) In the SNAP program:

(A) Interest received monthly or on another periodic basis from the sale of a home is counted as unearned income.

(B) If a self-employed client sells a work-related asset, including equipment and inventory, the proceeds of the sale are treated as self-employment income (see OAR 461-145-0910).

(c) Proceeds from the sale of a work-related asset including equipment and inventory, if the client is self-employed, the proceeds of the sale are treated as self-employment income (see OAR 461-145-0910).

(56) Costs of the type excluded under OAR 461-145-0920 are subtracted from proceeds counted as income under this rule.

In the ERDC and SNAP programs, if an individual is required by law to receive an SSI benefit through a representative payee, the representative's fee is excluded.

In the ERDC program:

(a) A monthly SSI payment is counted as unearned income.

(b) Lump-sum SSI payments are counted according to OAR 461-140-0120.

In the OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB-DW programs:

(a) Except in the QMB-BAS, QMB-SMB, and QMB-SMF programs, a retroactive SSI payment is excluded for nine months after the month of receipt. After the nine-month period, any remaining amount is a countable (see OAR 461-001-0000) resource. For the purposes of this section, a payment is retroactive if it is issued in any month after the calendar month for which it is intended.

(b) For the purposes of determining eligibility for individuals not assumed eligible under OAR 461-135-0010, SSI payments received by other members of the financial group (see OAR 461-110-0530) are counted as unearned income.

In the REF, REFM, and TANF programs:

(a) SSI monthly and lump-sum payments are excluded if the recipient will be removed from the financial group (see OAR 461-110-0530) the month following receipt of the payment.

(b) An SSI lump-sum payment is excluded in the month received and the next month.

In the SNAP program:

(a) A monthly SSI payment is counted as unearned income.

(b) A lump-sum SSI payment is excluded.

Except as provided in sections (2) and (3) of this rule, the equity value (see OAR 461-001-0000) of mutual funds, and securities, including stocks, bonds, educational savings bonds, and certificates of deposit (CDs), is counted as a resource.

In the OSIPM and QMB-DW programs, the value of a savings bond issued by the United States Department of the Treasury is excluded during the minimum retention period.

In all programs except the OSIPM and QMB-DW programs, the value of a savings bond issued by the United States Department of the Treasury is excluded during the minimum retention period if the owner has received a denial of a request for a hardship waiver based on financial need.

Interest and dividends on items covered by section (1) of this rule are treated as provided in OAR 461-145-0108.
THIS RULE IS REPEALED

(1) In the OSIP and OSIPM programs, the Department will authorize a one-time special needs payment for a home adaptation required by the client’s care plan, if the adaptation is needed to accommodate the client’s physical condition and prevent the client’s placement in a nursing facility.

(2) For a home adaptation:

(a) The client must be the owner or buyer of the house.

(b) The adaptation must cost less than moving to another home.

(c) 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.

(d) Providers of the adaptations must ensure that the work being completed meets current building codes.

(e) Adaptations authorized by this rule include only changes to the structure of the building, such as installation of ramps, grab-bars, and railings; widening of doorways; modification of bathroom facilities; and installation of electric and plumbing systems necessary to accommodate the client’s medical equipment or supplies.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Special Need; Laundry Allowances

(1) OSIP and OSIPM clients who are receiving SSI or *home and community-based care* (see OAR 461-001-0030) or have adjusted income less than the OSIPM program income standard under OAR 461-155-0250 are eligible for a laundry allowance if they have proven, excessive, coin-operated laundry facility costs and do not:

   (a) Have their own laundry facilities; or

   (b) Reside in an adult foster care-home, assisted living facility, nursing facility, residential care facility, or specialized living facility, unless the specialized living facility is apartment based.

(2) This allowance may not exceed the amount required to wash and dry the laundry of the client.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.706, 413.085, 414.685
Stats. Implemented: ORS 409.010, 411.060, 411.404, 411.706, 413.085, 414.685
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) Cannot 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.

(78) 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.

(89) 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.

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685
Special Need; Property Taxes

(1) OSIP and OSIPM clients who are homeowners or buyers are allowed a special need of one year in an amount equal to the cost of delinquent real property taxes, penalties and interest, if needed to prevent imminent foreclosure (see section (4) of this rule).

(2) Clients whose property taxes have not been paid and who are eligible for the Oregon Property Tax Deferral Program must opt to defer property taxes. If necessary, the state may provide payment for back property taxes, to bring the tax current, to allow clients to defer their ongoing property taxes.

(3) Clients who have not chosen to defer their property taxes; and have failed to pay their whose property taxes have not been paid, will not receive a property tax special need payment unless the an exception is authorized by the Department's Estates Administration Unit. The exception will be based on the value of the property, the potential of foreclosure, and the potential of an Estates Administration Unit recovery of such property.

(4) Imminent foreclosure is indicated by a formal notice of foreclosure.

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706, 411.710, 413.085, 414.685
In the OSIPM program:

(1) A client is considered living in a community based care facility (see OAR 461-001-0000) if the client resides at one of the following care settings licensed by the Department:

(a) Adult Foster CareHome.

(b) Residential Care Facility.

(c) Assisted Living Facility.

(d) Specialized Living Facility.

(e) Group Care Home.

(2) In determining eligibility for OSIPM for an individual receiving care in a 24-hour mental health residential care setting, such as an adult foster home, residential treatment home, residential treatment facility, or a secure treatment facility, the special need (see OAR 461-155-0010) is the amount of the service payment authorized by the Department and is added to the OSIP maintenance standard.

(3) If a client who meets the applicable income requirements begins living in a community based care facility:

(a) Payment for room and board may be authorized during the month of admission at the initial placement, limited to the approved rate.

(b) Room and board payments may be paid to the community based care facility during the temporary absence of a client if all of the following criteria are met:

(A) The absence occurs because the client is admitted to a hospital or nursing home.

(B) The Department determines the intent of the client to return to the community based care facility.

(C) The community based care facility is willing to accept the room and board payment.

(D) The client returns one within the calendar-month following the month in which the absence began.
Spouses who each receive SSI and receive services in a community based care facility are eligible for a payment in the amount that equals the difference between the OSIPM standard for a one-person need group and the individual's total countable income. If one spouse has income above the OSIPM standard, the excess income is applied to the other spouse's countable income.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 413.085, 414.685
Stats. Implemented: ORS 409.010, 411.060, 411.404, 413.085, 414.685
THIS RULE IS REPEALED

(1) To receive the restaurant meals special need payment, OSIP and OSIPM clients who are receiving SSI, home and community-based care (see OAR 461-001-0030), or have adjusted income less than the OSIPM program income standard under OAR 461-155-0250 must have proven medical and nutritional needs that cannot be met with meals purchased with SNAP program benefits.

(2) A client living in his or her own home who is unable to prepare his or her own meals, but is eligible for SNAP program benefits, may have his or her meals prepared by attendants that volunteer or are compensated by the Seniors and People with Disabilities Division In-Home Services program. A client also may receive, if eligible, Meals on Wheels services to supplement his or her diet.

(3) The payment standard for restaurant meals is $60 per month.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060, 411.706
Special Need; Special Diet Allowance

(1) In the OSIP, OSIPM, REF, REFM, SFPSS, and TANF programs, a client receiving any of the following is not eligible for a special diet allowance if receiving any of the following:

(a) Room and board.

(b) Residential care facility services or assisted living facility services.

(c) Nursing facility services.

(d) Adult foster care services.

(e) An allowance for restaurant meals.

(f) A commercial food preparation diet.

(2) An REF, REFM, SFPSS, or TANF client, or an OSIP or OSIPM client receiving SSI, having an adjusted income less than the OSIPM program income standard under OAR 461-155-0250, or receiving in-home services under OAR 411-030 is eligible for a special diet allowance if the client meets the following requirements:

(a) The client would be in an imminent life-threatening situation without the diet, as verified by medical documentation from a Department-approved medical authority (see OAR 461-125-0830); and

(b) A nutritionist verifies that the special diet needed exceeds the cost of a regular diet.

(a) Any special diet to which the client must adhere must be clearly described in writing by a Department-approved medical authority (see OAR 461-125-0830), and the written description must be provided to the Department.

(b) The Department must receive verification that the client would be in an imminent life-threatening situation without the special diet, as documented by a Department-approved medical authority; and

(c) A licensed dietitian must describe in writing which particular food items required by the special diet are likely to exceed the cost of similar food items included in a regular diet and such a written description must be provided to the Department.

(3) The amount of a special diet allowance is calculated as follows:
(a) In the REF, REFM, SFPSS, and TANF programs, the difference between the actual cost of the special diet and a prorated share of the SNAP program benefit for the appropriate number of clients in the benefit group (see OAR 461-110-0750).

(b) In the OSIP and OSIPM programs, the lesser of the following:

(A) The difference between the actual cost of the special diet and the amount provided in the basic standard for food (see OAR 461-155-0250).

(B) A maximum of $300 per month, or an exceptional amount, authorized by the SPD Program Assistance Section, which will not exceed the cost of home IV therapy. Except as provided for in subsection (b) of this section, the special diet allowance is the amount by which the client’s food costs, including the special diet, exceed the one-person SNAP Payment Standard (Thrifty Food Plan).

(b) In the OSIPM program, an exceptional amount must be authorized by the APD Financial Eligibility and Waiver Unit.

(4) Local management staff must approve or deny any the request for a special diet allowance provided under subsection (3)(a) of this rule.

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

Prescription Drug Co-pay Coverage

In the OSIPM program for a client who is receiving SSI:

(1) The Department will provide a payment for all Medicare Part D or Veteran's Administration Health Care prescription co-pays if a client's co-pays exceed $10 per month.

(2) Payment for Medicare Part D co-pays is limited to the current Low-Income Subsidy (LIS) program amounts for a fully dual eligible individual under 100 percent of the Federal Poverty Limit.

(3) If the payment exceeds $30 per month, it must be approved by Seniors, Aging and People with Disabilities Division central office staff.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.706, 413.085, 414.685
Stats. Implemented: ORS 409.010, 411.060, 411.083, 411.404, 411.704, 411.706, 413.085, 414.68i
Income Deductions; Non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) in the Community When There Are Children in the Household Group

(1) For purposes of this rule:

(a) "Child" means an unmarried individual, living with a natural or adoptive parent, and is:

(A) Under the age of 18; or

(B) Under the age of 22 and temporarily absent from the household while attending full-time secondary, postsecondary, or vocational-technical training designed to prepare the individual for employment.

(b) "Ineligible" means an individual who is not eligible to receive either SSI or TANF benefits.

(2) This rule is used to determine adjusted income (see OAR 461-001-0000) for individuals in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:

(a) Live in the community;

(b) Are not assumed eligible (see OAR 461-135-0010);

(c) Do not receive home and community-based care (see OAR 461-001-0030); and

(d) Have at least one child (see subsection (1)(a) of this rule) in the household group (see OAR 461-110-0210).

(3) For an individual described in section (2) of this rule who is married to a spouse (see OAR 461-001-0000) who is ineligible (see subsection (1)(b) of this rule), the Department calculates the adjusted income of the individual under sections (4)(b) through (f) of this rule first. If the individual’s adjusted income is greater than the OSIPM program adjusted income standard for a need group of one under OAR 461-155-0250, the individual is not eligible for OSIPM.

(4) To determine adjusted income for individuals described in section (2) of this rule, deductions from the countable (see OAR 461-001-0000) income of the financial group (see OAR 461-110-0530) are made in the following order:

(a) An allocation as described below:

(A) When an adult is applying, income is allocated (see paragraph (C) of this subsection) from an ineligible spouse included in the financial group to each ineligible child of the couple.
(B) When a child is applying:

(i) Income from ineligible parents is first allocated to each ineligible child in the household.

(ii) Second, the remaining income from subparagraph (i) of this paragraph is reduced as provided in subsections (b) through (f) of this section.

(iii) Third, the remaining income is reduced by the non-SSI OSIP and OSIPM adjusted income standard of the --

(1) Couple if both parents live with the child; or

(2) Individual if only one ineligible parent lives with the child.

(iv) Fourth, the remainder is deemed equally to each child applicant in the household.

(v) The income deemed to the child is added to the other income of the child and deductions are taken as described in subsections (b) through (f) of this section to calculate the child's adjusted income.

(C) The maximum amount of each allocation under paragraphs (A) and (B) of this subsection is the difference between the couple and the individual SSI Standard. The allocation for paragraphs (A) and (B) of this subsection is reduced by the other countable income of each ineligible child. An allocation is taken from unearned income first, and any remaining allocation is then taken from earned income.

(b) One standard deduction of $20 from unearned income.

(A) This deduction may be taken from earned income if the individual has less than $20 in unearned income.

(B) This deduction does not apply to a benefit based on need that is totally or partially funded by the federal government or by a nongovernmental agency.

(c) One standard earned income deduction of:

(A) $65 for individuals in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs; or

(B) $85 for individuals in the OSIP-AB and OSIPM-AB programs.
(d) An income deduction for documented impairment-related work expenses or blind work expenses.

(e) One half of the remaining earned income.

(f) Deductions under a plan for self-support for individuals in the OSIP-AB, OSIP-AD, OSIPM-AB, and OSIPM-AD programs.

Stats. Implemented: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685
For In the OSIP and OSIPM programs, this rule applies to an institutionalized spouse who began a continuous period of care on or after October 1, 1989.

1. The Department assesses a couple's combined countable resources at the beginning of each continuous period of care when requested by either spouse or by a representative acting on behalf of either spouse (see OAR 461-001-0000).

2. The Department advises requesting parties of the verification needed to make the assessment. Verification of ownership interest and current value of resources must be provided. When verification is not provided within specified time frames, the Department advises requesting parties that an assessment cannot be completed.

3. Requesting parties have a right to appeal the determination of countable resources at the time of the assessment.

4. If either spouse disagrees with the amount or the method of computation of the community spouse's allowances, they are entitled to a hearing within 30 days of the date of the request for the hearing.

3. Either spouse has a right to a contested case hearing:

   (a) To contest the Department’s determination of the couple’s countable resources at the time of resource assessment.

   (b) To contest the Department’s method of computing the community spouse’s resource allowance.

   (c) To contest the Department’s determination of the amount of the community spouse’s resource allowance.

4. In order to be timely, a hearing request completed about issues under section (3) of this rule must meet the requirements of OAR 461-025-0310.

Stats. Implemented: ORS 183.415, 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 413.085, 414.685
THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY

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.** $2,003 is added to the amount over $601 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 $2,003. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from $2,003.

(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, or a mental health facility, there is a liability as described at OAR 461-160-0610.

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.706, 413.085, 414.065, 414.685
Adjusted income for OSIP-EPD and OSIPM-EPD is determined as follows:

1. All unearned income is excluded.
2. From gross countable earned income, one standard income deduction of $20 is deducted.
3. One standard earned income deduction of $65, or $85 for individuals whose disability is based on blindness, is deducted.
4. The remainder is divided by two.
5. Any costs allowed as employment and independence expenses, Impairment Related Work Expenses, or Blind Work Expenses as defined in OAR 461-001-0035 are deducted.
6. The remainder is adjusted income.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.706, 413.085, 414.687
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706, 413.085, 414.687
Concurrent and Duplicate Program Benefits

(1) Except as noted in this rule, an individual may not receive benefits from the Department of the same type (that is, cash, medical, or SNAP benefits) for the same period as a member of two or more different benefit groups (see OAR 461-110-0750) or from two or more separate programs. Except as allowed in subsection (g) of this section, this provision includes a prohibition against an individual receiving TANF concurrently with another cash assistance program funded under Title IV-E of the Social Security Act.

(a) An individual may receive EA, HSP, and TA-DVS benefits and cash payments from other programs for the same time period.

(b) If a GA recipient becomes eligible for the TANF program, the GA recipient may not receive a TANF cash payment for themselves in the month a GA cash payment was received.

(c) A TANF recipient may receive ERDC for a child (see OAR 461-001-0000) in the household group (see OAR 461-110-0210), but who may not be included in the TANF filing group (see OAR 461-110-0310 and 461-110-0330).

(d) A child who is a member of an ERDC benefit group may also be a member of one of the following benefit groups:

(A) An OSIP-AB benefit group.

(B) A TANF benefit group when living with a nonneedy caretaker relative (see OAR 461-001-0000), if the caretaker relative is not the parent (see OAR 461-001-0000) of the child.

(C) A TANF benefit group when living with a needy caretaker relative receiving SSI.

(e) An individual in the SNAP program who leaves a filing group (see OAR 461-110-0310 and 461-110-0370) that includes an individual who abused them and enters a domestic violence shelter (see OAR 461-001-0000) or safe home (see OAR 461-001-0000) for victims of domestic violence (see OAR 461-001-0000) may receive SNAP benefits twice during the month the individual enters the domestic violence shelter or safe home.

(f) A QMB recipient may also receive medical benefits from OSIPM, REFM, MAGI Child, MAGI Parent or Other Caretaker Relative, or MAGI Pregnant Woman. QMB-DW and QMB-SMF recipients may not receive any other medical assistance program offered under the state plan (see OAR 461-135-0730).
(g) An individual may receive Chafee (see OAR 413-030-0400 to 413-030-0455) and TANF benefits during the same time period. As of January 1, 2013, receipt of both Chafee and TANF benefits will not result in an overpayment.

(h) An individual receiving Employment Payments (see OAR 461-001-0025 and 461-135-1270) who becomes eligible for TANF in the same month may receive both benefits in the same month.

(i) An individual receiving JPI (see OAR 461-135-1260) who becomes eligible for Pre-TANF or TANF in the same month may receive both benefits in the same month.

(2) An individual may not receive benefits of the same type (that is, cash, medical, or SNAP benefits) for the same period from both Oregon and another state or tribal food distribution program, except as follows:

(a) Medical benefits may be authorized for an eligible individual if the individual's provider refuses to submit a bill to the Medicaid agency of another state and the individual would not otherwise receive medical care.

(b) Cash benefits may be authorized for an individual in the Pre-TANF program if benefits from another state will end by the last day of the month in which the individual applied for TANF.

(3) In the SNAP program, each individual who has been included as a member of the filing group in Oregon or another state is subject to all of the restrictions in section (2) of this rule.

(4) An REF or TANF filing group may not receive REF or TANF benefits during the same month that an individual in that group was enrolled in or received assistance from the Office of Refugee Resettlement Matching Grant Program.

 Monthly Change Report Incomplete or Not Received

**THIS RULE IS REPEALED**

If a Department branch office serving a program covered by this chapter of rules does not receive a completed Monthly Change Report by the last day of the payment month, the case is closed effective the end of the *budget month* (see OAR 461-001-0000).

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049