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**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**SSP 25-2018**

CHAPTER 461  
DEPARTMENT OF HUMAN SERVICES  
SELF-SUFFICIENCY PROGRAMS

**FILED**  
07/11/2018 10:48 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Modifying rule about eligibility of residents of public institutions

EFFECTIVE DATE: 07/11/2018 THROUGH 09/30/2018

AGENCY APPROVED DATE: 07/11/2018

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NEED FOR THE RULE(S):

OAR 461-135-0950 about eligibility for inmates and residents of public institutions needs to be amended to align with federal policy by adding Medicare Savings Programs (QMB programs) to the exception of ineligibility for certain individuals in the state hospital, and by changing the requirements for receiving benefits in a state hospital from 21 or older to 21 or younger and specifying that 21-year-old individuals must be receiving services in a certified ward before age 21, not just enter the state hospital prior to age 21.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-135-0950 will result in serious prejudice to the public interest, the Department, and individual residing at the Oregon State Hospital who meet the requirements for Medicare Savings Programs who may incur medical expenses which should be covered by Medicaid, including the expense of the Part B premium. This rule needs to be amended at this time to bring the Department into compliance with federal policy and avoid delaying benefits for three months for up to 19 individuals. This amendment aligns with federal policy by adding Medicare Savings Programs (QMB programs) to the exception of ineligibility for certain individuals in the state hospital, and by changing the requirements for receiving benefits in a state hospital from 21 or older to 21 or younger and specifying that 21-year-old individuals must be receiving services in a certified ward before age 21, not just enter the state hospital prior to age 21.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None.

AMEND: 461-135-0950

RULE SUMMARY: OAR 461-135-0950 about eligibility for inmates and residents of public institutions is being amended to add Medicare Savings Programs (QMB programs) to the exception of ineligibility for certain individuals in the state hospital. This rule is also being amended to change the requirements for receiving benefits in a state hospital from 21 or older to 21 or younger and specify that 21-year-old individuals must be receiving services in a certified ward

before age 21, not just enter the state hospital prior to age 21. These changes align with federal policy, and are retroactive to July 1, 2018.

CHANGES TO RULE:

461-135-0950

Eligibility for Inmates and Residents of Public Institutions ¶¶

(1) This rule sets out additional restrictions on the eligibility of inmates and residents of state hospitals for programs covered by Chapter 461 of the Oregon Administrative Rules.¶¶

(2) Definition of an "inmate".¶¶

(a) An inmate is an individual living in a public institution (see section (3) of this rule) who is:¶¶

(A) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including an individual being held involuntarily in a detention center awaiting trial or an individual serving a sentence for a criminal offense;¶¶

(B) Residing involuntarily in a facility under a contract between the facility and a public institution where, under the terms of the contract, the facility is a public institution;¶¶

(C) Residing involuntarily in a facility that is under governmental control;¶¶

(D) Receiving care as an outpatient while residing involuntarily in a public institution; or¶¶

(E) In the OSIPM and QMB programs, released from the public institution during a temporary period of hospitalization in a medical institution outside of the correctional facility.¶¶

(b) An individual is not considered an inmate when:¶¶

(A) The individual is released on parole, probation, or post-prison supervision;¶¶

(B) The individual is on home- or work-release, unless the individual is required to report to a public institution for an overnight stay;¶¶

(C) The individual is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual; or¶¶

(D) The individual is in a public institution pending other arrangements as defined in 42 CFR 435.1010.¶¶

(3) A "public institution" is any of the following:¶¶

(a) A state hospital (see ORS 162.135).¶¶

(b) A local correctional facility (see ORS 169.005): a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds individuals for more than 36 hours.¶¶

(c) A Department of Corrections institution (see ORS 421.005): a facility used for the incarceration of individuals sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.¶¶

(d) A youth correction facility (see ORS 162.135):¶¶

(A) A facility used for the confinement of youth offenders and other individuals placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a residential academy and satellite, and camps and branches of those facilities; or¶¶

(B) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth, or youth offenders pursuant to a judicial commitment or order.¶¶

(4) Definition of serious mental illness. An individual has a serious mental illness if the individual has been diagnosed by a psychiatrist, a licensed clinical psychologist or a certified non-medical examiner as having dementia, schizophrenia, bipolar disorder, major depression or other affective disorder or psychotic mental disorder other than a substance abuse disorder and other than a disorder that is caused primarily by substance abuse.¶¶

(5) An individual who resides in a state hospital (see subsection (3)(a) of this rule) meets the definition of a serious mental illness (see section (4) of this rule), and applies for medical assistance between 90 and 120 days prior to the expected date of the person's release from the state hospital may be found eligible for medical assistance. If the individual is determined to be eligible, the effective date of the individual's medical assistance is the date the individual is released from the institution.¶¶

(6) ~~In the OSIPM and QMB programs, a client who becomes a resident of a state hospital has medical benefits suspended if the client is at least 21 years of age and under 65 years of age. When a client except as provided for in section (7) of this rule, an individual who is at least 21 years of age and less than 65 years of age who becomes a resident of a state hospital has medical benefits suspended. When an individual with suspended medical benefits is no longer a resident of the state hospital, or when the individual is admitted to a medical institution outside of the state hospital for a period of hospitalization, medical benefits are reinstated effective the first day the client individual is no longer a resident, if the client individual continues to meet eligibility for the medical program. The July 2018 amendments to this rule are retroactive to July 1, 2018.~~

(7) An individual residing in a state hospital may be eligible for OSIPM and QMB program benefits if the individual:

(a) Receives services on a certified ward;

(b) Receives a Certificate of Need for Services from the State-authorized agency; and

(c) Meets one of the following:

(A) Is 65 years of age or older;

(B) Is under 21 years of age; or

(C) Is 21 years of age ~~or older~~, if the basis of need is disability or blindness; ~~eligibility was determined before, and if the individual reached 21 years of age; and the individual entered the state hospital before reaching 22 years of~~ was receiving services in a certified ward immediately before reaching age 21. Except as provided for in paragraph (A) of this subsection, eligibility ends at age 22.

(8) For all programs covered under chapter 461 of the Oregon Administrative Rules:

(a) Except as provided otherwise in this rule, an inmate (see section (2) of this rule) of a public institution is not eligible for benefits.

(b) If a pregnant woman receiving medical assistance through the OSIPM program becomes an inmate of a public institution, her medical benefits are suspended. When the Department is informed the woman is no longer an inmate, her medical benefits are reinstated - effective on the first day she is no longer an inmate - if she is still in her protected period of eligibility under OAR 461-135-0010.

(c) If an individual receiving medical assistance through the OSIPM or QMB programs becomes an inmate of a correctional facility, medical benefits are suspended during the incarceration period.

(d) In the OSIPM and QMB programs, when the Department is notified that an individual with suspended benefits has been released or has been admitted to a hospital outside of the public institution for a period of hospitalization, medical benefits are reinstated effective the first day the client is no longer an inmate if both of the following are true:

(A) The client continues to meet eligibility for the medical program; and

(B) The notification takes place within ten calendar days of the release, or the notification takes place more than ten calendar days from the release date and there is good cause for the late reporting.

(9) In the GA and SNAP programs, in addition to the other provisions of this rule, an inmate released from a public institution on home arrest, and required to wear an electronic device to monitor his or her activity, is ineligible for benefits if the correctional agency provides room and board to the individual.

(10) In the GA program, when an individual becomes an inmate of a public institution:

(a) Benefits may continue for the two calendar months following the month the Department is notified of the incarceration, if the individual will be released before the end of the second calendar month and the housing arrangement is still available.

(b) If the individual will be released after the end of the second calendar month following the month of notification, or if the release date is not known, benefits will be closed effective the end of the notice period (see OAR 461-175-0050) for a timely continuing benefit decision notice (see OAR 461-001-0000).

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685, 412.014

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.447, 411.816, 412.014, 412.049, 414.426, 42 CFR 535.1009