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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 5-2019

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

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FILING CAPTION: Changing rules about authorized representatives and alternate payees

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NEED FOR THE RULE(S):

The Department needs to amend OAR 461-115-0090, OAR 461-165-0035, OAR 461-195-0521, and OAR 461-195-0541 and suspend OAR 461-115-0140 and OAR 461-165-0040 because the upcoming Integrated Eligibility system does not (without a multi-million dollar change and a delay in the start date) accommodate multiple representatives. These changes set out one authorized representative for all programs (except the TA-DVS program), align related policies about who can serve, the functions they can perform, and the responsibilities of an authorized representative. OAR 461-115-0090 about authorized representatives is being amended to establish that an authorized representative designated for one Department program must be the authorized representative for all Department programs except the TA-DVS program; revise who can be an authorized representative, who can appoint an authorized representative, what functions the authorized representative can fulfill, the requirements to which an authorized representative is subject, and establish that an individual's long-term care provider may not serve as that individual's authorized representative for the application for or administration of long-term care services. OAR 461-115-0140 about authorized representatives and alternate payees in the SNAP program is being suspended and this topic will be covered in OAR 461-115-0090 and OAR 461-165-0035. OAR 461-165-0035 about alternate payees is being amended to revise who can serve as an alternate payee, who can designate an alternate payee, and what requirements and responsibilities apply to those who serve as an alternate payee. OAR 461-165-0040 about assigning payees is being suspended and this topic will be covered in OAR 461-165-0035. OAR 461-195-0521 about the calculation of overpayments is being amended to remove outdated program names and clarify overpayment liability in OCCS medical programs related to the actions of an authorized representative. OAR 461-195-0541 about liability for overpayments is being amended to update cross-references and indicate when authorized representatives are liable for overpayments.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-195-0521, 461-115-0090 and OAR 461-195-0541, and suspending OAR 461-115-0140 and OAR 461-165-0040 will result in serious prejudice to the public interest, the Department, the Oregon Health Authority, and recipients of DHS and OHA benefits who have designated an authorized representative. Without these rule changes, individuals who have an authorized representative for only one program in which they participate or who have multiple authorized representatives at the time of conversion will be

converted to Integrated Eligibility without an authorized representative. For individuals who are not able to manage their own affairs, this could result in a loss of benefits and place them at risk. In addition, without adopting these rule changes by March 1, 2019, there will be insufficient time to implement the policy and complete the necessary case actions and coding in time for implementation of Integrated Eligibility. A change to the Integrated Eligibility system to accommodate multiple authorized representatives would cost several million dollars and delay the date on which the system is scheduled to go live. If the conversion of cases results in loss of authorized representative designations, the Department will be out of compliance with federal regulations that require Medicaid agencies to allow individuals to choose an authorized representative. These changes set out one authorized representative for all programs (except the TA-DVS program), align related policies about who can serve, the functions they can perform, and the responsibilities of an authorized representative.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None.

RULES:

461-115-0090, 461-115-0140, 461-165-0035, 461-165-0040, 461-195-0521, 461-195-0541

AMEND: 461-115-0090

RULE SUMMARY: OAR 461-115-0090 about authorized representatives is being amended to establish that an authorized representative designated for one Department program must be the authorized representative for all Department programs except the TA-DVS program. This amendment also revises who can be an authorized representative, who can appoint an authorized representative, what functions the authorized representative can fulfill, and the requirements to which an authorized representative is subject. Finally, this amendment establishes that an individual's long-term care provider may not serve as that individual's authorized representative for the application for or administration of long-term care services. These changes are part of the shift to the use of an Integrated Eligibility system.

CHANGES TO RULE:

461-115-0090

Authorized Representatives; General ¶¶

~~(1) The head of household, spouse (see OAR 461-001-0000), or any other responsible member of the household may designate a term "Department" in this rule refers to the Department of Human Services and the Oregon Health Authority.¶¶~~

~~(2) The term "eligibility determination group" in this rule refers to all individuals whose financial and non-financial information is considered in determining program eligibility.¶¶~~

~~(3) An authorized representative to act on behalf of the household in making application for the program, in reporting changes, in obtaining benefits, or in using benefits may not be established for the Temporary Assistance for Domestic Violence Survivors (TA-DVS) program.¶¶~~

~~(4) Unless limited elsewhere in this rule, the authorized representative may do one or more of the following:¶¶~~

~~(a) With the exception of the Authorized Representative designation form, complete, sign, and submit any applications, renewals, or documents on the applicant or recipient's behalf.¶¶~~

~~(b) Receive copies of the applicant or recipient's notices and other communications from the Department.¶¶~~

~~(2c) In all programs except the SNAP program, Act on behalf of the applicant or recipient in any or all other matters with the Department must allow a person or persons of the applicant's choice to act as the authorized representative unless the person may cause harm to the client.¶¶~~

~~(5) The following individuals may appoint an authorized representative on a form designated by the Department~~

subject to the limitations listed in sections (7) - (12) of this rule unless the individuals are included in the eligibility determination group (see section 2 of this rule) solely for the purpose of determining eligibility based on tax filing status.

(a) In all programs, the head of household (see OAR 461-001-0015), primary person (see OAR 461-001-0000), or may be considered as having a conflict of interest primary contact (see OAR 410-200-0015) of any age.

(b) Any individual age 18 and older who is included in each eligibility determination group of the head of household, primary person, or primary contact.

(3c) ~~An all programs except the SNAP and TA-DVS programs, if an authorized representative is needed but individual given legal guardianship or power of attorney for an individual age 18 and older who is included in each eligibility determination group of the head of household, primary person, or primary contact.~~

(d) If the Department has determined that an authorized representative is needed based on the individual's physical or mental capacity to handle their own affairs, and an authorized representative has not been designated by the client individual, the Department ~~will~~ may appoint one.

(46) In the SNAP program:

(a) ~~Ex~~The Department accepts ~~as limited by sections (5) and (6) this rule, the s~~ designation of an authorized representative via any of the following methods which must include either a handwritten or electronic of an authorized representative must be made in writing by an adult member of the household.

(b) The selection and authority of an authorized representative is further limited by ~~ic~~ signature of both the individual designating the authorized representative and the authorized representative.

(a) The Internet;

(b) E-mail;

(c) Mail;

(d) Telephonic recording;

(e) In person; or

(f) Other electronic means.

(7) An authorized representative designated for one program is the authorized representative for all programs and benefits of the head of household, primary person, or primary contact, excluding the TA-DVS program and long-term care (see OAR 461-001-0000) services (see sections (3) and (11) of this rule).

(8) The following may not serve as an authorized representative:

(a) An individual serving an Intentional Program Violation (see OAR 461-1495-0140601), unless the Department determines no one else is available to serve as the authorized representative.

(5b) ~~A client who resides in a drug addiction or alcoholic~~ Homeless meal providers for homeless SNAP recipients.

(c) A person who may cause harm to the individual.

(d) A person who may have a conflict of interest.

(e) Department employees or an employee of a contractor involved in the certification or issuance processes for Department program benefits, unless a designated Department official determined no one else is available to serve as an authorized representative and has given approval.

(f) Retailers who are authorized to accept Department Electronic Benefit Transfer (EBT) cards, unless a designated Department official determined no one else is available to serve as an authorized representative and has given approval.

(9) An individual who resides in a Substance Use Disorder (SUD) treatment center identified in OAR 461-135-0550(2) may apply for SNAP program benefits only through an authorized representative. The authorized representative must be an ~~an~~ designated employee of ~~and~~ the treatment center. The employee must complete the authorized representative form designated by the center.

(6) ~~A client~~ Department.

(10) An individual with a disability (see OAR 461-001-0015) who participates in the SNAP program while residing in a group living facility (see OAR 461-001-0015) ~~may participate~~ arrangement (GLA) may apply through an authorized representative or on his or her ~~the~~ own behalf, at the option of the group living facility (see OAR 461-135-0510(2)(e)).

~~(7) The GLA must determine if a resident may apply on their own behalf based on the resident's physical and mental ability to handle their own affairs. In the TANF program, a person not related to the dependent child may serve as an authorized representative if a designated employee of the GLA, the employee must complete the authorized representative for alternate payee for not more than 60 days.~~

~~(8) A designee of a correctional facility may apply for OSIPM and QMB on behalf of an individual, who is designated by the Department.~~

~~(11) An individual's long-term care services provider cannot serve as the individual's authorized representative for the administration of and application for long-term care services.~~

~~(12) While the individual is residing in a correctional facility, for the purpose of establishing eligibility for medical assistance until the release of the individual from the correctional facility or during a period of hospitalization that occurs outside of the correctional facility, a designee of a correctional facility may apply for OSIPM and QMB programs on behalf of an individual for the purpose of establishing eligibility for medical assistance.~~

(a) The designee may obtain information necessary to determine eligibility for medical assistance, including the person's Social Security number or information that is not otherwise subject to disclosure under ORS 411.320 or ORS 413.175.

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

~~(9) In the TA-DVS program, a person may only serve~~ (13) The authorized representative must maintain the confidentiality of any information provided by the Department regarding the represented individual.

~~(14) An individual or organization ceases to be an authorized representative during the 90-day eligibility period. If the eligibility period closes before 90 days, the authorized representative is no longer able to act on behalf of the household. A new authorized representative must be designated at each new eligibility period when:~~

~~(a) A represented individual notifies the Department that the designation is terminated;~~

~~(b) A represented individual appoints a different authorized representative;~~

~~(c) The authorized representative notifies the Department that the designation is terminated;~~

~~(d) The Department determines the authorized representative is no longer permitted to be the authorized representative; or~~

~~(e) There is a change in the legal authority upon which the individual or organization's authority was based.~~

(15) An authorized representative who knowingly misrepresents information provided to the Department may be subject to overpayments (see OARs 461-195-0501 and 461-195-0541) in addition to other penalties:

(a) In group living (see OAR 461-001-0015) arrangements or substance use disorder (SUD) treatment centers, the facility may be prosecuted under applicable federal or state law.

(b) For other authorized representatives not covered by subsection (a) of this section, the Department may prohibit the person from serving as a representative for one year.

Statutory/Other Authority: ORS 409.050, 411.060, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, 329A.500

Statutes/Other Implemented: ORS 409.010, 411.060, 411.404, 411.447, 411.816, 412.014, 412.049, 411.117, 329A.500

SUSPEND: 461-115-0140

RULE SUMMARY: OAR 461-115-0140 about authorized representatives and alternate payees in the SNAP program is being suspended because this topic will be covered in OAR 461-115-0090 and OAR 461-165-0035.

CHANGES TO RULE:

~~461-115-0140~~

~~Authorized Representative or Alternate Payee; SNAP~~

~~In the SNAP program:¶¶~~

~~(1) None of the following may serve as authorized representative (see OAR 461-115-0090) or alternate payee:¶¶~~

~~(a) An individual serving an Intentional Program Violation, unless the Department determines no one else is available to serve as the authorized representative.¶¶~~

~~(b) A landlord or a vendor of goods or items who deals directly with the client, including a retailer authorized to accept SNAP benefits.¶¶~~

~~(c) Employees of the Department or an employee of a contractor involved in the certification and issuance processes for SNAP benefits, unless authorized in writing by the designee of the Department's SNAP Program Manager. The designee must determine no one else is available to serve as the authorized representative.¶¶~~

~~(d) A provider of meals for the homeless.¶¶~~

~~(2) An authorized representative or alternate payee who knowingly misrepresents the circumstances of the filing group (see OAR 461-110-0370) or misuses SNAP benefits is subject to penalty as follows:¶¶~~

~~(a) In group living (see OAR 461-001-0015) situations or treatment programs for drug addiction or alcohol abuse, the facility may be prosecuted under applicable federal or state law.¶¶~~

~~(b) For other authorized representatives and alternate payees not covered by subsection (a) of this section, the Department may prohibit the person from serving as a representative or payee for one year.¶¶~~

~~(3) Except as provided by this rule or by OAR 461-115-0090, a client may select his or her authorized representative or alternate payee.~~

~~Statutory/Other Authority: ORS 411.816~~

~~Statutes/Other Implemented: ORS 411.816~~

AMEND: 461-165-0035

RULE SUMMARY: OAR 461-165-0035 about alternate payees is being amended to revise who can serve as an alternate payee, who can designate an alternate payee, and what requirements and responsibilities apply to those who serve as an alternate payee. These changes are part of the use of an Integrated Eligibility system.

CHANGES TO RULE:

461-165-0035

Alternate Payees; EBT ¶

- (1) An alternate payee may not be established in the TA-DVS program.¶
- (2) An alternate payee may be used to obtain and use benefits for the benefit group (see OAR 461-110-0750) when benefits are issued by electronic benefit transfer (EBT).¶
- (2) Except as provided in section (5) of this rule, an alternate payee may be used any time the primary person, the spouse of the primary person,¶
- (3) The following individuals may appoint an alternate payee in writing on a form designated by the Department. The form must include the signatures of both the individual designating the alternate payee and the alternate payee:¶
 - (a) In all programs, the head of household (see OAR 461-001-0015) of any age, primary person (see OAR 461-001-0000 and OAR 461-001-0015) of any age, primary contact (see OAR 410-200-0015) or another responsible adult member of the filing group names one in writing; age, authorized representative (see OAR 461-115-0090), and any other member age 18 or older of the group applying.¶
 - (b) An individual given legal guardianship or power on a form designated by the Department attorney for an individual age 18 and older.¶
 - (3c) The branch office may appoint an emergencyIn the OSIP and OSIPM programs, a community spouse (see OAR 461-001-0030).¶
 - (4) If an alternate payee if the adult filing group members are temporarily unable to act as needed and all responsible members of the group applying are temporarily unable to act as a payee, the Department may appoint an emergency alternate payee.¶
 - (45) When an alternate payee is named, the Department may issues an EBT card and personal identification number (PIN) for that person or other program benefits to the alternate payee.¶
 - (6) The following may not serve as an alternate payee:¶
 - (a) An individual serving an Intentional Program Violation (see OAR 461-195-0601), unless the Department determines no one else is available to serve as the alternate payee.¶
 - (b) Homeless meal providers for homeless SNAP recipients.¶
 - (c) A person who may cause harm to the individual.¶
 - (d) A person who may have a conflict of interest.¶
 - (5A) For child care benefits in the ERDC, JOBS, JOBS Plus, and TANF programs, an alternate payee may not be a Department-approved child care provider or acting on behalf of a Department-approved child care provide Department employees or an employee of a contractor involved in the certification or issuance processes for Department program benefits, unless a designated Department official determined no one else is available to serve as an alternate payee and has given approval.¶
 - (B) Retailers who are authorized to accept Department Electronic Benefit Transfer (EBT) cards, unless a designated Department official determined no one else is available to serve as an alternate payee and has given approval.¶
 - (7) The power to act as an alternate payee for an individual ends when:¶
 - (a) The represented individual notifies the Department that the designation is terminated;¶
 - (b) The alternate payee notifies the Department that the designation is terminated;¶
 - (c) The Department determines the alternate payee is no longer permitted to be the alternate payee; or¶
 - (d) There is a change in the legal authority upon which the individual or organization's authority was based.¶

(8) An alternate payee who misuses Department benefits is subject to penalty as follows:¶

(a) In group living (see OAR 461-001-0015) arrangements or substance use disorder (SUD) treatment centers identified in OAR 461-135-0550, the facility may be prosecuted under applicable federal or state law.¶

(b) For other alternate payees not covered by subsection (a) of this section, the Department may prohibit the person from serving as a payee for one year.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.816, 412.049, 329A.500, 411.404, 412.014, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.816, 412.049, 329A.500, 411.404, 412.014

SUSPEND: 461-165-0040

RULE SUMMARY: OAR 461-165-0040 about assigning payees is being suspended because this topic will be covered in OAR 461-165-0035.

CHANGES TO RULE:

~~461-165-0040~~

~~Assigning Payee; Not EBT~~

~~When benefits are not issued by EBT, a person may be payee for a case regardless of whether they receive benefits on that case. They may be the payee for more than one program or case. The payee is:~~

~~(1) The primary person; or~~

~~(2) An authorized representative.~~

~~Statutory/Other Authority: ORS 411.060~~

~~Statutes/Other Implemented: ORS 418.040, 412.049~~

AMEND: 461-195-0521

RULE SUMMARY: OAR 461-195-0521 about the calculation of overpayments is being amended to remove outdated program names and clarify overpayment liability in OCCS medical programs related to the actions of an authorized representative. These changes are part of updating authorized representative rules for Integrated Eligibility.

CHANGES TO RULE:

461-195-0521

Calculation of Overpayments ¶¶

This rule specifies how the Department calculates an overpayment (see OAR 461-195-0501).¶¶

- (1) The Department calculates an overpayment by determining the amount the client received or the payment made by the Department on behalf of the client that exceeds the amount for which the client was eligible.¶¶
- (2) When a filing group, OCCS Medical programs household group (see OAR 410-200-0015), ineligible student, or authorized representative (see OAR 461-115-0090 and OAR 410-200-0015) fails to report income, the Department calculates and determines the overpayment by assigning unreported income to the applicable budget month without averaging the unreported income, except:¶¶
 - (a) A client's earned income reported quarterly from the Employment Department is considered received by the client in equal amounts during the months identified in the report.¶¶
 - (b) In the ERDC, ~~MAA, MAF~~, REF, SNAP, and TANF programs, a client's actual self-employment income is annualized retrospectively to calculate the overpayment.¶¶
 - (c) In the OCCS Medical programs, if actual income is not available for the months in which an overpayment occurred, a client's actual self-employment income (see OAR 410-200-0015) received during the year when an overpayment occurred is annualized to calculate an overpayment.¶¶
- (3) When using prospective budgeting (see OAR division 461-150) and the actual income differs from the amount determined under OAR 461-150-0020(2), there may be a client error overpayment (see OAR 461-195-0501) only when the filing group, ineligible student, or authorized representative withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an overpayment.¶¶
- (4) When using anticipated income for the OCCS Medical programs and the actual income differs from the amount determined under OAR 410-200-0310, there may be a client error overpayment only when the OCCS Medical programs household group (see OAR 410-200-0015) or authorized representative (see OAR 410-200-0015) knowingly withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an overpayment.¶¶
- (5) When a filing group, ineligible student, or authorized representative fails to report all earned income within the reporting time frame, the earned income deduction (see OAR 461-160-0160, 461-160-0190, 461-160-0430, 461-160-0550, and 461-160-0552) is applied as follows:¶¶
 - (a) In the OSIP, OSIPM, QMB, and REFM programs, the Department allows the earned income deduction.¶¶
 - (b) In the ~~MAA, MAF~~, REF, and TANF programs, the Department allows the earned income deduction when good cause (see section (6) of this rule) exists.¶¶
 - (c) In the SNAP program, no deduction is applied to earned income if the amount or source of income was not timely reported.¶¶
- (6) For the purposes of OAR 461-195-0501 to 461-195-0561, "good cause" means circumstances beyond the client's reasonable control that caused the client to be unable to report income timely and accurately.¶¶
- (7) When support is retained:¶¶
 - (a) In the TANF program, the amount of support (other than cash medical support) the Department of Justice retains as a current reimbursement each month is added to other income to determine eligibility (see OAR 461-001-0000). When a client is not eligible for TANF program benefits, the overpayment is offset by the support the Department of Justice retains as a current reimbursement.¶¶
 - (b) In the medical programs, the amount of the cash medical support the Department retains each month is

excluded income and not used to determine eligibility for medical program benefits. When a client has incurred a medical program overpayment, the overpayment is offset by the amount of the cash medical support the Department retains during each month of the overpayment.¶

(8) In the REF and TANF programs, when a client directly receives support used to determine eligibility or calculate benefits, the overpayment is:¶

(a) If still eligible for REF or TANF program benefits, the amount of support the client received directly; or¶

(b) If no longer eligible for REF or TANF program benefits, the amount of program benefits the client received.¶

(9) When an overpayment occurs due to the failure of an individual to reimburse the Department, when required by law to do so, for benefits or services (including cash medical support) provided for a need for which that individual is compensated by another source, the overpayment is limited to the lesser of the following:¶

(a) The amount of the payment from the Department;¶

(b) Cash medical support; or¶

(c) The amount by which the total of all payments exceeds the amount payable for such a need under the Department's rules.¶

(10) Benefits paid during a required notice period (see OAR 461-175-0050, OAR 410-200-0120) are included in the calculation of the overpayment when:¶

(a) The filing group, OCCS Medical programs household group (see OAR 410-200-0015), ineligible student, or authorized representative (see OAR 461-115-0090 and OAR 410-200-0015) failed to report a change within the reporting time frame under OAR 461-170-0011 or OAR 410-200-0235; and¶

(b) Sufficient time existed for the Department to adjust the benefits to prevent the overpayment if the filing group, OCCS Medical program household group (see OAR 410-200-0015), ineligible student, or authorized representative (see OAR 461-115-0090 and OAR 410-200-0015) had reported the change at any time within the reporting time frame.¶

(11) In the SNAP program:¶

(a) If the benefit group (see OAR 461-110-0750) was categorically eligible, there is no overpayment based on resources.¶

(b) For a filing group (see OAR 461-110-0370) found eligible for SNAP program benefits under OAR 461-135-0505(1)(a) to (c), and the actual income made the group ineligible for the related program, the group remains categorically eligible for SNAP program benefits as long as the eligibility requirement under OAR 461-135-0505(1)(d) is met. A benefit group of one or two individuals would be entitled to at least the minimum SNAP program benefit allotment under OAR 461-165-0060.¶

(c) For a filing group found eligible for SNAP program benefits only under OAR 461-135-0505(1)(d), and the actual income equals or exceeds 185 percent of the Federal Poverty Level, the filing group is no longer categorically eligible. The overpayment is the amount of SNAP program benefits incorrectly received.¶

(12) In the OSIP and OSIPM programs, when a client does not pay his or her share of the cost of services (see OAR 461-160-0610) or the OSIP-EPD or OSIPM-EPD program participant fee (see OAR 461-160-0800) in the month in which it is due, an overpayment is calculated as follows:¶

(a) All payments made by the Department on behalf of the client during the month in question are totaled, including but not limited to any payment for:¶

(A) Capitation;¶

(B) Long term care services;¶

(C) Medical expenses for the month in question;¶

(D) Medicare buy-in (when not concurrently eligible for an MSP);¶

(E) Medicare Part D;¶

(F) Mileage reimbursement;¶

(G) Special needs under OAR 461-155-0500 to 461-155-0710; and¶

(H) Home and community-based care (see OAR 461-001-0030), including home delivered meals and non-medical transportation.¶

(b) Any partial or late liability payment made by a client receiving home and community-based care in-home

services or participant fee paid by an OSIP-EPD or OSIPM-EPD program client is subtracted from the total calculated under subsection (a) of this section. The remainder, if any, is the amount of the overpayment.¶
(13) When a client's liability is unreduced pending the outcome of a contested case hearing about that liability the overpayment is the difference between the liability amount determined in the final order and the amount, if any, the client has repaid.¶

(14) In the OCCS Medical programs, OSIPM, QMB, and REFM programs if the client was not eligible for one program, but during the period in question was eligible for another program:¶

(a) With the same benefit level, there is no overpayment.¶

(b) With a lesser benefit level, the overpayment is the amount of medical program benefit payments made on behalf of the client exceeding the amount for which the client was eligible.¶

(15) When an overpayment is caused by administrative error (see OAR 461-195-0501), any overpayment of GA, OSIP, REF, SFPSS, or TANF program benefits is not counted as income when determining eligibility for the OCCS Medical programs, OSIPM, and REFM programs.¶

(16) Credit against an overpayment is allowed as follows:¶

(a) In the GA, REF, and TANF programs, a credit is allowed for a client's payment for medical services made during the period covered by the overpayment, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless the Department authorized the procedure prior to its completion.¶

(b) In the SNAP program, if the overpayment was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.¶

(c) In the SFPSS and TANF programs, if the overpayment is caused by reported earned income, a credit is allowed for the Post-TANF grant if the client meets eligibility under OAR 461-135-1250 and the client has received less than 12 months of Post-TANF program benefits.¶

(d) In all programs, for an underpayment of benefits in the program in which the overpayment occurred.¶

(17) In the SNAP program, in compliance with the American Recovery and Reinvestment Act of 2009, effective April 1, 2009 through September 30, 2009, the amount between the normal Thrifty Food Plan (TFP) benefit amount under this section and the increased TFP benefit amount under OAR 461-155-0190 is not counted in the overpayment amount unless the filing group was ineligible for SNAP program benefits. [~~Table not included. See ED-NOTE: see attached Table~~]¶

(18) In the REF program, when an individual used or accessed cash benefits in violation of OAR 461-165-0010(8)(a), the amount of the overpayment is the amount of cash benefits the client used or accessed.¶

(19) In the SFPSS and TANF programs, when an individual used or accessed cash benefits in violation of OAR 461-165-0010(9)(a), the amount of the overpayment is the amount of cash benefits the client used or accessed.¶

[~~ED-NOTE: Tables referenced are available from the agency.~~]

Statutory/Other Authority: 329A.500, 413.085, 414.685, ORS 409.050, 411.060, 411.070, 411.404, 411.660, 411.706, 411.816, 412.014, 412.049, 412.124, 414.231, ~~HB 2089 (2013, Section 10)~~

Statutes/Other Implemented: 329A.500, ORS 409.010, 411.060, 411.070, 411.404, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.706, 411.816, 412.014, 412.049, 412.124, 414.231, 416.350

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

Calculation of Overpayments

This rule specifies how the Department calculates an *overpayment* (see OAR 461-195-0501).

- (1) The Department calculates an *overpayment* by determining the amount the client received or the payment made by the Department on behalf of the client that exceeds the amount for which the client was eligible.
- (2) When a filing group, OCCS Medical programs *household group* (see OAR 410-200-0015), ineligible student, or *authorized representative* (see OAR 461-115-0090 and OAR 410-200-0015) fails to report income, the Department calculates and determines the *overpayment* by assigning unreported income to the applicable budget month without averaging the unreported income, except:
 - (a) A client's earned income reported quarterly from the Employment Department is considered received by the client in equal amounts during the months identified in the report.
 - (b) In the ERDC, REF, SNAP, and TANF programs, a client's actual self-employment income is annualized retrospectively to calculate the *overpayment*.
 - (c) In the OCCS Medical programs, if actual income is not available for the months in which an *overpayment* occurred, a client's actual self-employment income (see OAR 410-200-0015) received during the year when an *overpayment* occurred is annualized to calculate an *overpayment*.
- (3) When using prospective budgeting (see OAR division 461-150) and the actual income differs from the amount determined under OAR 461-150-0020(2), there may be a *client error overpayment* (see OAR 461-195-0501) only when the filing group, ineligible student, or *authorized representative* withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an *overpayment*.
- (4) When using anticipated income for the OCCS Medical programs and the actual income differs from the amount determined under OAR 410-200-0310, there may be a *client error overpayment* only when the OCCS Medical programs *household group* (see OAR 410-200-0015) or *authorized representative* (see OAR 410-200-0015) knowingly withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an *overpayment*.
- (5) When a filing group, ineligible student, or *authorized representative* fails to report all earned income within the reporting time frame, the earned income deduction (see OAR 461-160-0160, 461-160-0190, 461-160-0430, 461-160-0550, and 461-160-0552) is applied as follows:

- (a) In the OSIP, OSIPM, QMB, and REFM programs, the Department allows the earned income deduction.
- (b) In the REF and TANF programs, the Department allows the earned income deduction when *good cause* (see section (6) of this rule) exists.
- (c) In the SNAP program, no deduction is applied to earned income if the amount or source of income was not timely reported.
- (6) For the purposes of OAR 461-195-0501 to 461-195-0561, "good cause" means circumstances beyond the client's reasonable control that caused the client to be unable to report income timely and accurately.
- (7) When support is retained:
- (a) In the TANF program, the amount of support (other than cash medical support) the Department of Justice retains as a current reimbursement each month is added to other income to determine *eligibility* (see OAR 461-001-0000). When a client is not eligible for TANF program benefits, the *overpayment* is offset by the support the Department of Justice retains as a current reimbursement.
- (b) In the medical programs, the amount of the cash medical support the Department retains each month is excluded income and not used to determine *eligibility* for medical program benefits. When a client has incurred a medical program *overpayment*, the *overpayment* is offset by the amount of the cash medical support the Department retains during each month of the *overpayment*.
- (8) In the REF and TANF programs, when a client directly receives support used to determine *eligibility* or calculate benefits, the *overpayment* is:
- (a) If still eligible for REF or TANF program benefits, the amount of support the client received directly; or
- (b) If no longer eligible for REF or TANF program benefits, the amount of program benefits the client received.
- (9) When an *overpayment* occurs due to the failure of an individual to reimburse the Department, when required by law to do so, for benefits or services (including cash medical support) provided for a need for which that individual is compensated by another source, the *overpayment* is limited to the lesser of the following:
- (a) The amount of the payment from the Department;
- (b) Cash medical support; or

- (c) The amount by which the total of all payments exceeds the amount payable for such a need under the Department's rules.
- (10) Benefits paid during a required *notice period* (see OAR 461-175-0050, OAR 410-200-0120) are included in the calculation of the *overpayment* when:
- (a) The filing group, OCCS Medical programs *household group* (see OAR 410-200-0015), ineligible student, or *authorized representative* (see OAR 461-115-0090 and OAR 410-200-0015) failed to report a change within the reporting time frame under OAR 461-170-0011 or OAR 410-200-0235; and
- (b) Sufficient time existed for the Department to adjust the benefits to prevent the *overpayment* if the filing group, OCCS Medical program *household group* (see OAR 410-200-0015), ineligible student, or *authorized representative* (see OAR 461-115-0090 and OAR 410-200-0015) had reported the change at any time within the reporting time frame.
- (11) In the SNAP program:
- (a) If the *benefit group* (see OAR 461-110-0750) was categorically eligible, there is no *overpayment* based on resources.
- (b) For a *filing group* (see OAR 461-110-0370) found eligible for SNAP program benefits under OAR 461-135-0505(1)(a) to (c), and the actual income made the group ineligible for the related program, the group remains categorically eligible for SNAP program benefits as long as the *eligibility* requirement under OAR 461-135-0505(1)(d) is met. A *benefit group* of one or two individuals would be entitled to at least the minimum SNAP program benefit allotment under OAR 461-165-0060.
- (c) For a *filing group* found eligible for SNAP program benefits only under OAR 461-135-0505(1)(d), and the actual income equals or exceeds 185 percent of the Federal Poverty Level, the *filing group* is no longer categorically eligible. The *overpayment* is the amount of SNAP program benefits incorrectly received.
- (12) In the OSIP and OSIPM programs, when a client does not pay his or her share of the cost of services (see OAR 461-160-0610) or the OSIP-EPD or OSIPM-EPD program *participant fee* (see OAR 461-160-0800) in the month in which it is due, an *overpayment* is calculated as follows:
- (a) All payments made by the Department on behalf of the client during the month in question are totaled, including but not limited to any payment for:
- (A) Capitation;
- (B) Long term care services;

(C) Medical expenses for the month in question;

(D) Medicare buy-in (when not concurrently eligible for an MSP);

(E) Medicare Part D;

(F) Mileage reimbursement;

(G) Special needs under OAR 461-155-0500 to 461-155-0710; and

(H) *Home and community-based care* (see OAR 461-001-0030), including home delivered meals and non-medical transportation.

(b) Any partial or late liability payment made by a client receiving *home and community-based care* in-home services or *participant fee* paid by an OSIP-EPD or OSIPM-EPD program client is subtracted from the total calculated under subsection (a) of this section. The remainder, if any, is the amount of the *overpayment*.

(13) When a client's liability is unreduced pending the outcome of a contested case hearing about that liability the *overpayment* is the difference between the liability amount determined in the final order and the amount, if any, the client has repaid.

(14) In the OCCS Medical programs, OSIPM, QMB, and REFM programs if the client was not eligible for one program, but during the period in question was eligible for another program:

(a) With the same benefit level, there is no *overpayment*.

(b) With a lesser benefit level, the *overpayment* is the amount of medical program benefit payments made on behalf of the client exceeding the amount for which the client was eligible.

(15) When an *overpayment* is caused by *administrative error* (see OAR 461-195-0501), any *overpayment* of GA, OSIP, REF, SFPSS, or TANF program benefits is not counted as income when determining *eligibility* for the OCCS Medical programs, OSIPM, and REFM programs.

(16) Credit against an *overpayment* is allowed as follows:

(a) In the GA, REF, and TANF programs, a credit is allowed for a client's payment for medical services made during the period covered by the *overpayment*, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless the Department authorized the procedure prior to its completion.

(b) In the SNAP program, if the *overpayment* was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.

(c) In the SFPSS and TANF programs, if the *overpayment* is caused by reported earned income, a credit is allowed for the Post-TANF grant if the client meets *eligibility* under OAR 461-135-1250 and the client has received less than 12 months of Post-TANF program benefits.

(d) In all programs, for an underpayment of benefits in the program in which the *overpayment* occurred.

(17) In the SNAP program, in compliance with the American Recovery and Reinvestment Act of 2009, effective April 1, 2009 through September 30, 2009, the amount between the normal Thrifty Food Plan (TFP) benefit amount under this section and the increased TFP benefit amount under OAR 461-155-0190 is not counted in the *overpayment* amount unless the filing group was ineligible for SNAP program benefits.

Normal TFP for October 1, 2008 - September 30, 2009

SNAP Payment Standard (TFP)

No. in Need Group	Monthly Amount
1	\$ 176
2	323
3	463
4	588
5	698
6	838
7	926
8	1,058
Each additional individual	132

(18) In the REF program, when an individual used or accessed cash benefits in violation of OAR 461-165-0010(8)(a), the amount of the *overpayment* is the amount of cash benefits the client used or accessed.

(19) In the SFPSS and TANF programs, when an individual used or accessed cash benefits in violation of OAR 461-165-0010(9)(a), the amount of the *overpayment* is the amount of cash benefits the client used or accessed.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.660, 411.706, 411.816, 412.014, 412.049, 412.124, 413.085, 414.231, 414.685

Stats. Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.706, 411.816, 412.014, 412.049, 412.124, 414.231, 416.350

AMEND: 461-195-0541

RULE SUMMARY: OAR 461-195-0541 about liability for overpayments is being amended to update cross-references and indicate when authorized representatives are liable for overpayments. These changes are part of updating the authorized representative rules for Integrated Eligibility.

CHANGES TO RULE:

461-195-0541

Liability for Overpayments ¶¶

(1) In all programs except the OCCS Medical, OSIP, OSIPM, QMB, REFM, and SNAP programs or a child care program, the following persons are liable for repayment of an overpayment (see OAR 461-195-0501):¶¶

(a) Each individual in the filing group or required to be in the filing group and the payee when the overpayment was incurred, except an individual who did not reside with and did not know he or she was included in the filing group.¶¶

(b) A caretaker relative (see OAR 461-001-0000) and his or her spouse (see OAR 461-001-0000) who were not part of, but resided with, the filing group when the overpayment was incurred.¶¶

(c) A parent (see OAR 461-001-0000) or caretaker relative of a child (see OAR 461-001-0000) in the benefit group (see OAR 461-110-0750) and the spouse of the parent or caretaker relative if the parent, caretaker relative, or spouse was a member of or resided with the filing group when the overpayment was incurred.¶¶

(d) An individual determined liable for an overpayment remains liable when the individual becomes a member of a new filing group.¶¶

(e) An authorized representative (see OAR 461-115-0090) when the authorized representative knowingly gave incorrect or incomplete information or intentionally withheld information resulting in the overpayment.¶¶

(2) In the OCCS Medical and REFM programs, the following persons are liable for repayment of an overpayment:¶¶

(a) Each individual in the filing group, the OCCS Medical programs household group (see OAR 410-200-0015), or required to be in the filing group and the payee when the overpayment was incurred, except an individual who;¶¶

(A) Was a child or dependent child (see OAR 461-001-0000) at the time of the overpayment; or¶¶

(B) Did not reside with and did not know he or she was included in the filing group.¶¶

(b) A caretaker relative and his or her spouse who were not part of, but resided with, the filing group or OCCS Medical programs household group (see OAR 410-200-0015) when the overpayment was incurred.¶¶

(c) A parent or caretaker relative of a child in the filing group or OCCS Medical programs household group (see OAR 410-200-0015) and the spouse of the parent or caretaker relative if the parent, caretaker relative, or spouse was a member of or resided with the filing group or OCCS Medical programs household group when the overpayment was incurred.¶¶

(d) An authorized representative (see OAR ~~461-001-115-00090~~ 461-115-00090 and OAR 410-200-0015) when the authorized representative knowingly gave incorrect or incomplete information or intentionally withheld information that resulted in the overpayment.¶¶

(3) In a child care program:¶¶

(a) An overpayment caused by administrative error is collectible as follows:¶¶

(A) The provider is liable for a provider overpayment made on behalf of a client eligible for child care payments.¶¶

(B) Each adult in the filing group or required to be in the filing group is liable for an overpayment if the client was not eligible for the payment.¶¶

(b) Each adult in the filing group or required to be in the filing group is liable for a client overpayment, and a provider is liable for an overpayment caused by the provider. The client and provider are jointly and severally liable for an overpayment caused by both. In the case of an alleged provider overpayment, a provider's failure to provide contemporaneous records of care provided creates a rebuttable presumption that the care was not provided.¶¶

(c) An adult who cosigned an application with a minor provider applicant is liable for an overpayment incurred by the minor provider.¶¶

(d) An authorized representative (see OAR 461-115-0090) is liable for an overpayment when the authorized representative knowingly gave incorrect or incomplete information or intentionally withheld information that resulted in the overpayment.

(4) In the GA, OSIP, OSIPM, and QMB programs, the following persons are liable for repayment of an overpayment:

(a) Each individual in the filing group or required to be in the filing group and the payee when the overpayment was incurred, except an individual who;---

(A) Was a child or dependent child at the time of the overpayment; or

(B) Did not reside with and did not know he or she was included in the filing group.

(b) A caretaker relative and his or her spouse who were not part of, but resided with, the filing group when the overpayment was incurred.

(c) A parent or caretaker relative of a child in the filing group and the spouse of the parent or caretaker relative if the parent, caretaker relative, or spouse was a member of or resided with the filing group when the overpayment was incurred.

(d) An authorized representative when the authorized representative knowingly gave incorrect or incomplete information or intentionally withheld information that resulted in the overpayment.

(5) In the SNAP program, the following persons are liable for repayment of an overpayment or a claim that results from trafficking (see OAR 461-195-0601(2)) of SNAP benefits:

(a) The primary person (see OAR 461-001-0015) of any age, an ineligible student in the household, and all adults (see OAR 461-001-0015) who were members of or required to be in the filing group (see OAR 461-110-0370) when excess benefits were issued.

(b) A sponsor of a non-citizen household member if the sponsor is at fault, for payments prior to November 21, 2000.

(c) A drug or alcohol treatment center or residential care facility that acted as the authorized representative of the client.

(d) An authorized representative when the authorized representative knowingly gave incorrect or incomplete information or intentionally withheld information that resulted in the overpayment.

(e) For a claim that results in trafficking, the payee and the authorized representative when they actually traffic the benefits.

(6) Except as provided otherwise in section (7) of this rule, in all programs, both a non-citizen and the sponsor of the non-citizen are liable for an overpayment incurred if the overpayment results from the failure of the sponsor to provide correct information (see OAR 461-145-0820 to 461-145-0840). If the sponsor had good cause (see OAR 461-195-0521(5)) for withholding the information, the sponsor is not liable for the overpayment.

(7) In the SNAP program, the sponsor of a non-citizen is not liable under section (6) of this rule for payments on or after November 21, 2000.

(8) In the OCCS medical programs, the November 2013 amendments to OAR 461-195-0501, 461-195-0521, 461-195-0541, and 461-195-0561 apply as of October 1, 2013.

Statutory/Other Authority: ORS 409.050, 411.060, 411.404, 411.816, 412.014, 412.049, 2013 HB 2089 Sec. 10 329A.500, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 411.060, 411.087, 411.404, 411.630, 411.635, 411.640, 411.690, 411.816, 412.014, 412.049, 416.350, 329A.500