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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILED
10/31/2019 7:56 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amending three rules regarding APD medical programs

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/20/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Salem, OR 97301

Filed By:
Meorah Solar
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/26/2019

TIME: 10:00 AM - 11:30 AM

OFFICER: Meorah A Solar

ADDRESS: Human Services Building

500 Summer St NE

Room 160

Salem, OR 97301

SPECIAL INSTRUCTIONS:

The hearing will adjourn at 10:20 a.m.
if no one is present or remains to
testify.

NEED FOR THE RULE(S):

OAR 461-120-0345 about requirements to obtain health care coverage and cash medical support in the OSIPM and QMB programs needs to be amended to align the rule with the integrated ONE/IE system. The amendment eliminates the requirement to pursue employer-sponsored health insurance in the QMB-BAS program.

OAR 461-135-0010 about assumed eligibility for medical programs need to be amended to remove redundant and unnecessary language as well as add language consistency. The amendment aligns the 1619b section with the SSI recipient section by adding the provision about meeting non-financial requirements as earlier sections already establish that 1619b designees and SSI recipients must meet nonfinancial requirements.

OAR 461-155-0700 about special need and personal incidentals and room and board allowances in the OSIPM program

need to be amended to allow the Department to pay room and board without personal incidentals for individuals whose SSI is suspended due to incarceration in a public institution and are now being released into a community based care setting. The amendment will allow the payment to be made while the individual works to reinstate SSI or until SSI is denied. The changes need to occur as the Department does not currently have a rule that allows this payment for OSIPM-LTC individuals, which has caused a service equity gap. This payment will also allow individuals to avoid Nursing Facility placement due to a lack of income.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None.

FISCAL AND ECONOMIC IMPACT:

The Department is unable to estimate the fiscal impact of amending OAR 461-120-0345 as private insurance is not coded on QMB cases, so there is no way to track how many individuals potentially qualify for employer-sponsored insurance; however, the number is believed to be very low. In addition, most employer-sponsored insurance plans cover dental and vision, which Medicare does not, so it is likely individuals would prefer to maintain or seek coverage when available on their own. The Department could experience a negative fiscal impact as a result of this rule change as private insurance would be billed for any out-of-pocket Medicare costs before Medicaid, thus potentially increasing Medicare wrap-around claims. The Department cannot estimate the exact impact as there is no way to track who is currently has or would potentially qualify for employer-sponsored health insurance. It is estimated that clients or applicants who must pay premiums for employer-sponsored health insurance and choose to drop or not pursue the coverage would potentially be positively impacted in that they would remain eligible for QMB-BAS; however, they would lose any insurance coverage for services not covered by Medicare. 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.

The Department estimates that amending OAR 461-135-0010 will have no fiscal impact on clients, the public, the Department, other state agencies, local government, and business, including small business. There is no cost of compliance for small businesses. No small businesses are subject to this rule.

The Department is unable to estimate the fiscal impact of amending OAR 461-155-0700 as the Department does not have a way to determine an exact number of clients that will be eligible under this rule change and therefore cannot determine an exact expenditure or savings. However, any negative economic impact to the Department due to making these room and board payments would be positively offset by avoiding unnecessary placement in a nursing facility. Currently, the basic nursing facility rate is \$9,332.15 per month for one individual. The base rate for a Residential Care Facility is \$1,626 per month for one individual, including the room and board standard of \$599.00 per month, the total monthly expenditure for the Department would be \$2,225 ($\$1,626 + \$599 = \$2,225$). For one individual that avoids nursing facility placement, in one month the cost savings to the Department would be \$7,107.15 ($\$9,332.15 - \$2,225 = \$7,107.15$). OSIPM-LTC clients will be positively affected as the Department will pay their room and board dues while they work to reinstate SSI, rather than the client accruing an unpaid room and board balance with the community based care facility or requiring unnecessary placement in a nursing facility. Providers will be positively affected as they will receive room and board payments monthly for clients that wouldn't normally be able to make this payment. 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.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

see above under Fiscal and Economic Impact

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of these rules but are invited to provide input during the public comment period.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

461-120-0345, 461-135-0010, 461-155-0700

AMEND: 461-120-0345

RULE SUMMARY: OAR 461-120-0345 about requirements to obtain health care coverage and cash medical support in the OSIPM and QMB programs is being amended to eliminate the requirement to pursue employer-sponsored health insurance in the QMB-BAS program. This change aligns the rule with the integrated ONE/IE system.

CHANGES TO RULE:

461-120-0345

Clients Required to Obtain Health Care Coverage and Cash Medical Support; OSIPM, QMB ¶¶

This rule explains the obligation of 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) Individuals must cooperate with the Department and the Division of Child Support of the Department of Justice in establishing 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.¶¶

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

(c) Each 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:¶¶

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

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

(C) 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.¶¶

(2) Each individual must make a good faith effort to obtain available coverage under Tri-Care.¶¶

(3) 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, t~~The individual is not required to incur a cost for the health insurance.¶¶

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

(5) 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.¶

(6) The penalty provided by this rule ends when the individual meets the requirements of this rule.¶

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

Statutory/Other Authority: ORS 411.060, 411.070, 412.024, 412.049, 414.042

Statutes/Other Implemented: ORS 411.060, 411.070, 412.001, 412.024, 412.049, 414.025, 414.042

AMEND: 461-135-0010

RULE SUMMARY: OAR 461-135-0010 about assumed eligibility for medical programs is being amended to align the 1619b section with the SSI recipient section by adding the provision about meeting non-financial requirements as earlier sections already establish that 1619b designees and SSI recipients must meet nonfinancial requirements. The changes remove redundant and unnecessary language as well as add language consistency.

CHANGES TO RULE:

461-135-0010

Assumed Eligibility for Medical Programs ¶¶

(1) This rule sets out when a client is assumed eligible for certain medical programs because the client receives or is deemed to receive benefits of another program.¶¶

(2) A pregnant woman who is eligible for and receiving benefits the day the pregnancy ends is assumed eligible for the OSIPM program until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.¶¶

(3) A pregnant woman who was eligible for and receiving medical assistance under the OSIPM program or OCCS Medical Programs (see OAR 461-001-0000) and becomes ineligible while pregnant is assumed eligible for Medicaid and can continue to receive OSIPM or OCCS Medical Programs benefits until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.¶¶

(4) A child (see OAR 461-001-0000) born to a mother eligible for and receiving OSIPM benefits is assumed eligible for medical benefits under this section until the end of the month the child turns one year of age.¶¶

(5) The individuals described in subsection (a) and (b) of this section are assumed eligible for OSIPM (except OSIPM-EPD) unless subsection (c), (d), or (e) of this section applies:¶¶

(a) A recipient of SSI benefits who meets all non-financial requirements for the OSIPM program except citizen and non-citizen status. SSI recipients are presumed to meet all citizen and non-citizen status requirements for the OSIP program .¶¶

(b) An individual who meets all non-financial requirements for the OSIPM program except citizen and non-citizen status and is deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)), which cover individuals with disabilities whose impairments have not changed but who have become gainfully employed and have continuing need for OSIPM. Individuals deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act are assumed to meet all citizen and non-citizen status requirements for the OSIPM program.¶¶

(c) An individual described in subsection (a) or (b) of this section who is in a nonstandard living arrangement (see OAR 461-001-0000) is not eligible for long-term care (see OAR 461-001-0000) services if the individual would otherwise be ineligible for OSIPM due to a disqualifying transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client).¶¶

(d) An individual described in subsection (a) or (b) of the section who is in a nonstandard living arrangement is not assumed eligible for long-term care services if countable (see OAR 461-001-0000) resources exceed the limit after performing the calculation under OAR 461-160-0580.¶¶

~~(e) An individual described in subsection (a) or (b) of the section who does not meet the requirements of OAR 461-120-0345 or the residency requirements (see OAR 461-120-0010) is not assumed eligible for OSIPM.¶¶~~

(6) For the purposes of this section the definition of a "child" means an unmarried individual under age 19 and includes natural, step, and adoptive children. A child found eligible for OSIPM is assumed eligible until the end of the twelfth month following the determination of the child's OSIPM eligibility or redetermination of eligibility unless the child:¶¶

(a) No longer meets the definition of a child given in this section;¶¶

(b) Moves out of state;¶¶

(c) Voluntarily ends benefits; or¶¶

(d) Is eligible for any other Medicaid program that provides OHP Plus benefits.¶¶

(7) A client who receives both benefits under Part A of Medicare and SSI benefits is assumed eligible for the QMB-BAS program unless the individual does not meet the requirements of OAR 461-120-0345 or the residency requirements (see OAR 461-120-0010).

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

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404

AMEND: 461-155-0700

RULE SUMMARY: OAR 461-155-0700 about special need and personal incidentals and room and board allowances in the OSIPM program is being amended to allow the Department to pay room and board without personal incidentals for individuals whose SSI is suspended due to incarceration in a public institution and are now being released into a community based care setting. The amendment will allow the payment to be made while the individual works to reinstate SSI or until SSI is denied. The changes are being made as the Department does not currently have a rule that allows this payment for OSIPM-LTC individuals, which has caused a service equity gap. This payment will also allow individuals to avoid nursing facility placement due to a lack of income.

CHANGES TO RULE:

461-155-0700

Special Need; Personal Incidentals and Room and Board Allowances; OSIPM ¶

In the OSIPM program:¶

(1) In the following circumstances, personal incidentals and room and board allowances may be paid for an individual to reside in a community based care facility (see OAR 461-155-0630) to avoid placement in a nursing facility or leave a nursing facility or an acute care hospital, when an individual meets the requirements of one of the following subsections:¶

(a) Is determined to be eligible based on a disability determination made by the Department (see OAR 461-125-0370).¶

(A) To receive this payment, the individual must pursue SSI by making application with the Social Security Administration (SSA) and appealing denials until SSA makes a final administrative decision. If SSI is denied at the final SSA administrative level, the individual is no longer eligible for this payment.¶

(B) The payment is the difference between the countable (see OAR 461-001-0000) income of the individual and the OSIPM program adjusted income standard (see OAR 461-155-0250).¶

(b) Is leaving a nursing facility and limited to a maximum SSI payment of \$30 or to a maximum Veterans benefit payment of \$90. The payment is the difference between the countable income of the individual and the OSIPM program adjusted income standard (see OAR 461-155-0250).¶

(c) Is a qualified non-citizen under OAR 461-120-0125 who is not eligible for SSI due to not meeting the requirements to become a naturalized citizen within the SSI time limit.¶

(A) The individual must pursue naturalization.¶

(B) The payment is the difference between the countable income of the individual and the OSIPM adjusted income standard (see OAR 461-155-0250).¶

(d) Does not have sufficient income to divert to the community spouse (see OAR 461-001-0030) due to the difference between the personal needs allowance related to a nursing facility placement and the personal needs allowance and room and board related to a community based care facility placement. The allowance is issued only when the individual or community spouse requests or chooses a nursing facility placement rather than a community based care facility placement because the community spouse needs the resulting higher diversion amount to meet his or her monthly expenses.¶

(A) For all individuals, the allowance is the difference between the amount of the individual's income that would be available to divert to the community spouse under a nursing facility placement and the amount of the individual's income available under the community based care facility placement, using the liability calculation as outlined in OAR 461-160-0620.¶

(B) For an individual whose income is less than the adjusted OSIPM program standard, the allowance is the amount calculated under paragraph (A) of this subsection plus the difference between the OSIPM program adjusted income standard and the individual's countable income.¶

(2) Room and board allowance (see OAR 461-155-0270), without personal incidentals, may be paid for an individual to reside in a community based care facility (see OAR 461-155-0630) to avoid placement in a nursing

facility, when an individual is leaving a public institution (see OAR 461-135-0950) and the individual's SSI is suspended, subject to the following provisions:¶

(a) The individual's SSI must have been suspended due to placement in a public institution.¶

(b) The individual must pursue reinstatement of SSI, and verification must be provided to the Department.¶

(c) The payment is the difference between the countable income of the individual and the OSIPM Room and Board Standard (see OAR 461-155-0270).¶

(d) If SSI is reinstated or reinstatement of SSI is denied, the individual is no longer eligible for this allowance.¶

(3) The payment amount is prorated in the first month for an individual who moves to a community based care facility on any day other than the first day of the month.

Statutory/Other Authority: ORS 411.060, 411.070, 411.704, 411.706

Statutes/Other Implemented: ORS 411.060, 411.070, 411.704, 411.706