

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

A. RICHARD VIAL
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILED
10/30/2019 11:33 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Changing rules regarding APD medical programs

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/18/2019 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.

CONTACT: Meorah Solar
503-602-7545
meorah.a.solar@dhsosha.state.or.us

500 Summer St NE, E 48
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, E 48

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 461-135-0780 about eligibility for Pickle Amendment clients in the OSIPM program, OAR 461-145-0220 about treatment of the home, OAR 461-155-0250 about income and payment standard for OSIPM, OAR 461-155-0270 about room and board standards for OSIPM, OAR 461-160-0580 about excluded resources (community spouse provision) OSIPM program (except OSIP-EPD and OSIPM-EPD), and OAR 461-160-0620 about income deductions and client liability for Long Term Care Services and Waivered Services need to be amended to keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living by adjusting these standards to reflect the annual federal cost of living adjustments that happen every January.

OAR 461-155-0290 about income standards for QMB-BAS, OAR 461-155-0291 about income standards for QMB-DW, and OAR 461-155-0295 about income standards for QMB-SMB and QMB-SMF need to be amended to keep Oregon in line with current federal standards for Department Medicaid programs and changes in the federal poverty

guidelines by adjusting these standards to reflect the annual updates to the federal poverty guidelines that happens every March.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

<https://www.ssa.gov/news/press/factsheets/colafacts2019.pdf>

Available in November on <http://medicaid.gov/Federal-Policy-Guidance/Federal-Policy-Guidance.html> and <https://www.medicare.gov/eligibility/spousal-impoverishment/index.html>

FISCAL AND ECONOMIC IMPACT:

The Department is unable to estimate the fiscal impact of amending OAR 461-135-0780, 461-145-0220, 461-155-0250, 461-155-0270, 461-160-0580, and 461-160-0620 on the Department and on clients because the 2020 cost of living increases will not be known until November. It is possible that a few clients will lose eligibility as a result. Some clients may be required to make increased payments as a result. 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 is unable to estimate the fiscal impact of amending OAR 461-155-0290, 461-155-0921, and 461-155-0295 on the Department and on clients because the 2020 Federal Poverty Limit are not published until January. It is possible that a few clients will lose eligibility for certain Medicare Savings Programs (MSP) as a result, since it is often the case that the percentage Social Security benefits increase due to the annual Cost of Living Adjustments exceeds that of the Federal Poverty Level increases. However, in 2013, 2016, and 2017 the percentage of the Federal Poverty Level increase exceeded the COLA increases. In light of that, it is also possible that the amendments will result in either clients being eligible for an MSP for the first time or clients who are receiving QMB-SMB will be eligible for the QMB-BAS program, which offers a medical benefit in addition to payment of the Part B premium. 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? NO IF NOT, WHY NOT?

No rule advisory committee was used for these changes because each of these involve routine annual adjustments.

RULES PROPOSED:

461-135-0780, 461-145-0220, 461-155-0250, 461-155-0270, 461-155-0290, 461-155-0291, 461-155-0295, 461-160-0580, 461-160-0620

AMEND: 461-135-0780

RULE SUMMARY: OAR 461-135-0780 about eligibility for Pickle Amendment clients in the OSIPM program is being amended to adjust these standards to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

CHANGES TO RULE:

461-135-0780

Pickle Amendment Clients; OSIPM ¶¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY¶¶

In the OSIPM program:¶¶

(1) The countable (see OAR 461-001-0000) SSB income of an individual is determined according to sections (2) to (4) of this rule if the individual meets all of the following requirements:¶¶

(a) Is receiving Social Security Benefits (SSB);¶¶

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and¶¶

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the individual was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB.¶¶

(2) The SSB amount received by the individual when the individual became ineligible for SSI or OSIP is used as the individual's countable SSB income, for the purposes of the Pickle Amendment. If the spouse (see OAR 461-001-0000) of the individual also had Social Security benefits at the time the individual lost SSI benefits, SSB amount at that time of the spouse is considered the countable income of the spouse. If the amount cannot be determined using the information provided by the SSA, it is calculated in accordance with section (3) of this rule.¶¶

(3) The Department determines the month in which the individual was entitled to SSB and received SSI in the same month. The Department uses the table in section (4) of this rule to find the percentage that applies to that month. The Department multiplies the present amount of the SSB of the individual by the applicable percentage. If the spouse of the individual also had SSB at the time the individual lost SSI benefits, the Department adjusts the SSB of the spouse using the same multiplier that was used for the individual's calculation under this section. This amount, rounded down to the next lower whole dollar, is the individual's countable SSB income.¶¶

(4) The following guide contains the calculations used to determine the SSB for prior years (the Department uses this table only if the prior year's amount using information provided by SSA): [see attached table]

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.083, 411.404, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.083, 411.404, 411.704, 413.085, 414.685, 42 CFR 435.135

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

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING
ADJUSTMENTS PUBLISHED ANNUALLY

(4)

If SSI was Last Received During	Multiply Current SSB by
January 2018 – December 2018.....	.973
January 2017 – December 2017.....	.954
January 2015 - December 2016.....	.951
January 2014 - December 2014.....	.935
January 2013 - December 2013.....	.921
January 2012 - December 2012.....	.906
January 2009 - December 2011.....	.874
January 2008 - December 2008.....	.826
January 2007 - December 2007.....	.808
January 2006 - December 2006.....	.782
January 2005 - December 2005.....	.751
January 2004 - December 2004.....	.731
January 2003 - December 2003.....	.716
January 2002 - December 2002.....	.706
January 2001 - December 2001.....	.689
January 2000 - December 2000.....	.665
January 1999 - December 1999.....	.650
January 1998 - December 1998.....	.641
January 1997 - December 1997.....	.628
January 1996 - December 1996.....	.610
January 1995 - December 1995.....	.595
January 1994 - December 1994.....	.579
January 1993 - December 1993.....	.564
January 1992 - December 1992.....	.548
January 1991 - December 1991.....	.528
January 1990 - December 1990.....	.501
January 1989 - December 1989.....	.479
January 1988 - December 1988.....	.460
January 1987 - December 1987.....	.442
January 1986 - December 1986.....	.436
January 1985 - December 1985.....	.423
January 1984 - December 1984.....	.408
July 1982 - December 1983.....	.395
July 1981 - June 1982.....	.367
July 1980 - June 1981.....	.330
July 1979 - June 1980.....	.289
July 1978 - June 1979.....	.263
July 1977 - June 1978.....	.247
May or June 1977.....	.233

AMEND: 461-145-0220

RULE SUMMARY: OAR 461-145-0220 about treatment of the home is being amended to adjust these standards to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

CHANGES TO RULE:

461-145-0220

Home ¶¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY¶¶

(1) Home defined: A home is the place where the filing group (see OAR 461-110-0310) lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:¶¶

(a) Land on which the home is built and contiguous property.¶¶

(A) In all programs except the OSIP, OSIPM, QMB, and SNAP programs, property must meet all the following criteria to be considered contiguous property:¶¶

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group (see OAR 461-110-0530).¶¶

(ii) It must not be separated by a public right-of-way, such as a road.¶¶

(iii) It must be property that cannot be sold separately from the home.¶¶

(B) In the OSIP, OSIPM, QMB, and SNAP programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the financial group.¶¶

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.¶¶

(2) Exclusion of home and other property:¶¶

(a) For an individual who has an initial month (see OAR 461-001-0000) of long-term care on or after January 1, 2006:¶¶

(A) For purposes of this subsection, "child" means a biological or adoptive child who is:¶¶

(i) Under age 21; or¶¶

(ii) Any age and meets the Social Security Administration criteria for blindness or disability.¶¶

(B) The equity value (see OAR 461-001-0000) of a home is excluded if the requirements of at least one of the following subparagraphs are met:¶¶

(i) The child (see paragraph (A) of this subsection) of the individual occupies the home.¶¶

(ii) The spouse (see OAR 461-001-0000) of the individual occupies the home.¶¶

(iii) The equity in the home is \$585,000 or less, and the requirements of at least one of the following subparagraphs are met:¶¶

(I) The individual occupies the home.¶¶

(II) The home equity is excluded under OAR 461-145-0250.¶¶

(III) The home is listed for sale per OAR 461-145-0420.¶¶

(iv) Notwithstanding OAR 461-120-0330, the equity in the home is more than \$585,000 and the individual is unable legally to convert the equity value in the home to cash.¶¶

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.¶¶

(c) In the SNAP program, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461-145-0420.¶¶

(3) Exclusion during temporary absence: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:¶¶

(a) In all programs except the OSIP, OSIPM, and QMB-DW programs, during the temporary absence of all

members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.¶¶

(b) In the OSIP, OSIPM, and QMB-DW programs, when the individual is absent to receive care in a medical institution, if one of the following is true:¶¶

(A) The absent individual has provided evidence that the individual will return to the home. The evidence must reflect the subjective intent of the individual, regardless of the individual's medical condition. A written statement from a competent individual is sufficient to prove the intent.¶¶

(B) The home remains occupied by the individual's spouse, child, or a relative dependent on the individual for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.¶¶

(c) In the REF, REFM, and TANF programs, when all members of the filing group are absent because:¶¶

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or¶¶

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.¶¶

(d) In the SNAP program, when the financial group is absent because of employment or training for future employment.

Statutory/Other Authority: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 409.050, 410.010, 410.020, 410.070, 410.080, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685, 414.839

AMEND: 461-155-0250

RULE SUMMARY: OAR 461-155-0250 about the income and payment standard for OSIPM is being amended to adjust these standards to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

CHANGES TO RULE:

461-155-0250

Income and Payment Standard; OSIPM ¶¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY¶¶

In the OSIPM program:¶¶

- (1) An individual who is assumed eligible per OAR 461-135-0010 is presumed to meet the income limits for the OSIPM program.¶¶
- (2) An individual meeting the requirements of OAR 461-135-0745 or OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in sections (3) or (5) of this rule, must have countable (see OAR 461-001-0000) income that is equal to or less than 300 percent of the full SSI standard for a single individual or have established a qualifying trust as specified in OAR 461-145-0540(10)(c).¶¶
- (3) An individual, other than one identified in sections (1), (2), (5), or (6) of this rule, must have adjusted income (see OAR 461-001-0000) below the standard in this section. [see attached table]¶¶
- (4) In the OSIPM (except OSIPM-EPD) program, an individual receiving Medicaid services in a nursing facility or an ICF-ID is allowed the following amounts for clothing and personal incidentals:¶¶
 - (a) For an individual who receives a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.¶¶
 - (b) For all other individuals, \$63.10 is allowed.¶¶
 - (c) For an individual identified in subsection (b) of this section with countable income (including any SSI) that is less than \$63.10, the payment standard is equal to the difference between the individual's countable income (including any SSI) and \$63.10. For the purposes of this subsection, countable income includes income that would otherwise be countable for an individual who is assumed eligible under OAR 461-135-0010.¶¶
- (5) In the OSIPM-EPD program, an individual must have adjusted earned income equal to or below 250 percent of the federal poverty level for a family of one.¶¶
- (6) An individual who meets the requirements of OAR 461-135-0755, is not assumed eligible, and does not meet the income standard set out in section (3) of this rule, must have adjusted income equal to or below 150 percent of the federal poverty level for a family of one.

Statutory/Other Authority: ORS 411.060, ORS 409.050, 411.070, 411.404, 411.704, 411.706, 413.085, 414.685

Statutes/Other Implemented: ORS 411.060, ORS 409.010, 411.070, 411.404, 411.704, 411.706

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

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING
ADJUSTMENTS PUBLISHED ANNUALLY

(3)

OSIPM Adjusted Income Standards		
Number in Need Group	One	Two
AB/AD/OAA	771.00	1,157.00

AMEND: 461-155-0270

RULE SUMMARY: OAR 461-155-0270 about room and board standards for OSIPM is being amended to adjust these standards to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

CHANGES TO RULE:

461-155-0270

Room and Board Standard; OSIPM ¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY¶

For an OSIPM program client in a community based care (see OAR 461-001-0000) facility, the room and board standard is \$599.00. A client residing in a community based care facility must pay room and board.

Statutory/Other Authority: ORS 411.060, 411.070, 411.704, 411.706, ORS 409.050, 411.404, 413.085, 414.685

Statutes/Other Implemented: ORS 411.060, 411.070, 411.704, 411.706, ORS 409.010, 411.404

AMEND: 461-155-0290

RULE SUMMARY: OAR 461-155-0290 about income standards for QMB-BAS is being amended to adjust these standards to reflect the annual updates to the federal poverty guidelines that happens every March. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the federal poverty guidelines.

CHANGES TO RULE:

461-155-0290

Income Standard; QMB-BAS ¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL POVERTY LEVEL STANDARDS PUBLISHED ANNUALLY¶

The adjusted income standard for the QMB-BAS program is 100 percent of the 2019 federal poverty level. [see attached Table]

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

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

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

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL POVERTY LEVEL
STANDARDS PUBLISHED ANNUALLY

No. in Need Group	Amount
1	\$1,041
2	1,410
3	1,778
4	2,146
5	2,515
6	2,883
7	3,251
8	3,620
9	3,988
10	4,356
Each additional person	369

AMEND: 461-155-0291

RULE SUMMARY: OAR 461-155-0291 about income standards for QMB-DW is being amended to adjust these standards to reflect the annual updates to the federal poverty guidelines that happens every March. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the federal poverty guidelines.

CHANGES TO RULE:

461-155-0291

Income Standard; QMB-DW ¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL POVERTY LEVEL STANDARDS PUBLISHED ANNUALLY¶

The adjusted income standard for the QMB-DW program is 200 percent of the 2019 federal poverty level (see OAR 461-155-0290). [see attached Table]

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

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

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

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL POVERTY
LEVEL STANDARDS PUBLISHED ANNUALLY

QMB-DW Adjusted Income Standard

No. in Need Group	Amount
1	\$2,082
2	2,819
3	3,555
4	4,292
5	5,029
6	5,765
7	6,502
8	7,239
9	7,975
10	8,712
Each additional person	737

AMEND: 461-155-0295

RULE SUMMARY: OAR 461-155-0295 about income standards for QMB-SMB and QMB-SMF is being amended to adjust these standards to reflect the annual updates to the federal poverty guidelines that happens every March. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the federal poverty guidelines.

CHANGES TO RULE:

461-155-0295

Income Standard; QMB-SMB, QMB-SMF ¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL POVERTY LEVEL STANDARDS PUBLISHED ANNUALLY¶

(1) Eligibility for QMB-SMB requires income greater than 100 percent (see OAR 461-155-0290) but less than 120 percent of the federal poverty level. The adjusted income standard for QMB-SMB is 120 percent of the 2019 federal poverty level. [Table is attached]¶

(2) Eligibility for QMB-SMF requires income equal to or greater than 120 percent (see section (1) of this rule) but less than 135 percent of the federal poverty level. The adjusted income standard for QMB-SMF is 135 percent of the 2019 federal poverty level. [Table is attached]

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

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

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

(1)

QMB-SMB Adjusted Income Standard
(Case Descriptor SMB)

<u>No. in Need Group</u>	<u>Amount</u>
1	\$1,249
2	1,691
3	2,133
4	2,575
5	3,017
6	3,459
7	3,901
8	4,343
9	4,785
10	5,227
Each additional person	442

(2)

QMB-SMF Adjusted Income Standard
(Case Descriptor SMF)

<u>No. in Need Group</u>	<u>Amount</u>
1	\$1,406
2	1,903
3	2,400
4	2,897
5	3,395
6	3,892
7	4,389
8	4,886
9	5,384
10	5,881
Each additional person	498

AMEND: 461-160-0580

RULE SUMMARY: OAR 461-160-0580 about excluded resources (community spouse provision) in the OSIPM program is being amended to adjust these standards to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

CHANGES TO RULE:

461-160-0580

Excluded Resource; Community Spouse Provision (OSIPM except OSIPM-EPD) ¶¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY¶¶

In the OSIPM (except OSIPM-EPD) program:¶¶

(1) This rule applies to an institutionalized spouse (see OAR 461-001-0030) who has applied for benefits because the individual is in or will be in a continuous period of care (see OAR 461-001-0030).¶¶

(2) Whether a legally married (see OAR 461-001-0000) couple lives together or not, the determination of whether the value of the couple's resources exceeds the eligibility limit for the institutionalized spouse for the OSIPM program is made as follows:¶¶

(a) The first step is the determination of what the couple's combined countable (see OAR 461-001-0000) resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)¶¶

(A) Division 461-140 and 461-145 rules applicable to OSIPM describe which of the couple's resources are countable resources, and are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIPM clients.¶¶

(B) The countable resources of both spouses are combined.¶¶

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.¶¶

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.¶¶

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:¶¶

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than \$126,420.¶¶

(B) \$25,284 (the state community-spouse resource allowance).¶¶

(C) A court-ordered community spouse resource allowance. In this paragraph and paragraph (2)(f)(C) of this rule, the term "court-ordered community spouse resource allowance" means a "court-ordered community spouse resource allowance" that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the client became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the client's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.¶¶

(D) After considering the income of the community spouse (see OAR 461-001-0030) and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph is the amount required to purchase a single premium immediate annuity to make up the shortfall; and the amount described in this paragraph is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:¶¶

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.¶¶

(ii) The difference between:¶¶

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and¶¶

(II) The applicable need standard under OAR 461-160-0620(3)(c).¶¶

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.¶¶

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.¶¶

(f) The sixth step is a comparison of the value of the remaining resources to the OSIPM resource standard for one person (under OAR 461-160-0015). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:¶¶

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than \$126,420) plus the OSIPM resource standard for one person.¶¶

(B) \$25,284 (the state community-spouse resource allowance), plus the OSIPM resource standard for one person.¶¶

(C) A "court-ordered community spouse resource allowance" plus the OSIPM resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the "court-ordered community spouse resource allowance".)¶¶

(D) The OSIPM resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. This amount is the amount required to purchase a single premium immediate annuity to make up the shortfall. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:¶¶

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.¶¶

(ii) The difference between:¶¶

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and¶¶

(II) The applicable need standard under OAR 461-160-0620(3)(c).¶¶

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.¶¶

(4) The provisions of paragraph (2)(c)(C) of this rule requiring income to be considered first may be waived if the Department determines that the resulting community resource allowance would create an undue hardship on the spouse (see OAR 461-001-0000) of the client.

Statutory/Other Authority: ORS 411.060, 411.070, 411.083, 411.404, 411.706, ORS 409.050, 413.085, 414.685

Statutes/Other Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.706, ORS 409.010

AMEND: 461-160-0620

RULE SUMMARY: OAR 461-160-0620 about income deductions and client liability for Long Term Care Services and Waivered Services is being amended to adjust these standards to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

CHANGES TO RULE:

461-160-0620

Income Deductions and Client Liability; Long-Term Care Services or Home and Community-Based Care; OSIPM ¶

~~Effective October 1, 2019, 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 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 \$63.10 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. \$2,113.75 is added to the amount over \$634.13 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$3,160.50, 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 \$2,113.75. To determine the income allowance of each eligible dependent: ¶

(i) The monthly income of the eligible dependent is deducted from \$2,113.75. ¶

- (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 (see OAR 461-155-0030) 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.¶
 - (h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income (see OAR 461-001-0000).¶
- (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 or the home and community-based care facility 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, the liability is the actual cost of services or the adjusted income of the individual, whichever is less. This amount must be paid to the facility each month as a condition of being eligible for nursing facility services.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.065, 414.685

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706, 413.085, 414.065, 414.685, 42

USC 1396r-5, 42 CFR 435.725 - 435.735