



PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILING CAPTION: Changing rules regarding APD medical programs

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CONTACT: Meorah Solar 500 Summer St NE, E 48
503-602-7545 Room 160
meorah.a.solar@dhsosha.state.or.us Salem, OR 97301

Filed By:
Meorah Solar
Rules Coordinator

RULES:

461-120-0345, 461-135-0010, 461-135-0780, 461-145-0220, 461-155-0250, 461-155-0270, 461-155-0700, 461-160-0580, 461-160-0620

AMEND: 461-120-0345

NOTICE FILED DATE: 10/31/2019

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, ¶~~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, 42 CFR 433.147, 42 CFR 435.610

AMEND: 461-135-0010

NOTICE FILED DATE: 10/31/2019

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 non-financial 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: 461-135-0780

NOTICE FILED DATE: 10/30/2019

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 ¶¶

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.

If SSI was Last Received During

Multiply Current SSB by

January 2019 – December 2019.....	.984
January 2018 – December 2018.....	.957
January 2017 – December 2017.....	.939
January 2015 - December 2016.....	.936
January 2014 - December 2014.....	.920
January 2013 - December 2013.....	.907
January 2012 - December 2012.....	.891
January 2009 - December 2011.....	.861
January 2008 - December 2008.....	.813
January 2007 - December 2007.....	.795
January 2006 - December 2006.....	.770
January 2005 - December 2005.....	.739
January 2004 - December 2004.....	.720
January 2003 - December 2003.....	.705
January 2002 - December 2002.....	.695
January 2001 - December 2001.....	.678
January 2000 - December 2000.....	.655
January 1999 - December 1999.....	.639
January 1998 - December 1998.....	.631
January 1997 - December 1997.....	.618
January 1996 - December 1996.....	.601
January 1995 - December 1995.....	.586
January 1994 - December 1994.....	.570
January 1993 - December 1993.....	.555
January 1992 - December 1992.....	.539
January 1991 - December 1991.....	.520
January 1990 - December 1990.....	.493
January 1989 - December 1989.....	.471
January 1988 - December 1988.....	.453
January 1987 - December 1987.....	.435
January 1986 - December 1986.....	.429
January 1985 - December 1985.....	.416
January 1984 - December 1984.....	.402
July 1982 - December 1983.....	.388
July 1981 - June 1982.....	.362
July 1980 - June 1981.....	.325
July 1979 - June 1980.....	.285
July 1978 - June 1979.....	.259
July 1977 - June 1978.....	.243
May or June 1977.....	.230

AMEND: 461-145-0220

NOTICE FILED DATE: 10/30/2019

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 ¶¶

(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 \$5895,000 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 \$5895,000 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

NOTICE FILED DATE: 10/30/2019

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 ¶

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, ~~\$634.10~~ 101 is allowed.¶

(c) For an individual identified in subsection (b) of this section with countable income (including any SSI) that is less than ~~\$634.10~~ 101, the payment standard is equal to the difference between the individual's countable income (including any SSI) and ~~\$634.10~~ 101. 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.

OSIPM Adjusted Income Standards		
Number in Need Group	One	Two
AB/AD/OAA	783.00	1,175.00

AMEND: 461-155-0270

NOTICE FILED DATE: 10/30/2019

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 ¶¶

For an OSIPM program client in a community based care (see OAR 461-001-0000) facility, the room and board standard is ~~\$599~~608.00. 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: 461-155-0700

NOTICE FILED DATE: 10/31/2019

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

AMEND: 461-160-0580

NOTICE FILED DATE: 10/30/2019

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) ¶¶

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 \$126,428.640.¶¶

(B) \$25,7284 (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 \$126,428,640) plus the OSIPM resource standard for one person.¶¶

(B) \$25,7284 (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 411.060, 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

NOTICE FILED DATE: 10/30/2019

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, in~~ 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 ~~\$634.10~~ \$634.13 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 \$3,2160.50, 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, 413.085, 411.060, 411.070, 411.404, ~~411.706~~, ~~413.085~~, 414.065, 414.685, 411.706

Statutes/Other Implemented: ORS 409.010, ~~4143.06085~~, ~~411.0760~~, 411.404, ~~411.0706~~, ~~413.085~~, 414.04, 414.065, 414.685, 42 USC 1396r-5, 411.706, 42 CFR 435.725 - 435.735