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

**SSP 9-2020**

CHAPTER 461  
DEPARTMENT OF HUMAN SERVICES  
SELF-SUFFICIENCY PROGRAMS

**FILED**  
04/17/2020 8:00 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Amending the ERDC and TANF program COVID-19 child care benefits rule

EFFECTIVE DATE: 04/17/2020 THROUGH 09/11/2020

AGENCY APPROVED DATE: 04/17/2020

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**NEED FOR THE RULE(S):**

OAR 461-135-0440 about Child Care Benefit Eligibility and Payment during the COVID-19 pandemic needs to be amended to bring the Department into compliance with clarifications regarding the Governor's mandate regarding the COVID-19 pandemic, restore important requirements in the child care provider application process, and offer applicants the choice to stay home when applying for ERDC. The amendments make more clear the rule sections being suspended and amended by this rule and allow ERDC applicants to apply for and sign the application by telephone. The changes also broaden provisions retroactively regarding what type of child care provider may bill for the increased number of absent days that are due to COVID-19 related temporary shutdown. This amendment removes the ability for an individual to be approved as a provider by the Department before completing "Introduction to Child Care Health and Safety" or "Recognizing and Reporting Child Abuse and Neglect," which are web based trainings.

**JUSTIFICATION OF TEMPORARY FILING:**

The Department finds that failure to act promptly by amending OAR 461-135-0440 will result in serious prejudice to the public interest, the Department, and clients of its programs. The Department needs to proceed by temporary rule due to needed adjustments following the Governor's Executive Order 20-12 and discussions between ERDC and the Oregon Early Learning Division. The Department also needs to proceed by temporary rule because the COVID-19 pandemic has created an emergent need to immediately implement methods of applying for ERDC that allow applicants to remain at home and to expand which providers are eligible for payment during temporary shutdown. Failure to act immediately could delay or prevent Oregon's families in need from being able to swiftly apply for ERDC during the current state of emergency. This rule adoption will provide essential supports to providers and families, restore the need for certain trainings to occur before provider approval, and create the ability for individuals in need of ERDC to "Stay at Home, Stay Healthy."

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

Governor Brown's Executive Order 20-12, available here:

[https://www.oregon.gov/gov/Documents/executive\\_orders/eo\\_20-12.pdf](https://www.oregon.gov/gov/Documents/executive_orders/eo_20-12.pdf)

Written Conversations between ERDC and the Oregon Early Learning Division, if any, available from the ERDC Policy Analyst Team.

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ADOPT: 461-135-0440

SUSPEND: Temporary 461-135-0440 from SSP 4-2020

RULE SUMMARY: OAR 461-135-0440 about Child Care Benefit Eligibility and Payment during the COVID-19 pandemic is being amended to make clear the rule sections being suspended and amended by this rule and to allow ERDC applicants to apply for and sign the application by telephone. The rule is also being amended to broaden provisions retroactively regarding what type of child care provider may bill for the increased number of absent days that are due to COVID-19 related temporary shutdown. This amendment removes the ability for an individual to be approved as a provider by the Department before completing "Introduction to Child Care Health and Safety" or "Recognizing and Reporting Child Abuse and Neglect," which are web based trainings. The amendments to this rule brings the Department into compliance with clarifications regarding the Governor's mandate regarding the COVID-19 pandemic, restores important requirements in the child care provider application process, and offers applicants the choice to stay home when applying for ERDC.

CHANGES TO RULE:

#### 461-135-0440

##### Child Care Benefit Eligibility and Payment; COVID-19

The provisions in this rule apply to child care benefits and requirements for child care providers in the ERDC and TANF programs.

(1) The Department suspends the following rules or rule sections regarding the ERDC or TANF programs:

(a) OAR 461-155-0150(5), (5)(c), (5)(e) through (5)(h), (12) through (14);

(b) OAR 461-160-0193(2)(c);

(c) OAR 461-160-0300(2), (3)(b);

(d) OAR 461-135-0405(2)(e); and

(e) OAR 461-155-0150(3)(f), (3)(g).

(2) The Department amends the following rule sections regarding the ERDC or TANF programs as provided in this rule:

(a) OAR 461-165-0180(13)(A), and

(b) OAR 461-170-0160(1), (2), (3).

(3) Effective March 16, 2020, the ERDC monthly countable income (see OAR 461-001-0000) standard is the 250 percent FPL or 85 percent state median income (SMI), whichever is higher, described under OAR 461-155-0180. To be eligible, the countable income of the need group (see OAR 461-110-0630) must be less than:

(a) The standard listed for the number of individuals in the need group for groups of eight or fewer.

(b) The standard listed for eight individuals in the need group for groups of more than eight individuals.

(4) Retroactively effective March 1, 2020:

(a) The monthly copay is \$0.

(b) The Department shall pay for absent days each month the child is absent. For the purposes of this rule, absent days will be paid for up to 31 days each month if:

(A) The child was scheduled to be in care,

(B) The provider bills for the time the child was scheduled to be in care, and

(C) It is the provider's policy to bill all families for absent days.

- (c) The Department shall pay for days a child is unable to attend care due to a temporary shutdown during the COVID-19 state of emergency period initiated by Executive Order 20-03 of the Governor of Oregon.¶
- (5) Notwithstanding OAR 461-165-0180(13)(a)(A), legally exempt (see OAR 461-165-0180) providers that are not a legally exempt relative (see OAR 461-165-0180) to all children in care must have an up-to-date, infant and child CPR and first aid certification within 90 days of approval by the Department.¶
- (6) In addition to provisions in OAR 461-170-0160, an individual may apply for ERDC benefits using the Department approved "telephonic application" (see section (7) of this rule) and "narrated telephonic signature" (see section (8) of this rule) processes. An individual submitting a telephonic application must submit the application with a narrated telephonic signature.¶
- (7) A telephonic application is accepted when the following requirements are met: ¶
- (a) All ERDC program related questions on the application are answered.¶
- (b) All information necessary to determine eligibility (see OAR 461-001-0000) and benefit amount is provided for each individual in the filing group (see OAR 461-110-0310). ¶
- (c) The applicant or their authorized representative (see OAR 461-115-0090) provides a narrated telephonic signature as defined in this rule. ¶
- (8) A narrated telephonic signature is accepted for an application for ERDC benefits when the Department makes record that the following requirements are met:¶
- (a) The "Your Rights and Responsibilities" form is reviewed and sent to the mailing address of the applicant.¶
- (b) The following sections at the end of the application form are reviewed and sent to the mailing address of the applicant:¶
- (A) "Information about all programs," and¶
- (B) "Information about your rights and responsibilities." ¶
- (c) The applicant or their authorized representative affirms that they:¶
- (A) Have heard and understand their rights and responsibilities; ¶
- (B) Agree to their rights and responsibilities;¶
- (C) Have given true, correct, and complete information to the Department; and¶
- (D) State their full name as their signature.¶
- (d) The Department makes record of the narrated telephonic signature.¶
- (9) Unless indicated otherwise in this rule, or changed by amendment, the provisions in this rule end the last day of the month in which the Governor of Oregon ends the COVID-19 state of emergency period initiated by Executive Order 20-03.

Statutory/Other Authority: ORS 411.060, 411.070, 412.006, 412.049, 409.050, 131.715, 329a.500, ORS 84.001 to 84.061

Statutes/Other Implemented: ORS 411.060, 411.070, 412.006, 412.049, 409.610, 411.122, 411.141, 418.485, 131.715, 329a.500, ORS 84.001 to 84.061