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

**SSP 12-2020**

CHAPTER 461  
DEPARTMENT OF HUMAN SERVICES  
SELF-SUFFICIENCY PROGRAMS

**FILED**  
05/15/2020 11:46 AM  
ARCHIVES DIVISION  
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& LEGISLATIVE COUNSEL

FILING CAPTION: Amending two Self-Sufficiency and APD program rules

EFFECTIVE DATE: 05/15/2020 THROUGH 11/09/2020

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

OAR 461-115-0071 about who must sign the application and complete the application process needs to be amended to bring the rule into alignment with guidance from Centers for Medicare & Medicaid Services. The changes specify that in the OSIPM and QMB programs, an application can be signed by anyone in the filing group. They also add that the application may be signed by an individual acting responsibly on behalf of a child or an incapacitated individual.

OAR 461-115-0090 about authorized representatives; general needs to be amended for all programs to align with Oregon Statute and guidance from Centers for Medicare & Medicaid Services. The amendments remove the ability of the Department to designate an authorized representative on someone's behalf and specify that an authorized representative must be age 18 or older. The change also removes a reference to a repealed OAR.

**JUSTIFICATION OF TEMPORARY FILING:**

The Department finds that failure to act promptly by amending OAR 461-115-0071 and OAR 461-115-0090 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 instruction from CMS and rule evaluation by Department policy analysts. Failure to act immediately could prevent appropriate individuals from being able to sign program applications or act on behalf of individuals receiving benefits. This rule adoption creates important parameters for the application process and authorized representative limitations.

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

E-mail communication between Centers for Medicare & Medicaid Services and Oregon's APD Program available from the APD Policy Analyst team.

**RULES:**

461-115-0071, 461-115-0090

AMEND: 461-115-0071

RULE SUMMARY: OAR 461-115-0071 about who must sign the application and complete the application process is being amended to specify that in the OSIPM and QMB programs, an application can be signed by anyone in the filing group. It is also being amended to add that the application may be signed by an individual acting responsibly on behalf of a child or an incapacitated individual. This amendment brings the rule into alignment with guidance from Centers for Medicare & Medicaid Services.

CHANGES TO RULE:

461-115-0071

### Who Must Sign the Application and Complete the Application Process ¶¶

(1) In the ERDC and TANF programs, the following individuals must sign the application and complete the application process:¶¶

(a) In the ERDC program, a caretaker (see OAR 461-001-0000).¶¶

(b) In the TANF program, at least one caretaker relative (see OAR 461-001-0000).¶¶

(2) In the EA program:¶¶

(a) A caretaker relative must sign the application and complete the application process for a child (see OAR 461-001-0000). If the child is not living with a caretaker relative, another adult may act on behalf of the child.¶¶

(b) If the caretaker relative lives with a spouse (see OAR 461-001-0000), both must sign the application.¶¶

(c) A dependent child 18 years of age who applies must sign the application and complete the application process.¶¶

(3) In the GA, OSIP, OSIPM, and QMB programs,¶¶

(a) At least one of the following individuals must sign the application and complete the application process:¶¶

(A) A member of the filing group (see OAR 461-115-0310) ~~18 years of age or older requesting assistance.~~¶¶

(B) For individuals applying for long-term care (see OAR 461-001-0000) services, the individual's community spouse (see OAR 461-001-0030) who lives with the individual or who was living with the individual immediately prior to the continuous period of care (see OAR 461-001-0030).¶¶

(C) The authorized representative (see OAR 461-115-0090).¶¶

(D) If a signature cannot be obtained under paragraphs (A) through (C) of this subsection, anyone 18 years of age or older acting responsibility on behalf of a child under age 18 or an incapacitated individual.¶¶

(b) If the applicant dies prior to the determination of eligibility for OSIPM, the application may be processed if the Department receives the information required to determine eligibility under OAR 461-115-0190(1).¶¶

(4) In the REF and REFM programs, at least one adult (see OAR 461-110-0430) member of the filing group (see OAR 461-110-0430) must sign the application.¶¶

(5) In the SNAP program, at least one of the following individuals must sign the application and complete the application process:¶¶

(a) An adult (see OAR 461-110-0370) or primary person (see OAR 461-001-0015) in the filing group (see OAR 461-110-0370).¶¶

(b) An adult or primary person excluded from the filing group under OAR 461-110-0370(8)(b).¶¶

(c) The authorized representative (see OAR 461-001-0000, 461-115-0090, and 461-135-0510) of the filing group.¶¶

(6) An individual required to sign the application but unable to sign may sign with a mark, witnessed by an employee of the:¶¶

(a) Branch office (see OAR 461-001-0000); or¶¶

(b) Public institution (see OAR 461-135-0950), when the individual applying is an inmate (see OAR 461-135-0950) and is applying for benefits under the OSIPM program.

Statutory/Other Authority: ORS 411.060, 411.070, 411.404, 411.816, 412.049

Statutes/Other Implemented: ORS 411.060, 411.070, 411.081, 411.087, 411.400, 411.404, 411.816, 412.049, 42 CFR 435.907

AMEND: 461-115-0090

RULE SUMMARY: OAR 461-115-0090 about authorized representatives; general is being amended for all programs to remove the ability of the Department to designate an authorized representative on someone's behalf. It is also being amended to specify that an authorized representative must be age 18 or older and to remove a reference to a repealed OAR. These amendments are being made to align with Oregon Statute and guidance from Centers for Medicare & Medicaid Services.

CHANGES TO RULE:

461-115-0090

Authorized Representatives; General ¶¶

- (1) "Authorized representative" means an individual ~~or aged 18 years or older or an~~ organization permitted by this rule to act on behalf of an applicant or beneficiary in assisting the applicant or beneficiary with their application, renewal of eligibility, and other on-going communications with the Department.¶¶
- (2) "Department" in this rule refers to the Department of Human Services and the Oregon Health Authority.¶¶
- (3) "Eligibility determination group" in this rule refers to all individuals whose financial and non-financial information are considered in determining program eligibility.¶¶
- (4) In the TA-DVS program, an authorized representative (see section (1) of this rule) may not be established.¶¶
- (5) An authorized representative designated for one program is the authorized representative for all programs and benefits of the head of household (see OAR 461-001-0015), primary person (see OAR 461-001-0000), or primary contact (see OAR 410-200-0015), excluding the TA-DVS program and not when the exception in subsection (6)(c) of this rule applies.¶¶
- (6) Unless limited elsewhere in this rule, an authorized representative may do any of the following:¶¶
  - (a) With the exception of the authorized representative designation form and subject to the exception in subsection (c) of this section: complete, sign, and submit any applications, renewals, or documents on behalf of the applicant or beneficiary.¶¶
  - (b) Receive copies of notices and other communications from the Department for the applicant or beneficiary.¶¶
  - (c) Act on behalf of the applicant or recipient by reporting information and submitting requests to the Department, except an individual's long-term care (see OAR 461-001-0000) services provider may not serve as the designated representative (see OAR 411-004-0010) or representative (see OAR 411-028-0010 and OAR 411-030-0020) of the individual for long-term care services.¶¶
- (7) The following individuals may appoint an authorized representative on a form designated by the Department subject to the limitations listed in sections (4), (5), and (8) - (12) of this rule, unless the individual is included in the eligibility determination group (see section 3 of this rule) solely for the purpose of determining eligibility based on tax filing status:¶¶
  - (a) The head of household, primary person, or primary contact of any age.¶¶
  - (b) Any individual age 18 and older who is included in each eligibility determination group of the head of household, primary person, or primary contact.¶¶
  - (c) An individual given legal guardianship or power of attorney for an individual age 18 and older who is included in each eligibility determination group of the head of household, primary person, or primary contact.¶¶
  - ~~(d) If the Department has determined that an authorized representative is needed based on the physical or mental capacity of an individual to handle their own affairs, and an authorized representative has not been designated by the individual, the Department may appoint one.¶¶~~
- (8) The Department may accept a designation of an authorized representative via any of the following methods, which must include either a handwritten or electronic signature of both the individual designating the authorized representative and the authorized representative:¶¶
  - (a) The Internet.¶¶
  - (b) E-mail.¶¶
  - (c) Mail.¶¶

- (d) Telephonic recording.¶
- (e) In person.¶
- (f) Other electronic means.¶
- (9) The following may not serve as an authorized representative: ¶
  - (a) An individual serving an Intentional Program Violation (see OAR 461-195-0601), unless the Department determines no one else is available to serve as the authorized representative.¶
  - (b) Homeless meal providers (see 7 CFR 271.2) for homeless SNAP recipients.¶
  - (c) A person who may cause harm to the individual.¶
  - (d) A person who may have a conflict of interest.¶
  - (e) Department employees or an employee of a contractor involved in the certification or issuance processes for Department program benefits, unless a designated Department official determined no one else is available to serve as an authorized representative and has given approval.¶
  - (f) Retailers who are authorized to accept Department Electronic Benefit Transfer (EBT) cards, unless a designated Department official determined no one else is available to serve as an authorized representative and has given approval.¶
- (10) An individual who resides in a drug or alcohol residential treatment facility identified in OAR 461-135-05510 may apply for SNAP program benefits only through an authorized representative. The authorized representative must be a designated employee of the treatment center. The employee must complete the authorized representative form designated by the Department and follow the responsibilities in OAR 461-115-0145 and ~~OAR 461-135-0550.~~ ¶
- (11) An individual with a disability (see OAR 461-001-0015) who participates in the SNAP program while residing in a group living (see OAR 461-001-0015) arrangement (GLA) may apply through an authorized representative or on their own behalf. The GLA must determine if a resident may apply on their own behalf based on the physical and mental ability of the resident to handle their own affairs. If the authorized representative is a designated employee of the GLA, the employee must complete the authorized representative form designated by the Department and follow the responsibilities in OAR 461-115-0145.¶
- (12) While the individual is residing in a correctional facility or during a temporary period of hospitalization that occurs outside of the correctional facility, a designee of a correctional facility may apply for the OSIPM and QMB programs on behalf of an individual for the purpose of establishing eligibility for medical assistance.¶
  - (a) The designee may obtain information necessary to determine eligibility for medical assistance, including the person's Social Security number or information that is not otherwise subject to disclosure under ORS 411.320 or ORS 413.175. ¶
  - (b) The information obtained under subsection (a) of this section may be used only for the purpose of assisting the person in applying for medical assistance and may not be re-disclosed without the authorization of the individual.¶
- (13) The authorized representative must maintain the confidentiality of any information provided by the Department regarding the represented individual.¶
- (14) An individual or organization ceases to be an authorized representative when:¶
  - (a) A represented individual notifies the Department that the designation is terminated;¶
  - (b) A represented individual appoints a different authorized representative;¶
  - (c) The authorized representative notifies the Department that the designation is terminated;¶
  - (d) The Department determines the authorized representative is no longer permitted to be the authorized representative; or¶
  - (e) There is a change in the legal authority upon which the individual or organization's authority was based.¶
- (15) An authorized representative may be subject to an overpayment (see OAR 461-195-0501 and OAR 461-195-0541) in addition to other penalties. These other penalties include:¶
  - (a) In GLA or drug or alcohol residential treatment facilities, the facility may be prosecuted under applicable federal or state law.¶
  - (b) For an authorized representative not covered by subsection (a) of this section, the Department may prohibit

the person from serving as an authorized representative for one year.

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

Statutes/Other Implemented: ORS 409.010, 411.060, 411.404, 411.447, 411.816, 412.014, 412.049, 411.117, 329A.500, 7 CFR 273.2, 42 CFR 435.907, 42 CFR 435.923