

OFFICE OF THE SECRETARY OF STATE

BEV CLARNO  
SECRETARY OF STATE

JEFF MORGAN  
INTERIM 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**

06/30/2020 11:25 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Making permanent a child care rule regarding provisions in the event of a pandemic

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/19/2020 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  
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: 07/23/2020

TIME: 2:00 PM - 3:30 PM

OFFICER: Meorah Solar

ADDRESS: No Physical Location due to  
COVID-19

By phone 1 (971) 673-8888, code  
9384183#

or 1 (503) 934-1400, code 9384183#  
Salem, OR 97301

SPECIAL INSTRUCTIONS:

Everyone has a right to know about  
and use DHS programs and services.

DHS provides free help. Some  
examples of the free help DHS can  
provide are: sign language and spoken  
language interpreters, written  
materials in other languages, braille,  
large print, audio and other formats. If  
you need help or have questions,  
please contact Meorah Solar at (503)  
602-7545, 711 TTY, or  
meorah.a.solar@dhsosha.state.or.us at  
least 48 hours before the meeting.

NEED FOR THE RULE(S):

OAR 461-135-0440 about Child Care Benefit Eligibility and Payment; COVID-19, needs to be adopted permanently to allow the Department to adopt rule provisions regarding child care benefits and payments in the event of a pandemic.

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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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FISCAL AND ECONOMIC IMPACT:

The Department estimates that permanently adopting OAR 461-135-0440 will have a negative fiscal impact on the Department of about \$2 million monthly, while copays for all clients are \$0. The Department estimates that the rule will have a positive fiscal impact on clients who are able to qualify for assistance due to more flexible eligibility and payment requirements, but is unable to estimate the extent of these impacts on clients because an income and eligibility comparison, before and after this rule was adopted, has not occurred. The Department estimates that there is no fiscal impact on other state agencies, local government, and business, including small business. No small businesses that are non-child-care providers are subject to these rules and there is no cost of compliance for any type of small business.

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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 Fiscal and Economic Impact

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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.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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ADOPT: 461-135-0440

RULE SUMMARY: OAR 461-135-0440 about Child Care Benefit Eligibility and Payment; COVID-19, is a recently adopted temporary rule that is being made permanent in order to allow special provisions regarding child care eligibility, benefits, and payments, to be adopted during a pandemic. The rule also allows the suspension and modification of other rules in Chapter 461 that conflict with the provisions of this rule or that need to be altered due to a pandemic.

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.<sup>¶</sup>

- (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, the provisions in this rule end on the later of the following dates:

(a) 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, or

(b) August 31, 2020.

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