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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILED
07/31/2020 1:35 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amending rules regarding SS and APD Medical Programs

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/18/2020 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.

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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: 08/24/2020

TIME: 1:00 PM - 2:30 PM

OFFICER: Meorah Solar

ADDRESS: No Physical Location due to
COVID-19

By phone 1(971) 673-8888, code
46101139#

or 1 (503) 934-1400, code 46101139#
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 461-115-0071 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 change specifies that in the OSIPM and QMB programs, an application can be signed by anyone in the filing group. The changes also allow an application to 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 to align the rule with Oregon Statute and guidance from Centers for Medicare & Medicaid Services. The amendment removes the ability of the Department to designate an authorized representative on someone's behalf. The amendments also add a provision that an authorized representative must be age 18 or older and remove a reference to a repealed OAR.

OAR 461-115-0700 about Required Verification; GA, OSIP, OSIPM, and QMB, needs to be amended to make verification process and requirements more clear and accurate, to add information regarding asset verification for non-MAGI medical programs, and to remove repetitive language.

OAR 461-135-0880 about OSIPM and QMB programs; COVID-19, needs to be adopted permanently to allow the Department to adopt rule provisions regarding the OSIPM and QMB programs in the event of a pandemic.

OAR 461-140-0296 about Length of Disqualification Due to an Asset Transfer; OSIP and OSIPM, in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs needs to be amended to update the amount used to calculate the number of months of ineligibility due to a disqualifying transfer of assets. This amendment brings the rule up to date for the required amount that is calculated every two years by using the average monthly cost to a private patient of nursing facility services in Oregon.

OAR 461-145-0087 about Coronavirus Aid, Relief, and Economic Security (CARES) Act, needs to be permanently adopted to provide ongoing clarity and transparency to the Department and the public. The rule provides guidance regarding how programs will treat certain types of CARES Act payments.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Documents regarding changes to OAR 461-115-0071 and OAR 461-115-0090 can be obtained from the APD Medical Policy Analyst team.

Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-10) Outbreak, available here: <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

Centers for Medicare & Medicaid Services (CMS) COVID-19 Frequently Asked Questions (FAQs) for State Medicaid and Children's Health Insurance Program (CHIP) Agencies, available here: <https://www.medicare.gov/state-resource-center/downloads/covid-19-faqs.pdf>

CMS Families First Coronavirus Response Act - Increased FMAP FAQs, updated 4/13/20, available here:
<https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-faqs.pdf>

CMS Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127 Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136 Frequently Asked Questions (FAQs), updated 4/13/2020, available here:
<https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-CARES-faqs.pdf>

Genworth Cost of Care Survey, available here: <https://www.genworth.com/about-us/industry-expertise/cost-of-care.html>

USDA Food and Nutrition Service COVID-10 Questions and Answers for States, available here:
<https://www.fns.usda.gov/covid-19/questions-answers-related-covid-19#snap>

Additional documents regarding adoption of OAR 461-145-0087 can be obtained from the respective Policy Analyst teams.

FISCAL AND ECONOMIC IMPACT:

The Department estimates that amending OAR 461-115-0071 and OAR 461-115-0090 will have a negative fiscal impact on the Department of \$1,630, the cost of translating and revising form MSC 231. Future costs of printing cannot be determined at this time. There is no expected fiscal impact on clients, other state agencies, the public, local government, or businesses, including small businesses. There are no costs of compliance for small businesses. No small business are subject to this rule.

The Department estimates that amending OAR 461-115-0700 will have a negative fiscal impact on the Department of \$1,616.91, the cost of translating and printing the Authorization for Electronic Verification of Resources form as of June 5th, 2020. Future costs of printing cannot be determined at this time. There is no expected fiscal impact on clients, other state agencies, the public, local government, or businesses, including small businesses. There are no costs of compliance for small businesses. No small business are subject to this rule.

The Department estimates that permanently adopting OAR 461-135-0880 will have a positive impact on Medicaid and long-term care service clients, namely due to keeping benefits open or at current levels for individuals during the COVID-19 emergency period. The Department estimates that this provision will have a negative financial impact on the Department, however, as CMS has increased the FMAP rate by 6.2% during this period, losses may be reduced or mitigated. The Department cannot provide a reasonable estimate of exact financial impact amounts because there is no way of knowing how long the COVID-19 emergency period will last. Also, there has not been a comparison of cases that would have closed, reduced, or experience an increase in client liability; if not for this rule. There is no expected fiscal impact on other state agencies, the public, local government, or businesses, including small businesses. There are no costs of compliance for small businesses. No small business are subject to this rule.

The Department estimates that amending OAR 461-140-0296 will have a positive fiscal impact on some Oregon

Supplemental Income Program Medical (OSIPM) program clients, a negative fiscal impact on other OSIPM program clients, and an uncertain fiscal impact on providers of long term care services, some of which are small businesses, and the Department (including county-operated AAAs). Under the amended rule, OSIPM program clients who transfer assets for less than fair market value on or after October 1, 2020 will be subject to a shorter disqualification period because the higher divisor in the rule will result in fewer months of disqualification for the client, increasing Department expenditures. The exact magnitude of the fiscal impact to clients and the Department cannot be estimated because the number of clients who will choose to engage in a disqualifying transfer to become eligible for Medicaid is unknown. Providers of long term care services, some of which are small businesses, will experience an uncertain fiscal impact as some clients will become eligible for program benefits sooner. There is no expected fiscal impact on other state agencies, the public, local government, or businesses, including small businesses. There are no costs of compliance for small businesses. No small business are subject to this rule.

The Department estimates that permanently adopting OAR 461-145-0087 will have a positive impact for the eligibility of individuals applying for or receiving GA, OSIPM, and QMB program benefits. For all other programs, the Department estimates that the adoption could have a negative impact for the eligibility of individuals receiving Federal Pandemic Unemployment Compensation payments, but a positive impact on those that receive a Recovery Rebate. The Department cannot estimate a specific dollar amount as there has not been a comparison of how many individuals had benefits closed, denied, or reduced specifically due to FPUC. There is no expected fiscal impact on the Department, other state agencies, the public, local government, or businesses, including small businesses. There are no costs of compliance for small businesses. No small business are subject to this rule.

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? YES

RULES PROPOSED:

461-115-0071, 461-115-0090, 461-115-0700, 461-135-0880, 461-140-0296, 461-145-0087

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:

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 responsibly 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 ~~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 461-135-055~~10~~ 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

AMEND: 461-115-0700

RULE SUMMARY: OAR 461-115-0700 about Required Verification; GA, OSIP, OSIPM, and QMB, is being amended to update information and requirements regarding asset verification for non-MAGI medical programs and remove repetitive language. This amendment will make verification process and requirements more clear.

CHANGES TO RULE:

461-115-0700

Required Verification; GA, OSIP, OSIPM, and QMB ¶

In the GA, OSIP, OSIPM, and QMB programs:¶

(1) All eligibility (see OAR 461-001-0000) factors, including identity, must be verified at initial application, when there is a change to any factor, and whenever eligibility for benefits becomes questionable. See OAR 461-115-0704 for the requirements to provide verification of citizenship and immigration status.¶

(2) Methods of verifying information include the following:¶

(a) Electronic. Information available and provided to the Department from an electronic source, including but not limited to:¶

(A) State Wage Information Collection Agency.¶

(B) Internal Revenue Service.¶

(C) Social Security Administration.¶

(D) State Unemployment Compensation Agency.¶

(E) State agencies administering programs under Title 1, 10, 14, or 16 of the Social Security Act.¶

(F) SNAP agencies.¶

(G) Other insurance affordability programs.¶

(H) The Department of Treasury.¶

(I) The Department of Homeland Security.¶

(J) Asset Verification System.¶

(b) Self-attestation. Information provided orally or in writing by or on behalf of an individual.¶

(c) Documentation. Documentary evidence provided by or on behalf of an individual, or obtained by the Department from a third party.¶

(3) If necessary, information needed to determine eligibility must be provided by or on behalf of the individual requesting benefits.¶

(4) The Department must allow a reasonable amount of time to provide additional information, if necessary.¶

(5) Financial eligibility.¶

(a) In the OSIP, OSIPM, and QMB-DW programs, if the total self-attested value of gross "liquid resources" of the financial group (see OAR 461-110-0530) is less than \$400, further verification of the value of "liquid resources" is only required if questionable. For the purposes of this rule, "liquid resources" include cash as well as other resources that can be converted to cash within 20 business days, except that the cash surrender value of a life insurance policy is not considered a liquid resource.¶

~~(b) The Department must request and use information relevant to verifying eligibility from available electronic sources.¶~~

~~(c) Except as provided for in subsection (c) of this section, the Department must use the information it receives from an electronic source to verify eligibility without requiring additional documentation. request and use information from available electronic sources, without requiring additional documentation, to verify eligibility and for budgeting (see OAR 461-001-0000). ¶~~

~~(d) The Department may request additional documentation from the individual if:¶~~

~~(A) The information is not available to the Department electronically.¶~~

~~(B) The information provided by self-attestation differs from the information received electronically and the individual or person acting on the individual's behalf could not provide a statement which reasonably explains the discrepancy.¶~~

~~(e) For individuals receiving or applying for long-term care (see OAR 461-001-0000) and subject to the provisions of OAR 461-160-0610, the Department may~~ The Department must use the Asset Verification System when a resource or transfer of assets (see OAR 461-140-0210 to 461-140-0300) evaluation is necessary to determine eligibility. Consent to use the Asset Verification System is request additional documentation from the individual if the information provided by self-attestation differs from the information the Department receives from an electronic source and a condition of eligibility. If resource information is not available, or not returned, through the Asset Verification System, or differs from self-attested information, resource documentation may be requested directly from the individual, subject to the other requirements of this section.¶

(6) Identity.¶

(a) Except as provided for in subsections (c) and (d) of this section, individuals must provide documentation to verify identity.¶

(b) The Department must accept the following as proof of identity, provided such document has a photograph or other identifying information sufficient to establish identity, such as name, age, race, height, weight, eye color, or address:¶

(A) Driver's license issued by a state or territory.¶

(B) School identification card.¶

(C) U.S. military card or draft record.¶

(D) Identification card issued by the federal, state, or local government.¶

(E) Military dependent identification card.¶

(F) U.S. Coast Guard Merchant Mariner card.¶

(G) For children under the age 19, a clinic, doctor, hospital, or school record, including preschool or day care records.¶

(H) Two other documents containing consistent information that corroborates an applicant's identity. Such documents can include employer identification cards; high school, high school equivalency, and college diplomas; marriage certificates; divorce decrees; and property deeds or titles.¶

(c) The Department may accept the finding of identity from a federal or another state agency for the purposes of public assistance, law enforcement, internal revenue or tax bureau, or corrections, if the agency has verified and certified the identity of the individual.¶

(d) If the individual does not have any document specified in subsection (b) of this section, and identity cannot be verified under subsection (c) of this section, the Department must accept an affidavit signed, under penalty of perjury, by an individual other than the applicant who can reasonably attest to the applicant's identity. Such affidavit must contain the individual's name and other identifying information described in subsection (b) of this section.¶

(7) Social Security numbers. The Department must verify that the SSN furnished by an individual was issued to that individual. Acceptable sources of verification must show a correct Social Security number, including but not limited to:¶

(a) Social Security Card.¶

(b) Social Security award letters or other correspondence or forms bearing the individual's SSN.¶

(c) Medicare card, if the individual is receiving Medicare off ~~his or her~~ their own record.¶

(d) Information provided electronically to the Department from the Social Security Administration.¶

(e) Wage stubs or unemployment records.¶

(f) IRS forms or letters.¶

(8) Pregnancy. The Department must accept self-attestation of pregnancy unless the ~~state has~~ Department has information that is not reasonably compatible with such attestation.¶

(9) Residency, age, date of birth, household size. The Department may accept self-attestation as verification of residency, age, date of birth, and household size, unless the statement differs from information available to the Department electronically or otherwise, in which case the Department may require the individual to provide documentation.¶

(10) If the Department is unable to verify information electronically or from a third party, the Department will

accept, on a case-by-case basis, self-attestation to verify all eligibility criteria, except citizenship and immigration status, under the following circumstances:¶¶

(a) Documentation does not exist at initial application or redetermination; or¶¶

(b) Documentation is not reasonably available at initial application or redetermination, such as in the case of homelessness, domestic violence, or natural disaster.¶¶

(11) The Department may not deny, close, or reduce benefits if verification available to the Department is incompatible or absent, and the Department did not request additional information from the individual.

Statutory/Other Authority: 411.070, 411.404, 411.706, 413.085, 414.685, ORS 409.050, 411.060, 411.402, 42 USC 1396W

Statutes/Other Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685, 414.839, 411.402, 42 USC 1396W

ADOPT: 461-135-0880

RULE SUMMARY: OAR 461-135-0880 about OSIPM and QMB programs; COVID-19, is being adopted permanently to allow the Department to adopt rule provisions regarding the OSIPM and QMB programs in the event of a pandemic.

CHANGES TO RULE:

461-135-0880

OSIPM and QMB Programs; COVID-19

The provisions in this rule apply to the OSIPM and QMB programs. ¶

(1) The Department amends the following rules or rule sections regarding the OSIPM and QMB programs.¶

(a) OAR 461-115-0700¶

(b) OAR 461-180-0030¶

(c) OAR 461-180-0040(4) and (5).¶

(d) OAR 461-180-0120(1), (2), and (3)(b).¶

(2) Notwithstanding OAR 461-180-0030, OAR 461-180-0040(4) and (5), OAR 461-180-0120(1), (2), and (3)(b), the Department shall suspend the effective date for all actions that reduce or close OSIPM or QMB program benefits, except for: ¶

(a) Program closures when an individual:¶

(A) Passes away.¶

(B) Is confirmed to have moved out of state.¶

(C) Requests a voluntary closure.¶

(D) In the QMB programs, is no longer eligible for Medicare. ¶

(E) Is approved for a one-time cash payment, such as a special needs payment for home repairs, or¶

(F) Is no longer eligible for an ongoing special needs payment, except when ineligibility is due to a change in service setting.¶

(b) Benefit reductions, when an individual requests a voluntary reduction.¶

(c) Increases to client liability, when:¶

(A) There is a change in service setting.¶

(B) Restoring previous liability after a one-time medical deduction.¶

(3) The Department shall accept electronic signature on all forms for the OSIPM and QMB programs. For the purposes of this rule, electronic signature is defined as:¶

(a) A written signature submitted digitally via email, or fax.¶

(b) A signature submitted through a Department electronic application system.¶

(c) A signature submitted telephonically. For telephonic signatures:¶

(A) The Department will make an effort to authenticate the identity of the individual providing the telephonic signature. ¶

(B) The individual shall be made aware of the rights and responsibilities listed in the form.¶

(C) The individual shall be made aware that the statement of their full name is being accepted as their signature. ¶

(D) The Department shall send a copy of the telephonically signed document to the individual, and ¶

(E) The Department shall make record of the telephonic signature.¶

(4) Notwithstanding OAR 461-115-0700, the Department will accept self-attestation (see OAR 461-115-0700(2)(b)) to verify all eligibility criteria, except citizenship and immigration status.¶

(5) The provisions of this rule shall end on the last day of the month in which the public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak of coronavirus disease 2019 (COVID-19) is lifted.

Statutory/Other Authority: ORS 84.001 to 84.061, 409.050, 411.060, 411.070, 411.083, 412.006, 412.009, 412.024, 412.049, 412.064, 412.089

Statutes/Other Implemented: ORS 84.001 to 84.061, 411.060, 411.070, 411.083, 412.006, 412.009, 412.024, 412.049, 412.064, 412.089, 409.010, 411.081, 411.087, 45 CFR 206.10, 45 CFR 263.2, 45 CFR 400.155, Pub. L. 166-127, 42 CFR 435.907, 42 CFR 435.914

AMEND: 461-140-0296

RULE SUMMARY: OAR 461-140-0296 about Length of Disqualification Due to an Asset Transfer; OSIP and OSIPM, in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to update the amount used to calculate the number of months of ineligibility due to a disqualifying transfer of assets. This amount is calculated by using the average monthly cost to a private patient of nursing facility services in Oregon.

CHANGES TO RULE:

461-140-0296

Length of Disqualification Due to an Asset Transfer; OSIP and OSIPM ¶

(1) This rule applies to individuals in the OSIP and OSIPM programs who live in a nonstandard living arrangement (see OAR 461-001-0000) and is retroactively effective July 6, 2020.¶

(2) A financial group (see OAR 461-110-0530) containing a member disqualified due to the transfer of an asset is disqualified from receiving benefits. The length of a disqualification period resulting from the transfer is the number of months equal to the uncompensated value (see OAR 461-140-0250) for the transfer divided by the following dollar amount:¶

(a) If the initial month (see OAR 461-001-0000) is prior to October 1, 1998-\$2,595.¶

(b) If the initial month is on or after October 1, 1998 and prior to October 1, 2000-\$3,320.¶

(c) If the initial month is on or after October 1, 2000 and prior to October 1, 2002-\$3,750.¶

(d) If the initial month is on or after October 1, 2002 and prior to October 1, 2004-\$4,300.¶

(e) If the initial month is on or after October 1, 2004 and prior to October 1, 2006-\$4,700.¶

(f) If the initial month is on or after October 1, 2006 and prior to October 1, 2008-\$5,360.¶

(g) If the initial month is on or after October 1, 2008 and prior to October 1, 2010-\$6,494.¶

(h) If the initial month is on or after October 1, 2010 and prior to October 1, 2016-\$7,663.¶

(i) If the initial month is on or after October 1, 2016 and prior to October 1, 2018--\$8,425.¶

(j) If the initial month is on or after October 1, 2018---\$8,784 and prior to October 1, 2020 ---\$8,784.¶

(k) If the initial month is on or after October 1, 2020---\$9,551.¶

(3) For transfers by an individual and the spouse of an individual that occurred before July 1, 2006:¶

(a) Add together the uncompensated value of all transfers made in one calendar month and treat this total as one transfer.¶

(b) If the uncompensated value of the transfer is less than the applicable dollar amount identified in subsections (2)(a) to (2)(jk) of this rule, there is no disqualification.¶

(c) If there are multiple transfers in amounts equal to or greater than the applicable dollar amount identified in subsections (2)(a) to (2)(jk) of this rule, each disqualification period is calculated separately.¶

(d) The number of months resulting from the calculation in section (2) of this rule is rounded down to the next whole number.¶

(e) Except as provided in subsection (3)(f) of this rule, the first month of the disqualification is the month the asset was transferred.¶

(f) If disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.¶

(g) If both spouses of a couple are in a nonstandard living arrangement, part of the disqualification is apportioned to each of them. If one member of the couple is serving a disqualification when the other member of the couple begins living in a nonstandard living arrangement, any remaining disqualification is apportioned equally to each member of the couple. If one spouse is unable to serve the resulting disqualification period for any reason, the remaining disqualification applicable to both spouses must be served by the remaining spouse.¶

(4) For transfers by an individual and the spouse of an individual that occurred on or after July 1, 2006 and for income cap trusts under OAR 461-145-0540(10)(c) that accumulate funds in excess of the applicable dollar amount identified in subsections (2)(a) to (2)(jk) of this rule:¶

(a) If there are multiple transfers by the individual and the spouse of the individual, including any transfer less than the applicable dollar amount identified in subsections (2)(a) to (2)(jk) of this rule, the value of all transfers are added together before dividing by the applicable dollar amount identified in subsections (2)(a) to (2)(jk) of this rule. For an income cap trust, the calculation in section (2) of this rule is performed as soon as, but not before, funds have accumulated to at least the applicable dollar amount identified in subsections (2)(a) to (2)(jk) of this rule.¶

(b) The quotient resulting from the calculation in section (2) of this rule is not rounded. The whole number of the quotient is the number of full months the financial group is disqualified. This number might be zero full months. The remaining decimal or fraction of the quotient is used to calculate a partial month disqualification, which may be in addition to one or more full months. This remaining decimal or fraction is converted to a number of days by multiplying the decimal or fraction by the number of days in the month following the last full month of the disqualification period, if any. If this calculation results in a fraction of a day, the fraction of a day is rounded down.¶

(c) Notwithstanding when the Department learns of a disqualifying transfer, the first month of the disqualification is:¶

(A) For an individual who transfers an asset while he or she is already receiving Department-paid long-term care (see OAR 461-001-0000) or home and community-based care (see OAR 461-001-0030) in a nonstandard living arrangement, the month following the month the asset was transferred, except that if disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.¶

(B) For an applicant who transfers an asset prior to submitting an application and being determined eligible and for an individual who transfers an asset while he or she is already receiving benefits in a standard living arrangement (see OAR 461-001-0000), the date of request (see OAR 461-115-0030) for long-term care or home and community-based care as long as the applicant or individual would otherwise be eligible but for this disqualification period. If the applicant or individual is not otherwise eligible on the date of request, the disqualification begins the first date following the date of request that the applicant or individual would be otherwise eligible but for the disqualification period.¶

(d) If both spouses of a couple are in a nonstandard living arrangement, part of the disqualification is apportioned to each of them. If one member of the couple is serving a disqualification when the other member of the couple begins living in a nonstandard living arrangement, any remaining disqualification is apportioned equally to each member of the couple. If one spouse is unable to serve the resulting disqualification period for any reason, the remaining disqualification applicable to both spouses must be served by the remaining spouse.¶

(5) If an asset is owned by more than one person, by joint tenancy, tenancy in common, or similar arrangement, the share of the asset owned by the individual is considered transferred when any action is taken either by the individual or any other person that reduces or eliminates the individual's control or ownership in the individual's share of the asset.¶

(6) For an annuity that is a disqualifying transfer under section (11) of OAR 461-145-0022, the disqualification period is calculated based on the uncompensated value as calculated under OAR 461-140-0250, unless the only requirement that is not met is that the annuity pays beyond the actuarial life expectancy of the annuitant. If the annuity pays beyond the actuarial life expectancy of the annuitant, the disqualification is calculated according to section (7) of this rule.¶

(7) If an individual or the spouse of an individual purchases an annuity on or before December 31, 2005, and the only requirement that is not met is that the annuity pays benefits beyond the actuarial life expectancy of the annuitant, as determined by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration, a disqualification period is assessed for the value of the annuity beyond the actuarial life expectancy of the annuitant.

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

Statutes/Other Implemented: 42 USC 1396p, ORS 409.010, 411.060, 411.704, 411.706

ADOPT: 461-145-0087

RULE SUMMARY: OAR 461-145-0087 about Coronavirus Aid, Relief, and Economic Security (CARES) Act, is being permanently adopted in order to provide guidance regarding how programs will treat certain types of CARES Act payments. This rule adoption will provide ongoing clarity and transparency to the Department and the public.

CHANGES TO RULE:

461-145-0087

Coronavirus Aid, Relief, and Economic Security (CARES) Act

(1) In all programs, Recovery Rebate payments authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) are: ¶

(a) An excluded asset (OAR 461-001-0000) in the month of receipt.¶

(b) An excluded asset for 12 full months starting with the month following the month of receipt, and¶

(c) After the 12-month period, the remainder is countable (OAR 461-001-0000) as a resource.¶

(2) Federal Pandemic Unemployment Compensation payments authorized by the CARES Act are treated as follows:¶

(a) In the GA and OSIPM programs, the payments are excluded as income and resources in the month of receipt. All funds remaining after the month of receipt are treated as a resource.¶

(b) In the QMB programs, the payments are excluded.¶

(c) In all other programs, the payments are treated as unemployment compensation benefits (see OAR 461-145-0550). Federal Pandemic Unemployment Compensation payments are not Disaster Unemployment Assistance (see OAR 461-145-0100).

Statutory/Other Authority: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049

Statutes/Other Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049