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

**SSP 27-2020**

CHAPTER 461  
DEPARTMENT OF HUMAN SERVICES  
SELF-SUFFICIENCY PROGRAMS

**FILED**  
08/07/2020 3:21 PM  
ARCHIVES DIVISION  
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& LEGISLATIVE COUNSEL

FILING CAPTION: Correcting omitted verbiage and a math error in two APD Medical Programs

EFFECTIVE DATE: 08/07/2020 THROUGH 02/02/2021

AGENCY APPROVED DATE: 07/07/2020

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Rules Coordinator

NEED FOR THE RULE(S):

OAR 461-140-0296 about Length of Disqualification Due to an Asset Transfer; OSIP and OSIPM, needs to be changed to correct a math error. This change aligns the rule text with current policy.

OAR 461-145-0022 about Annuities; OSIPM, needs to be changed to add an accidental omission of verbiage from the July 8, 2020 rule filing, which makes clear that certain types of annuities that list the first remainder beneficiary as the annuitant's child, must name the Department as the second remainder beneficiary for up to the total amount of medical assistance paid on behalf of the individual in order for the annuity to be treated as mentioned in that section of the rule. This change aligns the rule text with current policy.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by correcting OAR 461-140-0296 and OAR 461-145-0022 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 immediate nature of ongoing eligibility determinations and the need for Department rules to reflect accurate information. Failure to act immediately would result in incorrect information regarding annuity treatment in the OSIPM programs as well as incorrect information regarding disqualifications based on an asset transfer in the OSIP and OSIPM programs, remaining in rule.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

No documents relied upon.

RULES:

461-140-0296, 461-145-0022

AMEND: 461-140-0296

RULE SUMMARY: OAR 461-140-0296 about Length of Disqualification Due to an Asset Transfer; OSIP and OSIPM, is

being changed to correct a math error. This change aligns the rule text with current policy.

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.¶

(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)(j) 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)(j) 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)(j) 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)(j) 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)(j) 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)(j) 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~~zero 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

AMEND: 461-145-0022

RULE SUMMARY: OAR 461-145-0022 about Annuities; OSIPM, is being changed to add an omission which makes clear that certain types of annuities that list the first remainder beneficiary as the annuitant's child, must name the Department as the second remainder beneficiary for up to the total amount of medical assistance paid on behalf of the individual, in order for the annuity to be treated as mentioned in that section of the rule. This change aligns the rule text with current policy.

CHANGES TO RULE:

461-145-0022

Annuities; OSIPM ¶

Retroactively effective July 6, 2020, in the OSIPM program:¶

(1) For the purposes of this rule:¶

(a) "Actuarially sound" means a commercial annuity which pays principal and interest out in equal monthly installments over the actuarial life expectancy of the annuitant, with no deferral and no balloon payments. For purposes of this definition, the actuarial life expectancy is established by the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration, and, for transactions (including the purchase of an annuity) occurring on or after July 1, 2008, the payout period must be within 12 months of the actuarial life expectancy, measured at the time of purchase.¶

(b) For an individual, an annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity, if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR 461-145-0380.)¶

(c) The definition of "child" in OAR 461-001-0000 does not apply.¶

(d) "Child" means a biological or adoptive child who is:¶

(A) Under age 21; or¶

(B) Any age and meets the Social Security Administration criteria for blindness or disability.¶

(e) "Commercial annuity" means a contract or agreement (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.¶

(2) An annuity that does not make regular payments for a lifetime or specified number of years will not be excluded from countable resources under this rule.¶

(3) When an individual applies for medical assistance, both initially and at periodic redetermination (see OAR 461-115-0050 and 461-115-0430), the individual must report any annuity owned by the individual or a spouse of the individual.¶

(4) By signing the application for assistance, an individual and the spouse of an individual agree that the Department, by virtue of providing medical assistance, becomes a remainder beneficiary as described in sections (8) and (10) of this rule, under any commercial annuity purchased on or after February 8, 2006, unless the annuity is included in the community spouse's resource allowance under OAR 461-160-0580(2)(c).¶

(5) If the Department is notified about a commercial annuity, the Department will notify the issuer of the annuity about the right of the Department as a preferred remainder beneficiary, as described in sections (8) and (10) of this rule, in the amount of medical assistance provided to the individual.¶

(6) If an individual or a spouse of an individual purchases or transfers a commercial annuity prior to January 1, 2006, the following applies:¶

(a) If the individual is in a nonstandard living arrangement (see OAR 461-001-0000), the transaction may be subject to the rules on asset transfers at OAR 461-140-0210 and following. For an annuity that is not disqualifying or the disqualification period has already been served, the annuity is not counted as a resource; payments are counted as unearned income to the payee.¶

(b) If the individual is in a standard living arrangement, the annuity payments are counted as unearned income to the payee.¶

(7) Sections 8 and 9 of this rule apply to a commercial annuity if:¶

(a) The individual is in a nonstandard living arrangement, and the individual or the spouse of the individual purchases an annuity from January 1, 2006 through June 30, 2006; or¶

(b) The individual is in a standard living arrangement (see OAR 461-001-0000), and the individual or the spouse of an individual purchase an annuity on or after January 1, 2006.¶

(8) A commercial annuity covered by section (7) of this rule is counted as a resource unless the annuity is excluded by meeting the following requirements:¶

(a) If a married individual is an annuitant, the annuity must meet the requirements of subsection (8)(d) of this rule.¶

(b) If an unmarried individual is an annuitant, the annuity must meet the requirements of subsection (8)(d) of this rule, and the annuity must specify that upon the death of the individual, the first remainder beneficiary is either of the following:¶

(A) The Department, for all funds remaining in the annuity up to the amount of medical assistance provided on behalf of the individual.¶

(B) The child of the individual, if the Department is the next remainder beneficiary (after this child), up to the amount of medical assistance provided on behalf of the individual, in the event that the child does not survive the individual.¶

(c) If a spouse of an individual is the annuitant, the annuity must meet the requirements of subsection (8)(d) of this rule, and the annuity must specify that, upon the death of the spouse of the individual, the first remainder beneficiaries are either of the following:¶

(A) The individual, in the event that the individual survives the spouse; and the Department, in the event that the individual does not survive the spouse, for all funds remaining in the annuity up to the amount of medical assistance provided on behalf of the individual.¶

(B) A child of the spouse; and the individual in the event that this child does not survive the spouse.¶

(d) An annuity covered by section (7) of this rule may not be excluded unless the annuity meets all of the following requirements:¶

(A) The annuity is irrevocable.¶

(B) The annuity must be actuarially sound.¶

(C) The annuity is issued by a business that is licensed and approved to issue a commercial annuity by the state in which the annuity is purchased.¶

(9) If an annuity is excluded as a resource under section (8) of this rule, the annuity payments are counted as unearned income to the payee. If an annuity is a countable resource under section (8) of this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.¶

(10) This section lists the requirements for a commercial annuity purchased by the individual or the spouse of the individual on or after July 1, 2006, when an individual is in a nonstandard living arrangement, and the annuity names the individual or the community spouse as the annuitant. Annuities that meet all of the requirements of this section are counted as unearned income to the payee. The treatment of annuities that do not meet all requirements of this section is covered in sections (11) and (12) of this rule.¶

(a) The annuity must comply with one of the following paragraphs:¶

(A) The first remainder beneficiary is the spouse of the individual; the Department is named as the second remainder beneficiary for up to the total amount of medical assistance paid on behalf of the individual; and in the event that the spouse transfers any of the remainder of the annuity for less than fair market value (see OAR 461-001-0000), the Department is the second remainder beneficiary for up to the total amount of medical assistance paid on behalf of the individual.¶

(B) The first remainder beneficiary is the annuitant's child; the Department is named as the second remainder beneficiary for up to the total amount of medical assistance paid on behalf of the individual; and in the event that the child or a representative on behalf of the child transfers any of the remainder of the annuity for less than fair

market value, the Department is the second remainder beneficiary for up to the total amount of medical assistance paid on behalf of the individual.¶¶

(C) The first remainder beneficiary is the Department for up to the total amount of medical assistance paid on behalf of the individual.¶¶

(b) The annuity must be irrevocable.¶¶

(c) The annuity must be non-assignable.¶¶

(d) The annuity must be actuarially sound.¶¶

(e) The annuity is issued by a business that is licensed and approved to issue a commercial annuity by the state in which the annuity is purchased.¶¶

(11) If the individual is the annuitant and a commercial annuity does not meet all of the requirements of subsections (10) (a), (10)(d), and (10)(e) of this rule, or the spouse of the individual is the annuitant and a commercial annuity does not meet the requirements of subsections (10)(a), (10)(d), and (10)(e) of this rule, there is a disqualifying transfer of assets under OAR 461-140-0210 and following. See OAR 461-140-0296(6) and (7) for calculation of the disqualification period. To the extent to which there is a disqualifying transfer of assets under this section, the annuity is not counted as a resource.¶¶

(12) If the annuity does not meet all of the requirements of subsections (10)(b) or (10)(c) of this rule, the annuity is counted as a resource with cash value equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

Statutory/Other Authority: ORS 411.060, 411.070, 411.083, 411.404

Statutes/Other Implemented: ORS 411.060, 411.070, 411.083, 411.404