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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 34-2020

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Making temporary amendments to a rule regarding child care programs during COVID-19

EFFECTIVE DATE: 09/29/2020 THROUGH 03/27/2021

AGENCY APPROVED DATE: 09/29/2020

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NEED FOR THE RULE(S):

OAR 461-135-0440 about Child Care Benefit Eligibility and Payment; COVID-19, needs to be amended to implement immediate supports for the Oregon child care system. The rule also needs to be changed to clarify some provisions and to allow payment for certain Emergency Child Care (ECC) providers. The recent wildfires caused child care providers to evacuate and temporarily close with no warning. The child care system is already weakened by the ongoing pandemic, therefore immediate response was needed to help stabilize the child care provider base in Oregon. ECC providers are approved by the Office of Child Care (OCC), similar to how licensed providers are approved by OCC. ODHS already back pays licensed providers and needs to align the payment process for ECC providers to eliminate confusion and stabilize child care placements.

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 immediate nature and continuation of the pandemic, as well as the recent impacts to communities from the wildfires. Failure to act immediately could end supports to families needing to access benefits, partners, and child care providers. This rule amendment allows special provisions to be put into place that will support child care providers and families in need of child care.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Communications regarding this rule change, including but not limited to communications with the Department of Education, the lead agency for the Child Care Development Fund, and the Governor's Office; are available from the ERDC Policy Analyst Term.

AMEND: 461-135-0440

RULE SUMMARY: OAR 461-135-0440 about Child Care Benefit Eligibility and Payment; COVID-19, is being changed to allow child care providers the ability to bill ODHS for absent days due to temporary closures related to Oregon

wildfires, to clarify other temporary closure billings must be COVID-19 related, and to allow back payment of providers to the date they are approved as Emergency Child Care (ECC) through the Office of Child Care (OCC).

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 461-160-0040(4);¶
- (c) OAR 461-160-0193(2);¶
- (d) OAR 461-160-0300(2), (3)(b);¶
- (e) OAR 461-135-0405(2); and¶
- (f) OAR 461-155-0150(3), (3)(g).¶

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

- (a) OAR 461-165-0160(2)(f).¶
- (~~b~~) OAR 461-165-0180(13)(~~a~~)(A), and¶
- (~~b~~c) OAR 461-170-0160(1), (2), (3).¶

(3) 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) The monthly copay is \$0 beginning the month of March 2020, for the entirety of the certification period (see OAR 461-001-0000), for cases whose certification period begins on or before October 31, 2020.¶
- (5) The Department shall pay for:¶

(a) 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.¶
- (b) Days a child is unable to attend care due to a temporary shutdown related to COVID-19 during the COVID-19 state of emergency period initiated by Executive Order 20-03 of the Governor of Oregon.¶
- (c) Days a school-age child is attending child care and participating in distance learning due to concerns, school closures, or medical reasons related to COVID-19.¶
- (~~d~~) For the months of September, October, and November of 2020; days a child is unable to attend care due to a temporary shutdown related to Oregon wildfires during the COVID-19 state of emergency period initiated by Executive Order 20-03 of the Governor of Oregon; if the location at which care is provided was in an:¶
- (A) Evacuation Level 1, 2, or 3 area; or¶
- (B) Area with an Air Quality Index of 101 or higher.¶

(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) 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. Online infant and child CPR trainings approved through the Oregon Registry will be accepted by the Department until July 31, 2021.¶

(10) Providers who are approved by the Department may receive retroactive payment prior to the Department approval date and beginning the date the following were met:¶

(a) The provider was approved through the Office of Child Care (OCC) as an Emergency Child Care provider due to the COVID-19 state of emergency, and¶

(b) The provider met all other Department provider requirements.¶

(11) Providers who are not legally exempt are not eligible to receive payment from the Department if:¶

(a) Their application or approval to operate Emergency Child Care was denied, suspended, or revoked by the Office of Child Care (OCC); or¶

(b) They voluntarily surrendered their Emergency Child Care approval while under investigation by the OCC or at any time after OCC gave them notice of any administrative proceeding.¶

(12) Unless indicated otherwise in this rule, the provisions in this rule end on 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: 131.715, 329a.500, ORS 84.001 to 84.061, ORS 411.060, 411.070, 412.006, 412.049, 409.050

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