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

**SSP 43-2020**

CHAPTER 461  
DEPARTMENT OF HUMAN SERVICES  
SELF-SUFFICIENCY PROGRAMS

**FILED**

12/04/2020 3:45 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Making an Additional Change to a Temporary Rule Regarding Child Care During COVID-19

EFFECTIVE DATE: 12/04/2020 THROUGH 03/27/2021

AGENCY APPROVED DATE: 12/04/2020

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NEED FOR THE RULE(S):

OAR 461-135-0440 needs to be amended to align the rule with the child care providers selected through the ODHS data pull for the one-time supplemental payment. This will align eligibility and rule with Department actions.

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 the immediate nature of the pandemic in order to put into rule recent Department and inter-agency decisions and agreements. Failure to act immediately would place child care providers eligible for the supplemental one-time payment vulnerable under overpayment rules. Failure to act immediately would also create conflict between agency rule versus agency actions and decisions regarding provider one-time payments, creating confusion. This rule amendment enacts and makes clear critical and time-sensitive decisions and agreements.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

No documents relied upon.

AMEND: 461-135-0440

SUSPEND: Temporary 461-135-0440 from SSP 42-2020

RULE SUMMARY: OAR 461-135-0440 about Child Care Benefit Eligibility and Payment; COVID-19, is being amended to expand eligibility for the one-time supplemental payment to providers who received a payment from the Department for child care provided in October or November and met the other rule provisions.

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)~~ 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~~ December 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.¶

(e) A one-time supplemental payment of one of the following:¶

(A) In the amount of \$2,312.00 to child care providers who, at the time the Department completed the data pull on November 13, 2020, met the following criteria:¶

(i) Eligible for payment under OAR 461-165-0180,¶

(ii) Designation of a license-exempt standard family or enhanced family provider as identified by a Standard Family Rate provider type (see OAR 461-155-0150) or an Enhanced Family Rate provider type (see OAR 461-155-0150), and¶

(iii) Received a payment from the Department for child care provided during April, May, June, July, August, September, October, or November 2020.¶

(B) In the amount of \$2,842.00 to child care providers who, at the time the Department completed the data pull on November 13, 2020, met the following criteria:¶

(i) Met all criteria in subparagraph (5)(e)(A)(i) through (iii) of this rule, and¶

(ii) Have not received an Emergency Child Care grant from the Oregon Department of Education, Early Learning

Division for either phase one or phase two.

(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.

(a) Providers and their staff are not subject to the infant and child CPR and first aid certification renewal provisions if the training is not available in their preferred language.

(b) Individuals to whom subsection (9)(a) applies must complete the infant and child CPR and first aid certification within 60 days of the day the Governor of Oregon ends the COVID-19 state of emergency period initiated by Executive Order 20-03.

(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: ORS 131.715, 329a.500, ORS 84.001, ORS 411.060, 411.070, 412.006, 412.049, 409.050, 131.715, 329a.500, ORS 84.001 to 84.061, 84.061, 84.004, 84.007, 84.010, 84.013, 84.014, 84.016, 84.019, 84.022, 84.025, 84.028, 84.031, 84.034, 84.037, 84.040, 84.043, 84.046, 84.049, 84.052, 84.055, 84.058  
Statutes/Other Implemented: ORS 411.122, 411.141, 418.485, ORS 131.715, 329a.500, ORS 84.001, 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~~  
84.061, 84.004, 84.007, 84.010, 84.013, 84.014, 84.016, 84.019, 84.022, 84.025, 84.028, 84.031, 84.034, 84.037, 84.040, 84.043, 84.046, 84.049, 84.052, 84.055, 84.058