



PERMANENT ADMINISTRATIVE ORDER

SSP 45-2020

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

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RULES:

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AMEND: 461-001-0000

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-001-0000 about definitions for Chapter 461, is being amended to include new or more respectful terminology and update program names and information. It is also being amended to remove references to "microenterprise" and the Post-TANF program, as well as to update definitions, including "caretaker relative" and "signature."

CHANGES TO RULE:

461-001-0000

Definitions for Chapter 461 ¶

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. ~~Retroactively effective July 6, 2020, i~~In this chapter of rules, unless the context indicates otherwise:¶

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDSD), Department of Human Services (DHS), or any other agency formerly part of the Oregon Department of Human Services means the Oregon Department of Human Services (ODHS), except:¶

(a) The rule in which reference occurs only regulates programs covered by OAR chapter 461.¶

(b) ~~OCCS medical program eligibility~~Eligibility rules for HSD medical programs (see section (35) of this rules) are in OAR chapter 410, division 200.¶

- (2) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence (see section (25) of this rule), sexual assault, or stalking.¶
- (3) "Adjusted income" means the amount determined by subtracting income deductions from countable (see section (19) of this rule) income (see OAR 461-140-0010). Specific rules on the deductions are in OAR chapter 461, division 160.¶
- (4) "Adoption assistance" means financial assistance provided to families adopting children with special needs. "Adoption assistance" may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.¶
- (5) "Assets" mean income and resources.¶
- (6) "Basic decision notice" means a decision notice (see section (21) of this rule) mailed no later than the date of action given in the notice.¶
- (7) "Blind Work Expenses" has the meaning given in OAR 461-001-0035.¶
- (8) "Branch office" means any Department or AAA (Area Agency on Aging) office serving a program covered by this chapter of rules.¶
- (9) "Budgeting" means the process of calculating the benefit level.¶
- (10) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine eligibility (see section (28) of this rule) and benefit level for the payment month (see section (521) of this rule).¶
- (11) "Cafeteria plan" means a written benefit plan offered by an employer in which:¶
- (a) All participants are employees; and¶
 - (b) Participants may choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Service does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:¶
 - (A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);¶
 - (B) Group term life insurance plans (up to \$50,000);¶
 - (C) Dependent care assistance plans; and¶
 - (D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).¶
- (12) "Capital asset" means property that contributes toward earning self-employment income, ~~including self-employment income from a microenterprise (see section (45) of this rule)~~, either directly or indirectly. A "capital asset" generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.¶
- (13) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child (see section (16) of this rule). The status of "caretaker" ends once the individual no longer exercises care, control, and supervision of the child for 30 days.¶
- (14) "Caretaker relative" means an individual with whom the dependent child (see section (23) of this rule) is living, who assumes primary responsibility for the care of the dependent child, and ~~who is one of the following:~~¶
- ~~(a) A relative of the dependent child as follows:¶~~
 - ~~(A) A blood relative who is a parent (see section (51) of this rule), sibling, first cousin, nephew, or niece; including those of preceding generations as denoted by prefixes of grand, great, or great-great.¶~~
 - ~~(B) Stepfather, stepmother, stepbrother, and stepsister.¶~~
 - ~~(C) An individual who legally adopts the dependent child and any individual related to the individual adopting the dependent child.¶~~
 - ~~(b) The spouse (see section (65) of this rule) of a relative (see subsection (14)(a) of this section) of the dependent child:¶~~
 - (a) Is a biological, step, or adoptive relative of the dependent child; or¶
 - (b) Is the spouse of an individual described in subsection (a), even after the marriage is terminated by death or divorce.¶

- (15) "Certification period" means the period for which an individual is certified eligible for a program.¶
- (16) "Child" includes natural, step, and adoptive children. The term "child" does not include an unborn.¶
- (a) In the ERDC program, a "child" need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or ~~a~~noncitizen status requirements of OAR 461-120-0110, and must be:¶
- (A) Under the age of 18; or¶
- (B) Under the age of 19 and in secondary school or vocational training at least half time.¶
- (b) In the GA and OSIP programs, a "child" is an individual under the age of 18.¶
- (c) In the OSIPM and QMB programs, "child" means an unmarried individual who:¶
- (A) Is not considered a decision-maker in the household;¶
- (B) Is under the age of 18; and¶
- (C) Has at least one natural or adoptive parent in the same household.¶
- (d) In the REF and REFM programs, a "child" is an individual who is not an emancipated minor and is under the age of 18.¶
- (17) "Community based care" is any of the following:¶
- (a) Adult foster care - Room and board and 24-hour care and services for the elderly or for people with disabilities 18 years of age or older. The care is contracted to be provided in a home for five or fewer ~~client~~client individuals.¶
- (b) Assisted living facility - A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.¶
- (c) In-home Services - Individuals living in their home receiving services determined necessary by the Department.¶
- (d) Residential care facility - A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.¶
- (e) Specialized living facility - Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition, or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.¶
- (f) Independent choices - In-Home Services program wherein the participant is given cash benefits to purchase self-directed personal assistance services or goods and services provided pursuant to a written service plan (see OAR 411-030-0020).¶
- (18) "Continuing benefit decision notice" means a decision notice that informs the ~~client~~client individual of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.¶
- (19) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.¶
- (20) "Custodial parents" mean parents who have physical custody of a child. "Custodial parents" may be receiving benefits as dependent children or as caretaker relatives for their own children.¶
- (21) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.¶
- (22) "Department" means the Oregon Department of Human Services (ODHS).¶
- (23) "Dependent child" in the TANF program means an individual who has not been legally emancipated and who is one of the following:¶
- (a) An individual who is not a caretaker relative (see section (14) of this rule) of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or¶
- (b) A minor parent (see section (46Z) of this rule) whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.¶
- (24) "Disability" means:¶
- (a) In the SNAP program, see OAR 461-001-0015.¶
- (b) In the REF, SFPSS, TA-DVS, and TANF programs, for purposes other than determining eligibility:¶
- (A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the

requirements of the program; or¶¶

(B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).¶¶

(25) "Domestic violence" means the occurrence of one or more of the acts described in subsections (a) to (d) of this section between family members, intimate partners, or household members:¶¶

(a) Attempting to cause or intentionally, knowingly, or recklessly causing physical injury or emotional, mental, or verbal abuse.¶¶

(b) Intentionally, knowingly, or recklessly placing another in fear of imminent serious physical injury.¶¶

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.¶¶

(d) Using coercive or controlling behavior.¶¶

(e) As used in this section, "family members" and "household members" mean any of the following:¶¶

(A) Spouse;¶¶

(B) Former spouse;¶¶

(C) Individuals related by blood, marriage (see section (446) of this rule), or adoption;¶¶

(D) Individuals who are cohabitating or have cohabited with each other;¶¶

(E) Individuals who have been involved in a sexually intimate or dating relationship; or¶¶

(F) Unmarried parents of a child.¶¶

(26) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to survivors of domestic violence. If the facility serves other people, a portion must be used solely for survivors of domestic violence.¶¶

(27) "Electronic application" is an application electronically signed and submitted through the Internet.¶¶

(28) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.¶¶

(29) "Equity value" means fair market value (see section (30) of this rule) minus encumbrances.¶¶

(30) "Fair market value" means the amount an item is worth on the open market.¶¶

(31) "Family stability" in the JOBS, Pre-TANF, ~~Post-TANF~~, SFPSS, TA-DVS, and TANF programs means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.¶¶

(32) "Family stability activity" in the JOBS, Pre-TANF, ~~Post-TANF~~, SFPSS, TA-DVS, and TANF programs means an action or set of actions taken by an individual, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability (see section (31) of this rule).¶¶

(33) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.¶¶

(34) "~~Homeless" in the ERDC program means lacking aSD" is the Health Systems Division.~~¶¶

(35) "HSD medical programs" means all programs under HSD, including:¶¶

(a) Breast and Cervical Cancer Treatment Program (BCCTP);¶¶

(b) Extended Medical Assistance (EXT);¶¶

(c) Former Foster Care Youth Medical (FFCYM);¶¶

(d) Substitute Care; and¶¶

(e) MAGI Medicaid/CHIP programs for which eligibility is based on MAGI methodology, including:¶¶

(A) MAGI Child; ¶¶

(B) MAGI Parent or Caretaker Relative;¶¶

(C) MAGI Pregnant Woman;¶¶

(D) MAGI Children's Health Insurance Program (CHIP), and¶¶

(E) MAGI Adult.¶¶

(36) "Homeless" in the ERDC program means an individual who is experiencing a lack of fixed regular and adequate nighttime residence and includes living in an emergency shelter, shared housing with others due to loss of housing or economic hardship, staying in motels, cars, parks, public places, tents, trailers, or other similar

settings.¶

(357) "Impairment-Related Work Expenses" have the meaning found in OAR 461-001-0035.¶

(368) "Income producing property" means:¶

(a) In all programs except OSIP, OSIPM, and QMB, real or personal property that generates income for the financial group (see OAR 461-110-0530). Examples of "income producing property" are:¶

(A) Livestock, poultry, and other animals.¶

(B) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, and condominiums.¶

(b) In the OSIP, OSIPM, and QMB programs, "income-producing property" means any real or personal property not used in self-employment (see OAR 461-145-0600 and 461-145-0915) that produces income for the financial group. "Income-producing property" includes:¶

(A) Livestock, poultry, or other animals that produce marketable products sold by the financial group.¶

(B) Farmland not excluded under OAR 461-145-0220 that is farmed or rented out by the financial group.¶

(C) Real property other than the home (including vacation homes and condominiums), that is rented out.¶

(c) In the OSIP, OSIPM, and QMB programs, "income-producing property" does not include:¶

(A) Rooms or other space for rent in the home (see OAR 461-145-0220).¶

(B) Livestock, poultry, or other animals kept for resale (see OAR 461-145-0010).¶

(379) "Initial month" of eligibility means any of the following:¶

(a) In all programs, the first month a benefit group (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.¶

(b) In all programs except the SNAP program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.¶

(c) In the SNAP program:¶

(A) The first month for which the benefit group is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).¶

(B) For migrant and seasonal farmworkers, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.¶

(d) For a new applicant to the OSIP or OSIPM program applying for care in a nonstandard living arrangement (see section (478) of this rule), for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the individual would have been eligible had it not been for the disqualifying transfer of assets (see section (5) of this rule).¶

(e) For a current recipient of the OSIP or OSIPM program receiving or applying for care in a nonstandard living arrangement, for the purpose of calculating the correct divisor in OAR 461-140-0296, the later of the following:¶

(A) The month the disqualifying transfer occurred.¶

(B) The month of application for long-term care (see section (404) of this rule) services if the individual would have been eligible had it not been for the disqualifying transfer of assets.¶

(3840) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).¶

(3941) "Legally married" means a marriage uniting two individuals according to:¶

(a) The statutes of the state where the marriage occurred;¶

(b) Except in the SNAP program, the common law of the state in which the two individuals previously resided while meeting the requirements for common law marriage in that state; or¶

(c) The laws of a country in which the two individuals previously resided while meeting the requirements for legal or cultural marriage in that country.¶

(402) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a "life estate" enables the owner of the "life estate" to possess, use, and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A "life estate" is created when an individual owns property and then transfers ownership to

another individual while retaining, for the rest of the individual's life, certain rights to that property. In addition, a "life estate" is established when a member of the financial group purchases a "life estate" interest in the home of another individual.

~~(413) "Lodger" means an someone who~~

~~(a) Is living with an individual, receiving with a Department client, who benefits;~~

~~(ab) Is not a member of the individual's filing group (see OAR 461-110-0310) of the Department client; and~~

~~(bc) Pays the filing group;~~

~~(A) In all programs except the OSIP, OSIPM, and QMB programs, for room and board.~~

~~(B) In the OSIP, OSIPM, and QMB programs, for room with or without board.~~

~~(424) "Long term care" means the system through which the Department provides a broad range of social and health services for extended periods of time to eligible adults who are aged, blind, or have disabilities. This includes nursing facilities and the Oregon State Hospital.~~

~~(435) "Lump-sum income" means earned or unearned income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. "Lump-sum income" includes but is not limited to:~~

~~(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.~~

~~(b) Income from inheritance, gifts, winnings, and personal injury claims.~~

~~(c) Income received less frequently than annually.~~

~~(446) "Marriage" means the union of two individuals who are legally married (see section ~~(3941)~~ of this rule).~~

~~(45) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.~~

~~(467) "Minor parent" in the ERDC and TANF programs means a parent under the age of 18.~~

~~(478) "Nonstandard living arrangement" is defined as follows:~~

~~(a) In the GA, OSIP, OSIPM, and QMB programs, an individual is considered to be in a "nonstandard living arrangement" when the individual is applying for or receiving services in any of the following locations:~~

~~(A) A nursing facility in which the individual receives long-term care services paid with Medicaid funding, except this subsection does not apply to a Medicare elrecipient in a skilled-stay nursing facility.~~

~~(B) An intermediate care facility for individuals with intellectual disabilities (ICF/ID).~~

~~(C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.~~

~~(D) A community based care (see section (17) of this rule) setting, except a State Plan Personal Care (SPPC) setting is not considered a "nonstandard living arrangement".~~

~~(b) In all programs except GA, OSIP, OSIPM, and QMB, "nonstandard living arrangement" means each of the following locations:~~

~~(A) Foster care.~~

~~(B) Residential Care facility.~~

~~(C) Drug or alcohol residential treatment facility.~~

~~(D) Shelter for individuals who are homeless or domestic violence shelter.~~

~~(E) Lodging house if paying for room and board.~~

~~(F) Correctional facility.~~

~~(G) Medical institution.~~

~~(48) "OCCS" is the Office of Client and Community Services, part of the Medical Assistance Programs under the Oregon Health Authority responsible for OCCS medical program eligibility policy, community outreach, OCCS Medical Program eligibility determinations, and the OHA Customer Service Call Center.~~

~~(49) "OCCS Medical Programs" refers to programs for which eligibility policy can be found in OAR chapter 410, division 200, and includes CEC, CEM, MAA, MAF, EXT, OHP, Substitute Care, BCCTP, and MAGI Medicaid/CHIP programs, including:~~

~~(a) MAGI Adult;~~

~~(b) MAGI Child;~~

~~(c) MAGI Parent or Other Caretaker Relative;~~

~~(d) MAGI Pregnant Woman; and~~

~~(e) MAGI CHIP.~~

(509) "Ongoing month" means one of the following:

(a) For all programs except the SNAP program, any month following the initial month (see section (379) of this rule) of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the SNAP program, any month in the certification period (see section (15) of this rule) following the initial month of eligibility.

(510) "Parent" for all programs except JPI (see OAR 461-135-1260) and the SNAP program means the biological or legal mother or father of an individual or unborn. For JPI and the SNAP program, "parent" means the biological or legal mother or father of an individual.

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The individual is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce, or death.

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a "parent" if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent has given up care, control, and supervision of the child.

(521) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(532) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.

(543) "Periodic income" means income received on a regular basis less often than monthly.

(554) "Primary person" for all programs except the SNAP program, means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The "primary person" for individual programs is as follows:

(a) In the TANF program, the parent or caretaker relative.

(b) In the ERDC program, the caretaker.

(c) In the SNAP program, see OAR 461-001-0015.

(d) In the GA, OSIP, OSIPM, QMB, REF, and REFM programs, the ~~client or client~~ individual or individual's spouse.

(565) "Qualified Partnership Policy" means a long-term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:

(a) Issued while the individual was a resident in Oregon on January 1, 2008 or later; or

(b) Issued in another state while the individual was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.

(576) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as "real property".

(587) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(598) "Safe homes" mean private homes that provide a few nights lodging to survivors of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

~~(6059)~~ "Shelter costs" mean, in all programs except the SNAP program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the SNAP program, see OAR 461-160-0420.

(610) "Shelter-in-kind" means an agency or individual outside the financial group provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs (see section ~~(6059)~~ of this rule) of the financial group. "Shelter-in-kind" does not include temporary shelter provided by a domestic violence shelter, shelter for individuals who are homeless, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park, or bus station.

(621) "Sibling" means the brother or sister of an individual. "Blood related" means they share at least one

biological or adoptive parent. "Step" means they are not related by blood, but are related by the marriage of their parents.¶

~~(63)~~ "Signature" means:¶

~~(a)~~ For all programs except TA-DVS, any written, electronic, or telephonic signature.¶

~~(b)~~ For the TA-DVS program, a written or telephonic signature.¶

~~(642)~~ "Spousal support" means income paid (voluntarily, per court order, or per administrative order) by a separated or divorced spouse to a member of the financial group.¶

~~(653)~~ "Spouse" means an individual who is legally married to another individual.¶

~~(664)~~ "Stable income" means income that is the same amount each time it is received.¶

~~(675)~~ "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.¶

~~(686)~~ "Teen parent" means, in the JOBS, REF, REFM, and TANF programs, a parent who is the age of 18 or 19.¶

~~(697)~~ "Timely continuing benefit decision notice" means a decision notice that informs the individual of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.¶

~~(7068)~~ "Trust funds" mean money, securities, or similar property held by an individual or institution for the benefit of another individual.¶

~~(7169)~~ "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.¶

~~(720)~~ "Variable income" means earned or unearned income that is not always received in the same amount each month.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 411.837, 412.001, 412.006, 412.014, 412.049, 413.085, 414.685

AMEND: 461-110-0210

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-110-0210 about household group, is being amended to make clear how the household group is formed for individuals that are experiencing homelessness. It is also being amended to add more respectful terminology for this population.

CHANGES TO RULE:

461-110-0210

Household Group ¶¶

(1) This rule describes who is included in the household group. The household group generally consists of the individuals who live together with or without the benefit of a dwelling.¶¶

(2) For ~~homeless~~ individuals who are homeless, the household group consists of the individuals who consider themselves living together. Individuals who are homeless who do not consider themselves living together are considered separate households.¶¶

(23) A separate dwelling is not recognized for the purpose of determining the members of a household group unless the living space has, separate from any other dwelling, an access to the outside that does not pass through another dwelling, a functional sleeping area, bathroom, and kitchen facility.¶¶

(34) Each individual in the household group who applies for benefits is an applicant. The household group and applicants form the basis for determining who is in the remaining eligibility groups.¶¶

(45) For all programs except the SNAP program, a separate household group is established for individuals who live in the same dwelling as another household group, if all the following subsections are true:¶¶

(a) There is a landlord-tenant relationship between the two household groups in which the tenant is billed by the landlord at fair market value (see OAR 461-001-0000) for housing.¶¶

(b) The tenant lives independently from the landlord.¶¶

(c) The tenant:¶¶

(A) Has and uses sleeping, bathroom, and kitchen facilities separate from the landlord; or¶¶

(B) Shares bathroom or kitchen facilities with the landlord, but the facilities are in a commercial establishment that provides room or board or both for compensation at fair market value.¶¶

(56) Individuals who live with more than one household group during a calendar month are members of the household group in which they spend more than half of their time, except as follows:¶¶

(a) In the ERDC program, if a child (see OAR 461-001-0000) lives with different caretakers during the month, the child is considered a member of both household groups.¶¶

(b) In the TANF program:¶¶

(A) If a parent (see OAR 461-001-0000) sleeps at least 30 percent of the time during the calendar month in the home of the dependent child (see OAR 461-001-0000), the parent is in the same household group as the dependent child.¶¶

(B) A dependent child is included in the household group with the caretaker relative (see OAR 461-001-0000), who usually has the major responsibility for care and control of the dependent child, if the dependent child lives with two household groups in the same calendar month for at least one of the following reasons:¶¶

(i) Education.¶¶

(ii) The usual caretaker relative is gone from the household for part of the month because of illness.¶¶

(iii) A family emergency.¶¶

(c) In the SNAP program:¶¶

(A) The individual is a member of the household group that provides the individual more than half of the individual's 21 weekly meals. If the individual is a child, the child is a member of the household group credited with providing the child more than half of the individual's 21 weekly meals. A household group is credited with providing breakfast and lunch for each day the child departs that group's home for school, even if the child eats no

breakfast or lunch at that home.¶¶

(B) During the month in which a resident of a domestic violence shelter (see OAR 461-001-0000) enters the domestic violence shelter, the resident may be included both in the household group he or she left and in a household group in the domestic violence shelter.¶¶

(67) In the OSIPM program, individuals who are being evaluated under OAR 461-135-0745 or OAR 461-135-0750, or who are residing in a 24-hour mental health residential care setting are a household group of one regardless of others living in the individual's dwelling or facility.¶¶

(78) Individuals absent from the household for 30 days or more are no longer part of the household group, except for the following:¶¶

(a) In all programs except the OSIPM and SNAP programs, an individual in an acute care medical facility remains in the household group unless the individual enters long-term care (see OAR 461-001-0000).¶¶

(b) In the ERDC and TANF programs:¶¶

(A) A caretaker relative who is absent for up to 90 days while in a residential alcohol or drug treatment facility is in the household group.¶¶

(B) A child who is absent for 30 days or more is in the household group if the child is:¶¶

(i) Absent for illness (unless the child is in a long-term care Title XIX facility), social service, or educational reasons;¶¶

(ii) In foster care, but expected to return to the household within the next 30 days.¶¶

(c) In the ERDC program, an individual in the household group who is:¶¶

(A) Absent because of education, training, or employment, including long-haul truck driving, fishing, or active duty in the U.S. armed forces;¶¶

(B) Absent to care for an emergent need of an individual related to illness, injury, or death; or¶¶

(C) Absent but reasonably anticipated to return within 90 days.¶¶

(d) In the TANF program, when a filing group (see OAR 461-110-0310 and 461-110-0330) includes more than one caretaker relative, a caretaker relative in the household group who is absent:¶¶

(A) Because of education, training, or employment - including absence while working or looking for work outside the area of the residence of the caretaker relative, such as long-haul truck driving, fishing, or active duty in the U.S. armed forces; or¶¶

(B) For up to 60 days solely due to the regulations of a shelter for individuals who are homeless or domestic violence shelter or other circumstances beyond the individual's control but who would otherwise be included in the household group.¶¶

(e) In the REF and REFM programs, an individual in the household group who was absent:¶¶

(A) For up to 90 days while in a residential alcohol or drug treatment facility;¶¶

(B) To care for an emergent need of an individual related to illness, injury, or death;¶¶

(C) Because of education, training, or employment - including absence while working or looking for work outside the area of the individual's residence, such as long-haul truck driving, fishing, or active duty in the U.S. armed forces; or¶¶

(D) For up to 60 days solely due to the regulations of a shelter for individuals who are homeless or domestic violence shelter or other circumstances beyond the individual's control but who would otherwise be included in the household group.¶¶

(f) In the REF, REFM, and TANF programs, the Department may approve one or more 30-day extensions of this time period if the Department receives sufficient information to assure the Department that the absent individual will return within the extension period.¶¶

(89) In the OSIP-EPD and OSIPM-EPD programs, the household group consists only of the individual applying for or receiving benefits.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.001, 412.006, 412.049, 413.085, 414.685, 414.839

AMEND: 461-135-0700

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-135-0700 about Specific Requirements; GA, is being changed to change outdated terminology, clarify and expand what conditions need exist in order to be considered an individual who is homeless for the purposes of this rule. The rule is also being changed to change what steps must be taken in order for the Supplemental Security Income application and Interim Assistance Agreement process to be considered complete. It is also being changed to allow the Department to close GA after a final decision is issued by a Social Security Administration administrative law judge.

CHANGES TO RULE:

461-135-0700

Specific Requirements; GA ¶

- (1) For purposes of this rule, referring to an individual as "homeless" means any of the following:¶
- (a) The individual does not have a fixed or regular nighttime residence;¶
 - (b) ~~The individual will lose his or provides the Department with verification, under OAR 461-115-0700, that they are required to leave their own place of residence within 90 days due to eviction or the inability to pay rent or mortgage; or the upcoming 90 days. If the individual is not able to provide documentation verification, the Department will accept, on a case-by-case basis, self-attestation under the following circumstances:¶~~
 - (A) Documentation does not exist at application; or¶
 - (B) Documentation is not reasonably available at application, such as in the case of homelessness, domestic violence, or natural disaster.¶
 - (c) The individual's primary residence is one of the following:¶
 - (A) A supervised shelter that provides temporary accommodations.¶
 - (B) A halfway house or residence for individuals who may become institutionalized.¶
 - (C) A temporary accommodation in another individual's or family's residence for 90 days or less.¶
 - (D) A place not designed to be or ordinarily used as a place for individuals to sleep, such as a hallway, bus station, or similar place.¶
 - (E) A place lacking consistent and operational access to essential utilities.¶
 - (F) A temporary accommodation rented or leased by another person or entity, on behalf of the individual, for 90 or fewer days.¶
- (2) To be eligible for GA, an individual must meet all of the following requirements:¶
- (a) The individual must be 18 years of age or older.¶
 - (b) The individual must be an individual who is homeless (see section (1) of this rule).¶
 - (c) The individual may not be in the same OSIPM household group (see OAR 461-110-0210) with his or her child (see OAR 461-001-0000).¶
 - (d) The individual may not be receiving TANF benefits.¶
 - (e) The individual must be eligible for and receiving OSIPM with a basis of need established under OAR 461-125-0370(1)(c).¶
 - (f) The individual may not be in a nonstandard living arrangement (see OAR 461-001-0000) other than at home receiving in-home services (see OAR 411-030-0020).¶
 - (g) The individual must complete the application process for Supplemental Security Income (SSI); cooperate with the Department in applying to the Social Security Administration for SSI; appeal all denials of SSI made below the Appeal's Council level; and attend all appointments designated by the Department relating to obtaining SSI. The Department must also receive verification from the Social Security Administration that the individual's application for SSI benefits has been received.¶
 - (h) The individual must meet the non-financial, non-disability requirements for SSI.¶
 - (i) The individual must complete and sign an interim assistance agreement authorizing the Department to recover

interim GA benefits paid to the client (or paid to providers on the client's behalf) from the initial SSI payment or initial post-eligibility payment. The Social Security Administration must also receive the interim assistance agreement. The following provisions are considered part of the interim assistance agreement:¶

(A) Interim GA benefits include only those GA cash benefits paid during the period of time that the SSI benefit covers.¶

(B) For any month in which SSI is prorated, the Department may recover only a prorated amount of the interim GA cash benefit.¶

(C) If the Department is unable to stop delivery of a GA benefit issued after the SSI payment is made, the GA payment will be included in the interim assistance to be reimbursed to the Department.¶

(3) Financial Eligibility.¶

(a) The OSIPM income and resource methodology are used to determine financial eligibility for the GA program.¶

(b) The GA benefit amount is determined according to OAR 461-155-0210 and 461-160-0500.¶

(4) If the Department determines that the individual no longer has an impairment that meets the criteria in OAR 461-125-0370, the individual is ineligible for GA.¶

(5) An individual found by the Social Security Administration (SSA) not to meet disability criteria at the initial, reconsideration, or hearing level may continue receiving GA benefits until ~~all SSA administrative appeals are exhausted~~the disability claim is denied in a final decision by a Social Security Administration administrative law judge pursuant to 20 CFR §416.1453.

Statutory/Other Authority: ORS 411.060

Statutes/Other Implemented: ORS 411.710, OL 2016, ch 93

RULE SUMMARY: OAR 461-135-0780 about eligibility for Pickle Amendment clients in the OSIPM program is being amended to adjust standards to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

CHANGES TO RULE:

461-135-0780

Pickle Amendment Clients; OSIPM ¶¶

In the OSIPM program:¶¶

(1) The countable (see OAR 461-001-0000) SSB income of an individual is determined according to sections (2) to (4) of this rule if the individual meets all of the following requirements:¶¶

(a) Is receiving Social Security Benefits (SSB);¶¶

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and¶¶

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the individual was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB.¶¶

(2) The SSB amount received by the individual when the individual became ineligible for SSI or OSIP is used as the individual's countable SSB income, for the purposes of the Pickle Amendment. If the spouse (see OAR 461-001-0000) of the individual also had Social Security benefits at the time the individual lost SSI benefits, SSB amount at that time of the spouse is considered the countable income of the spouse. If the amount cannot be determined using the information provided by the SSA, it is calculated in accordance with section (3) of this rule.¶¶

(3) The Department determines the month in which the individual was entitled to SSB and received SSI in the same month. The Department uses the table in section (4) of this rule to find the percentage that applies to that month. The Department multiplies the present amount of the SSB of the individual by the applicable percentage. If the spouse of the individual also had SSB at the time the individual lost SSI benefits, the Department adjusts the SSB of the spouse using the same multiplier that was used for the individual's calculation under this section. This amount, rounded down to the next lower whole dollar, is the individual's countable SSB income.¶¶

(4) The following guide contains the calculations used to determine the SSB for prior years (the Department uses this table only if the prior year's amount using information provided by SSA):-~~see attached table~~¶¶

If SSI was Last Received During Multiply Current SSB by¶¶

¶¶

<u>January 2020 - December 2020.....</u>	<u>.987¶¶</u>
<u>January 2019 - December 2019.....</u>	<u>.972¶¶</u>
<u>January 2018 - December 2018.....</u>	<u>.945¶¶</u>
<u>January 2017 - December 2017.....</u>	<u>.927¶¶</u>
<u>January 2015 - December 2016.....</u>	<u>.924¶¶</u>
<u>January 2014 - December 2014.....</u>	<u>.908¶¶</u>
<u>January 2013 - December 2013.....</u>	<u>.895¶¶</u>
<u>January 2012 - December 2012.....</u>	<u>.880¶¶</u>
<u>January 2009 - December 2011.....</u>	<u>.849¶¶</u>
<u>January 2008 - December 2008.....</u>	<u>.803¶¶</u>
<u>January 2007 - December 2007.....</u>	<u>.785¶¶</u>
<u>January 2006 - December 2006.....</u>	<u>.760¶¶</u>
<u>January 2005 - December 2005.....</u>	<u>.730¶¶</u>

<u>January 2004 - December 2004.....</u>	<u>.711</u>
<u>January 2003 - December 2003.....</u>	<u>.696</u>
<u>January 2002 - December 2002.....</u>	<u>.686</u>
<u>January 2001 - December 2001.....</u>	<u>.669</u>
<u>January 2000 - December 2000.....</u>	<u>.646</u>
<u>January 1999 - December 1999.....</u>	<u>.631</u>
<u>January 1998 - December 1998.....</u>	<u>.623</u>
<u>January 1997 - December 1997.....</u>	<u>.610</u>
<u>January 1996 - December 1996.....</u>	<u>.593</u>
<u>January 1995 - December 1995.....</u>	<u>.578</u>
<u>January 1994 - December 1994.....</u>	<u>.562</u>
<u>January 1993 - December 1993.....</u>	<u>.548</u>
<u>January 1992 - December 1992.....</u>	<u>.532</u>
<u>January 1991 - December 1991.....</u>	<u>.513</u>
<u>January 1990 - December 1990.....</u>	<u>.487</u>
<u>January 1989 - December 1989.....</u>	<u>.465</u>
<u>January 1988 - December 1988.....</u>	<u>.447</u>
<u>January 1987 - December 1987.....</u>	<u>.429</u>
<u>January 1986 - December 1986.....</u>	<u>.424</u>
<u>January 1985 - December 1985.....</u>	<u>.411</u>
<u>January 1984 - December 1984.....</u>	<u>.397</u>
<u>July 1982 - December 1983.....</u>	<u>.383</u>
<u>July 1981 - June 1982.....</u>	<u>.357</u>
<u>July 1980 - June 1981.....</u>	<u>.321</u>
<u>July 1979 - June 1980.....</u>	<u>.281</u>
<u>July 1978 - June 1979.....</u>	<u>.256</u>
<u>July 1977 - June 1978.....</u>	<u>.240</u>
<u>May or June 1977.....</u>	<u>.227</u>

Statutory/Other Authority: ~~ORS 409.050~~, 411.060, 411.070, 411.083, 411.404, ORS 409.050, 413.085, 414.685
Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.083, 411.404, 411.704, 413.085, 414.685, 42
CFR 435.135, P.L. 92-336

RULE SUMMARY: OAR 461-135-0832 about Estate Administration; Definitions, is being changed to delete the definition of "domestic partner" and add a definition for "registered domestic partner."

CHANGES TO RULE:

461-135-0832

Estate Administration; Definitions ¶¶

Effective July 18, 1995, for purposes of these rules (OAR 461-135-0832 to 461-135-0847) and ORS 93.268, 410.075, 411.620, 411.630, 411.694, 411.708, 411.795, 416.310, 416.340, and 416.350 the terms listed below have the meanings ascribed to them herein; provided, however, as used in these rules, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 USC 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department applies the definitions and procedures set forth in these rules to recoveries and claims made pursuant to ORS 411.708, 411.795, 416.310, 416.340, and 416.350.¶¶

(1) "Assets" means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death, including any income or resources to which the individual is entitled, but does not receive, because of action: by the individual; the individual's spouse (see OAR 461-001-0000); by a person, including a court or administrative body with legal authority to act in place of or on behalf of the individual; or by any person, including any court or administrative body, acting at the direction or upon the request of the individual.¶¶

(2) "Assign" means a person who acquires an interest in real or personal property or an asset pursuant to a written or oral assignment of such real or personal property or asset from a person with the legal right to assign it.¶¶

(3) "Assistance" means general assistance and public assistance as defined in ORS 411.010 and medical assistance as defined in ORS 414.025.¶¶

(4) "Bona fide purchaser for value" means any person who provides consideration, including money or property, to a seller or transferor of real property or personal property equal to the fair market value of the real or personal property sold or transferred.¶¶

(5) "Child under age 21" means the deceased recipient's natural or adopted son or daughter who is under 21 years of age throughout the time the Department seeks to enforce its claim.¶¶

(6) "Child with a disability" means the deceased recipient's natural or adopted son or daughter of any age, who meets SSI disability criteria throughout the time the Department seeks to enforce its claim, and who presents evidence to the Department substantiating the disability within two years after the Department initially asserts its claim.¶¶

(7) "Child with a visual impairment" means the deceased recipient's natural or adopted son or daughter, of any age, who, within two years after the Department initially asserts its claim, substantiates blindness throughout the time the Department seeks to enforce its claim by presenting evidence of:¶¶

(a) Vision of 20/200 or less in the better eye with a corrective lens;¶¶

(b) A limitation in vision field to an angle of 20 degrees or less; or¶¶

(c) Meeting any other SSI criteria for blindness.¶¶

(8) "Consideration furnished test" means the method by which the ownership of real or personal property is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For

example, if one co-owner contributed \$2,500 and the other \$7,500 to the purchase price of a \$10,000 property in 1960; in 1995, the property is appraised at \$50,000. The co-owner who contributed \$2,500 is considered to own 25% of the property in 1995.¶

(9) "Convincing evidence" includes, but is not limited to:¶

(a) Recorded documents of title.¶

(b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.¶

(c) Tax statements or returns.¶

(d) Records of banking, financial or other similar institutions.¶

(e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.¶

(f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.¶

(10) "Date of request" means the date an individual or someone authorized on behalf of the individual contacts the Department or uses another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. It starts the application process.¶

(11) "Department" means the Department of Human Services, the Oregon Health Authority, or both.¶

~~(12) "Domestic partner" means an individual joined in a domestic partnership as defined in ORS 106.310.¶~~

~~(13) "Estate" means with respect to the collection of payments made for medical assistance provided on or after July 18, 1995 all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's spouse and any successor-in-interest to the recipient's spouse, through:¶~~

~~(a) Tenancy by the entirety;¶~~

~~(b) Joint tenancy;¶~~

~~(c) Tenancy in common;¶~~

~~(d) Not as tenants in common, but with the right of survivorship;¶~~

~~(e) Life estate;¶~~

~~(f) Transfer on death deed;¶~~

~~(g) Living trust;¶~~

~~(h) Annuity purchased on or after April 1, 2001; or¶~~

~~(i) Other similar arrangement.¶~~

~~(143) "General Assistance" means "general assistance" as defined in ORS 411.010.¶~~

~~(154) "Heir" means any individual, including the surviving spouse, who is entitled under intestate succession to the real property, personal property, and assets of a decedent who died wholly or partially intestate.¶~~

~~(165) "Interest" means any form of legal, beneficial, equitable or ownership interest.¶~~

~~(176) "Interspousal transfer" means any transfer, or chain of transfers, that effectively transfers title or control of an asset, or an interest in an asset, from one spouse to another, including: direct transfers between spouses, transfers from one or both spouses to a trust, and transfers from one trust to another trust.¶~~

~~(187) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.¶~~

~~(198) "Intestate succession" means succession to real property, personal property or assets of a decedent who dies intestate or partially intestate.¶~~

~~(2019) "Joint tenancy" means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.¶~~

~~(210) "Legal title" means legal ownership by a person.¶~~

~~(221) "Life estate" means an interest in real or personal property that terminates upon the death of a measuring life.¶~~

~~(232) "Living trust" means a revocable or irrevocable inter vivos trust funded with assets to which the recipient is~~

legally entitled.¶

(243) "Medical Assistance" (MA) is defined in ORS 414.025 and incorporated by this reference.¶

(254) "Medical institution" means a facility that provides care and services equivalent to those received in a nursing facility. "Medical institution" does not apply to home and community-based care (see OAR 461-001-0030), in-home services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.¶

(265) "Medicare cost sharing" means medical assistance funds used to pay Medicare premiums, coinsurance, copayments and deductibles.¶

(276) "Ownership documents" mean any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale, or other similar documents evidencing ownership or legal title held by a person.¶

(287) "Permanently institutionalized" means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.¶

(298) "Person" means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.¶

(3029) "Personal property" means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.¶

(310) "Probate estate" means all real property, personal property, or other assets included in a decedent's estate as it is defined by applicable state probate law.¶

(321) "Real property" means all land wherever situated, including improvements and fixtures thereon, and every estate, interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties. "Real property" includes property conveyed by the individual to, subsequently acquired by, or traceable to, a person, including the individual's surviving spouse and any successor-in-interest to the individual's surviving spouse, if the "real property" may be included in the individual's, or the individual's surviving spouse's, estate, as defined in this rule.¶

(332) "Recipient of property" means:¶

(a) Any survivor, heir, assign, devisee under a will, beneficiary of a trust, transferee or other person to whom real property, personal property or other assets pass upon the death of the decedent either by law, intestate succession, contract, will, trust instrument or otherwise; and¶

(b) Any subsequent transferee of such real property, personal property, or asset, or proceeds from the sale thereof, through any form of conveyance, that is not a bona fide purchaser for value.¶

(33) "Registered Domestic Partner" means an individual joined in a domestic partnership as defined in ORS 106.310.¶

(34) "Survivor" means any person who, as a co-tenant, is automatically entitled to an expanded share of real or personal property upon the death of a fellow co-tenant.¶

(35) "Survivorship" means an interest in real or personal property that expires upon the death of an individual whereby the interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.¶

(36) "Tenancy in common" means ownership of real or personal property by an individual together with one or more other persons which ownership interest shall not pass by survivorship upon the death of the individual.¶

(37) "Time of death" means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall time of death be construed to mean a time after which an interest in real or personal property or other assets may:¶

(a) Pass by survivorship or other operation of law due to the death of the decedent; or¶

(b) Terminate by reason of the decedent's death.¶

(38) "Transfer on death deed" has the meaning set out in ORS 93.949.¶

(39) "Value" means the fair market value. Fair market value is the price at which real or personal property would

change hands between a willing buyer and a willing seller. In the event the real or personal property was not reported to the Department by the deceased Medicaid recipient, the "value" would be established based on its fair market value at the time of discovery.

Statutory/Other Authority: ORS 410.075, 411.060, 411.070, 413.042, 416.340, 416.350, 2013 OL 14 Sec. 10

Statutes/Other Implemented: ORS 93.969, 410.070, 410.075, 411.010, 411.060, 411.708, 411.795, 416.310, 416.340, 416.350, 2013 OL 14 Sec. 10

AMEND: 461-135-0835

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-135-0835 about Limits on Estate Claims, is being amended as the Department is changing the term "domestic partner" to "registered domestic partner" in its Estate Administration rules, OARs 461-135-0832 to 461-135-0847.

CHANGES TO RULE:

461-135-0835

Limits on Estate Claims ¶

(1) The Estate Administration Unit is designated and authorized to administer the estate recovery program for the Oregon Health Authority and the Department of Human Services, and to present and file claims for payment. The Manager and Assistant Manager of the Estate Administration Unit, Estate Administrators, Assistant Estate Administrators, and Accounts Receivable Specialist are authorized to present, file, and resolve claims for the Estate Administration Unit. The Manager or Assistant Manager may designate other individuals to present, file, or resolve claims. This rule sets out some of these claims.¶

(2) For the OSIP program (see OAR 461-101-0010):¶

(a) The amount of any payments or benefits, including an overpayment (see OAR 461-195-0501), are a claim against the probate estate (see OAR 461-135-0832) of any deceased recipient.¶

(b) The claim for correctly paid payments or benefits under OSIP are deferred until the death of the spouse (see OAR 461-001-0000) or registered domestic partner (see OAR 461-135-0832), if any, of the deceased recipient.¶

(c) If the deceased recipient has no probate estate, the enforcement of the claim has been deferred, or there are insufficient resources in the probate estate to pay the claim in full, the probate estate of the spouse or registered domestic partner of the deceased recipient, if any, is charged for any payments or benefits paid under OSIP to the deceased recipient, the spouse, or registered domestic partner.¶

(d) The claim for correctly paid payments or benefits under OSIP may not be enforced if the deceased recipient is survived by a child under age 21 (see OAR 461-135-0832), a child with a disability (see OAR 461-135-0832), or a child with a visual impairment (see OAR 461-135-0832); and the child survives to the closing of the probate estate.¶

(e) Transfers of real or personal property without adequate consideration, by recipients of payments or benefits under OSIP, are voidable and may be set aside under ORS 411.620.¶

(f) Except when there is a surviving spouse or registered domestic partner, or a surviving child under age 21, a child with a disability, or a child with a visual impairment, the amount of any payments or benefits provided is a claim against the estate (see OAR 461-135-0832) in any conservatorship proceedings and may be paid pursuant to ORS 125.495.¶

(3) For General Assistance (see OAR 461-135-0832):¶

(a) The amounts of any payments or benefits, including overpayments, are a claim against the probate estate of any deceased recipient. The amount includes the state's monthly contribution, paid prior to January 1, 2014, to the federal government for the recipient's Medicare Part D prescription drug coverage. Effective July 1, 2016, any correctly paid benefits under Oregon Laws 2016, chapter 93, section 1 are excluded, except than an overpayment of benefits under Oregon Laws 2016, chapter 93, section 1 is included in a claim against the probate estate.¶

(b) The claim for correctly paid payments or benefits under the General Assistance program is deferred until the death of the spouse or registered domestic partner, if any, of the deceased recipient.¶

(c) If the deceased recipient has no probate estate, the enforcement of the claim has been deferred, or there are insufficient resources in the probate estate to pay the claim in full, then the probate estate of the spouse or registered domestic partner of the deceased recipient, if any, is charged for any payments or benefits to the deceased recipient, the spouse, or registered domestic partner.¶

(d) The claim for correctly paid payments or benefits under the General Assistance program may not be enforced

if the deceased recipient is survived by a child under age 21, a child with a disability, or a child with a visual impairment; and the child survives to the closing of the probate estate.¶

(e) Except when there is a surviving spouse or registered domestic partner, or a surviving child under age 21, a child with a disability, or child with a visual impairment, the amount of any assistance paid is a claim against the estate in any conservatorship proceedings and may be paid pursuant to ORS 125.495.¶

(4) For Medical Assistance (MA, as defined in OAR 461-135-0832):¶

(a) In determining the extent of the estate resources subject to the claim of the Department for correctly paid benefits, except as provided in subsection (b) of this section, the Department must disregard resources in an amount equal to the value (see OAR 461-135-0832) of resources excluded in the most recent eligibility determination under OAR 461-160-0855, based on payments received under a qualified partnership policy (see OAR 461-001-0000). The disregard of resources specific to the estate recovery claim applies to MA benefits received after the effective date of the MA eligibility determination in which a qualified partnership policy was considered and approved. The amount of any MA incurred in a prior MA eligibility period where qualified partnership policy benefits were not considered is not subject to the estate resource disregard.¶

(b) There is no disregard of resources under subsection (a) of this section if the recipient, or the spouse of the recipient, at any time transferred the value of the qualified partnership policy excluded resource amount to another individual for less than fair market value prior to the death of the recipient or the recipient's spouse, or exhausted the disregarded resource amount by purchasing things of value to the recipient or the recipient's spouse while either was living.¶

(c) The amount of any incorrectly paid payments or benefits, excluding an administrative error overpayment, are a claim, against the probate estate of any deceased recipient.¶

(d) The claim for correctly paid payments or benefits under MA is deferred until the death of the surviving spouse, if any, of the deceased recipient. After the death of a surviving spouse, the deferred claim of the deceased recipient is a claim against the following assets (see OAR 461-135-0832) or their proceeds in the estate of the spouse. The Department has a claim against the estate of the spouse for medical assistance (see OAR 461-135-0832) paid to the recipient, but only to the extent that the spouse received property or other assets from the recipient through any of the following:¶

(A) Probate.¶

(B) Operation of law.¶

(e) The claim for correctly paid payments or benefits under MA may not be enforced if the deceased recipient is survived by a child under age 21, a child with a disability, or a child with a visual impairment.¶

(f) An MA claim in an estate includes:¶

(A) The amount of any payments or benefits paid prior to October 1, 1993 to or on behalf of a recipient 65 years of age or older are a claim against the probate estate of any deceased recipient.¶

(B) The amount of any payments or benefits, paid on or after October 1, 1993 and prior to July 18, 1995, to or on behalf of a recipient 55 years of age or older are a claim against the probate estate of any deceased recipient.¶

(C) The amount of any payments or benefits, paid on or after July 18, 1995 and prior to October 1, 2013, to or on behalf of a recipient 55 years of age or older are a claim against the estate of any deceased recipient. All correctly made payments on or after January 1, 2010 for Medicare cost sharing (see OAR 461-135-0832) are excluded from a claim.¶

(D) The amount of any payments or benefits, paid October 1, 2013 or later, to or on behalf of a recipient 55 years of age or older, during the time the Department was paying any of the cost of care of the individual in a nursing facility, home and community based care (see OAR 461-001-0030), or in home services through the State Plan Personal Care Services (see OAR 411-034-0010), are a claim against the estate of any deceased recipient. All correctly made payments on or after January 1, 2010 for Medicare cost sharing are excluded from a claim.¶

(5) The amount paid, for a recipient age 55 or older, after December 31, 2013, to the federal government for the recipient's Medicare Part D prescription drug coverage is a claim against the estate of the deceased recipient.¶

(6) For trusts under OAR 461-145-0540(10), upon termination of the trust or upon the death of the original beneficiary the trust pays to the State or States from such remaining amounts in the trust an amount equal to the

total amount of medical assistance paid on behalf of the original beneficiary. The State or States must be listed as the first payee or payees and first remainder beneficiary or beneficiaries, and have priority over payment of other debts and administrative expenses, and other beneficiaries, except as allowed in subsection (a) of this section. Subsections (4)(d) and (4)(e) of this rule do not apply to this section.¶

(a) Allowable administrative expenses payable before any State include:¶

(A) Taxes due from the trust, excluding taxes due from the beneficiary, to the State or States or federal government because of the death of the beneficiary; and¶

(B) Reasonable fees for administration of the trust estate such as an accounting of the trust to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust. Trustee fees or conservator fees, not both, are limited to the month of the original beneficiary's death and the prior month.¶

(i) For a person that is a trustee, but not a conservator, trustee fees after the month of death, if claimed, must be reasonable and approved by the by the Department prior to payment.¶

(ii) For a person that is a conservator and trustee, conservator fees after the month of death, if claimed, must be approved by the court, after the Department is given notice and opportunity to object.¶

(b) Upon the death of the original beneficiary, the following expenses and payments are examples of some of the types not permitted prior to reimbursement of the State or States for medical assistance:¶

(A) Taxes due from the estate of the beneficiary other than those arising from inclusion of the trust in the estate;¶

(B) Payment of debts owed to third parties;¶

(C) Trustee or conservator fees, except as allowed by subsection (a) of this section;¶

(D) Funeral expenses; and¶

(E) Payments to residual beneficiaries.

Statutory/Other Authority: ~~ORS 409.050~~, 411.060, 411.070, 411.404, 413.042, 413.085, 416.340, ORS 409.050, 416.350, 414.685

Statutes/Other Implemented: ORS 93.969, 125.495, 411.404, 411.620, 411.630, 411.708, 411.795, 413.085, 416.310, 416.350

AMEND: 461-135-0845

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-135-0845 about Valuation of Life Estate, Transfer on Death Deeds, Reversionary Interest and Property, is being amended as the Department is changing the term "domestic partner" to "registered domestic partner" in its Estate Administration rules, OARs 461-135-0832 to 461-135-0847.

CHANGES TO RULE:

461-135-0845

Valuation of Life Estate, Reversionary Interest, and Property ¶¶

(1) In this rule, "spouse" or "spouses":¶¶

(a) For federally-funded programs, has the meaning defined in OAR 461-001-0000,¶¶

(b) For programs not federally-funded, has the meaning defined in OAR 461-001-0000 but also includes a registered domestic partner (see OAR 461-135-0832).¶¶

(2) Effective July 18, 1995, the value (see OAR 461-135-0832) of a life estate (see OAR 461-135-0832) or other interest (see OAR 461-135-0832) in real property (see OAR 461-135-0832), personal property (see OAR 461-135-0832), or other assets (see OAR 461-135-0832) measured by or valued with respect to a life span, including that of the relevant recipient of assistance (see OAR 461-135-0832), is established by reference to the life estate valuation tables in this section and is valued as of the time of death (see OAR 461-135-0832) of the recipient of assistance irrespective of the actual life span of the measuring life. [Table not included. See ED. NOTE.]¶¶

(3) Excluding accounts under section (4) of this rule or property under section (6) of this rule, for assistance recovery purposes, the interest of a person (see OAR 461-135-0832) in real property, personal property, or other assets held in joint tenancy (see OAR 461-135-0832) (including transfers with right of survivorship covered by ORS 93.180), tenancy in common (see OAR 461-135-0832), or other form of concurrent ownership with one or more other persons with right of survivorship (see OAR 461-135-0832), other than a spouse, is presumed to be the fractional share held by the person. The fractional share of a person is presumed to be the share reflected in the ownership documents (see OAR 461-135-0832). Such presumption may be rebutted under the consideration furnished test (see OAR 461-135-0832) using convincing evidence (see OAR 461-135-0832) of the actual consideration contributed by another co-owner of the property or assets. In the absence of any stated fractional share on the ownership documents, each co-owner is presumed to have an equal fractional share of ownership of the whole, unless rebutted by the consideration furnished test using convincing evidence.¶¶

(4) For medical assistance (see OAR 461-135-0832) recovery purposes, the interest of a recipient in multi-party accounts with an insured institution or credit union is presumed to be one-hundred percent, and the account's value shall be determined at time of death. The presumption may be rebutted by the consideration furnished test using convincing evidence.¶¶

(5) With respect to real property, personal property, or assets held jointly by spouses, as tenants in common, tenants by the entirety, or other concurrent ownership, the interest of a person in such property or assets is conclusively deemed to be one-half; provided, however, that in the event the ownership documents expressly set forth a different fractional share of ownership, and such fractional share is lawful in the appropriate jurisdiction, then the interest of a person is presumed to be the fractional share set forth in such ownership documents. Such presumption may be rebutted using convincing evidence. The consideration furnished test does not apply to this section of the rule.¶¶

(6) With respect to real property, personal property, or other assets conveyed by a transfer on death deed or other similar arrangement, including, but not limited to, payable on death accounts with financial institutions; the interest of the transferor is presumed to be one-hundred percent, except that if there is more than one transferor their respective interests are determined in accordance with sections (3), (4), and (5) of this rule.¶¶

(7) The value of real property is determined by establishing the value of the property to the satisfaction of the department (see OAR 461-135-0832). The burden of proof for establishing the value of the real property to the

satisfaction of the department lies with the person or, after the time of death of the person, with the person's representative, and may be established by any methodology, including an appraisal performed by an appraiser certified or licensed in the applicable jurisdiction, that the department determines most accurately reflects the value of the real property. The sum of liens or other encumbrances, if any, attached to the real property established using convincing evidence, is subtracted from the value of the real property to determine a net value of the real property.¶

(8) The value of personal property consisting of shares of stock or other securities traded on an exchange is evidenced by the average of the bid and ask prices. If such bid and ask prices are unavailable for certain stocks or securities, the value may be established by a written estimate from the corporation or other entity issuing such shares or securities of the value, or if such estimate is unobtainable, an estimate from a broker, trader or other person with knowledge in the field. The sum of liens or other encumbrances established using convincing evidence, is subtracted from the value of such stock or securities to determine a net value of the personal property consisting of stock or other securities.¶

(9) Subject to section (8) of this rule, the value of tangible personal property, including, but not limited to, livestock, furniture, vehicles and other tangible items may be established:¶

(a) By a written estimate from a person knowledgeable in the field of appraising such items of personal property; or¶

(b) From published sources such as catalogs of antiques or collectibles, blue books or other convincing evidence that accurately establishes the value of the property.¶

(10) The sum of liens or other encumbrances, if any, attached to such property in section (9), established using convincing evidence, is subtracted from the value of the tangible personal property to determine a net value of the tangible personal property. ¶

(11) The value of intangible personal property not otherwise provided for in this rule, is established by a written estimate from a person knowledgeable in the field of appraising such items of intangible personal property. The sum of liens or other encumbrances, if any, attached to such property, established using convincing evidence, is subtracted from the value of the intangible personal property to determine a net value of the intangible personal property. ¶

(12) Notwithstanding anything to the contrary in this rule, any real property, personal property, or other assets in a probate estate is valued in accordance with the probate code of the jurisdiction of the probate proceeding.¶

(13) Notwithstanding anything to the contrary in this rule, if a claim under OAR 461-135-0835 is deferred until a recipient's spouse dies; the value of any real property, personal property or other assets, subject to the deferred claim, is established as follows:¶

(a) For real property, personal property, or other assets in the probate estate of the deceased spouse; the value is the current value at the time of probate; or¶

(b) For real property, personal property, or other assets not in the probate estate of the deceased spouse; the value is determined on the later of the date of the claim or the sale of the real property, personal property, or other assets.¶

(14) The amount of a claim of the department that is recoverable from a person other than the recipient of assistance is calculated through the following steps:¶

(a) Step One: Determine the value of the real property, personal property, or other assets received by the person from the recipient of assistance. ¶

(b) Step Two: Deduct from the value the amount of any liens or encumbrances. ¶

(c) Step Three: Multiply the result by the fraction or percentage that constitutes the interest received from the recipient of assistance.

Statutory/Other Authority: ORS 411.060, 416.350, 413.085, 414.685, ORS 409.050, 413.042

Statutes/Other Implemented: ORS 416.340, 416.350, 411.708, 411.795, 416.310, 413.085, 414.685, 106.300 to 106.340, ORS 93.969

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

461-135-0845

(2)

Age	Life Estate	Remainder
0	.97188	.02812
1	.98988	.01012
2	.99017	.00983
3	.99008	.00992
4	.98981	.01019
5	.98938	.01062
6	.98884	.01116
7	.98822	.01178
8	.98748	.01252
9	.98663	.01337
10	.98565	.01435
11	.98453	.01547
12	.98329	.01671
13	.98198	.01802
14	.98066	.01934
15	.97937	.02063
16	.97815	.02185
17	.97700	.02300
18	.97590	.02410
19	.97480	.02520
20	.97365	.02635
21	.97245	.02755
22	.97120	.02880
23	.96986	.03014
24	.96841	.03159
25	.96678	.03322
26	.96495	.03505

Age	Life Estate	Remainder
27	.96290	.03710
28	.96062	.03938
29	.95813	.04187
30	.95543	.04457
31	.95254	.04746
32	.94942	.05058
33	.94608	.05392
34	.94250	.05750
35	.93868	.06132
36	.93460	.06540
37	.93026	.06974
38	.92567	.07433
39	.92083	.07917
40	.91571	.08429
41	.91030	.08970
42	.90457	.09543
43	.89855	.10145
44	.89221	.10779
45	.88558	.11442
46	.87863	.12137
47	.87137	.12863
48	.86374	.13626
49	.85578	.14422
50	.84743	.15257
51	.83874	.16126
52	.82969	.17031
53	.82028	.17972
54	.81054	.18946
55	.80046	.19954
56	.79006	.20994

Age	Life Estate	Remainder
57	.77931	.22069
58	.76822	.23178
59	.75675	.24325
60	.74491	.25509
61	.73267	.26733
62	.72002	.27998
63	.70696	.29304
64	.69352	.30648
65	.67970	.32030
66	.66551	.33449
67	.65098	.34902
68	.63610	.36390
69	.62086	.37914
70	.60522	.39478
71	.58914	.41086
72	.57261	.42739
73	.55571	.44429
74	.53862	.46138
75	.52149	.47851
76	.50441	.49559
77	.48742	.51258
78	.47049	.52951
79	.45357	.54643
80	.43659	.56341
81	.41967	.58033
82	.40295	.59705
83	.38642	.61358
84	.36998	.63002
85	.35359	.64641
86	.33764	.66236

Age	Life Estate	Remainder
87	.32262	.67738
88	.30859	.69141
89	.29526	.70474
90	.28221	.71779
91	.26955	.73045
92	.25771	.74229
93	.24692	.75308
94	.23728	.76272
95	.22887	.77113
96	.22181	.77819
97	.21550	.78450
98	.21000	.79000
99	.20486	.79514
100	.19975	.80025
101	.19532	.80468
102	.19054	.80946
103	.18437	.81563
104	.17856	.82144
105	.16962	.83038
106	.15488	.84512
107	.13409	.86591
108	.10068	.89932
109	.04545	.95455

AMEND: 461-140-0296

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-140-0296 about Length of Disqualification Due to an Asset Transfer; OSIP and OSIPM is being changed to permanently correct the number "one" to "zero."

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 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)(k) 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)(k) 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)(k) 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)(k) 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)(k) 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)(k) 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

AMEND: 461-145-0022

REPEAL: Temporary 461-145-0022 from SSP 27-2020

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-145-0022 about Annuities; OSIPM, is being amended to permanently 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

AMEND: 461-145-0220

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-145-0220 about treatment of the home, is being amended to adjust standards to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living. These amendments will take effect January 1.

CHANGES TO RULE:

461-145-0220

Home ¶¶

~~Retroactively effective July 6, 2020:¶¶~~

(1) Home defined: A home is the place where the filing group (see OAR 461-110-0310) lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:¶¶

(a) Land on which the home is built and contiguous property.¶¶

(A) In all programs except the OSIP, OSIPM, QMB, and SNAP programs, property must meet all the following criteria to be considered contiguous property:¶¶

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group (see OAR 461-110-0530).¶¶

(ii) It must not be separated by a public right-of-way, such as a road.¶¶

(iii) It must be property that cannot be sold separately from the home.¶¶

(B) In the OSIP, OSIPM, QMB, and SNAP programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the financial group.¶¶

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.¶¶

(2) Exclusion of home and other property:¶¶

(a) For an individual who has an initial month (see OAR 461-001-0000) of long-term care (see OAR 461-001-0000) or home and community-based care (see OAR 461-001-0030) on or after January 1, 2006:¶¶

(A) For purposes of this subsection, "child" means a biological or adoptive child who is:¶¶

(i) Under age 21; or¶¶

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

(B) The equity value (see OAR 461-001-0000) of a home is excluded if the requirements of at least one of the following subparagraphs are met:¶¶

(i) The child (see paragraph (A) of this subsection) of the individual or relative dependent on the individual for support occupies the home.¶¶

(ii) The spouse (see OAR 461-001-0000) of the individual occupies the home.¶¶

(iii) The equity in the home is ~~\$595~~603,000 or less, and the requirements of at least one of the following subparagraphs are met:¶¶

(I) The individual occupies the home.¶¶

(II) The home equity is excluded under OAR 461-145-0252.¶¶

(III) The home is listed for sale per OAR 461-145-0420.¶¶

(iv) Notwithstanding OAR 461-120-0330, the equity in the home is more than ~~\$595~~603,000 and the individual is unable legally to convert the equity value in the home to cash.¶¶

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.¶¶

(c) In the SNAP program, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461-145-0420.¶¶

(3) Exclusion during temporary absence: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:¶¶

(a) For the purposes of this section, "evidence" includes a written statement from a competent individual.¶¶

(b) In all programs except the OSIP, OSIPM, and QMB-DW programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.¶¶

(c) In the OSIP, OSIPM, and QMB-DW programs, when the individual is absent to receive long-term care or home and community-based care, under one of the following conditions:¶¶

(A) The absent individual has provided evidence that the individual will return to the home. The evidence must reflect the subjective intent of the individual, regardless of the individual's medical condition.¶¶

(B) The home remains occupied by the individual's spouse, child, or a relative dependent on the individual for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.¶¶

(d) In the OSIP, OSIPM, and QMB-DW programs, when the individual is absent due to illness, employment or training for future employment, seasonal employment, or uninhabitability; and both of the following conditions are met:¶¶

(A) The absent individual has provided evidence that the absent individual will return home, and¶¶

(B) The evidence reflects the subjective intent of the individual, regardless of the individual's medical condition.¶¶

(e) In the REF, REFM, and TANF programs, when all members of the filing group are absent because:¶¶

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or¶¶

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.¶¶

(f) In the SNAP program, when the financial group is absent because of employment or training for future employment.

Statutory/Other Authority: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 409.050, 410.010, 410.020, 410.070, 410.080, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685, 414.839

AMEND: 461-155-0210

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-155-0210 about Payment Standards and Methods of Issuance; GA, is being changed to make the rule provisions more clear by adding the definition of "eligible spouse," adding the GA payment standard separate from any calculations, and making clear how the payment is arrived at for both one and two people.

CHANGES TO RULE:

461-155-0210

Payment Standards and Methods of Issuance; GA ¶¶

~~In the GA program:~~(1) For purposes of this rule, "eligible spouse" means a spouse (see OAR 461-001-0000) who is eligible for and receiving OSIPM under OAR 461-125-0370(c).¶

~~(12) The GA payment standards are:¶~~

~~(a) \$545 for one person.¶~~

~~(b) \$818 for two persons.¶~~

~~(3) The payments for one person are as follows:¶¶~~

~~(a) The Housing Assistance Payment is the lesser of the individual's rent or of:¶¶~~

~~(A) The amount of monthly rent the individual owes.¶¶~~

~~(B) \$545 minus the adjusted income determined under OAR 461-165-0500, or¶¶~~

~~(C) \$545.¶¶~~

~~(b) The Utility Allowance is \$90.¶¶~~

~~(c) The Personal Incidental Fund is \$60.¶¶~~

~~(24) The payment standards for two people are as follows:¶¶~~

~~(a) The Housing Assistance Payment is the lesser of the couple's rent or \$818.¶¶~~For a married individual whose spouse is in the OSIPM household group and is considered an eligible spouse, the Housing Assistance Payment for each eligible spouse is half of the total Housing Assistance Payment, which is the least of:¶¶

~~(A) The amount of monthly rent the individual and spouse owe:¶¶~~

~~(B) \$818 minus the adjusted income determined under OAR 461-160-0500, or¶¶~~

~~(C) \$818.¶¶~~

~~(b) For a married individual whose spouse is in the OSIPM household group and is not considered an eligible spouse, the Housing Assistance Payment is the least of:¶¶~~

~~(A) The amount of monthly rent the individual and spouse owe:¶¶~~

~~(B) \$818 minus the adjusted income determined under OAR 461-160-0500, or¶¶~~

~~(C) \$545.¶¶~~

~~(bc) The Utility Allowance is \$139.¶¶~~

~~(ed) The Personal Incidental Fund is \$93.¶¶~~

~~(35) The Housing Assistance Payment is issued directly to the landlord and is contingent upon the receipt of a signed and valid Rental Agreement.¶¶~~

~~(46) The Utility Allowance is issued directly to the individual.¶¶~~

~~(57) The Personal Incidental Fund is issued directly to the individual.~~

Statutory/Other Authority: ORS 409.050, 411.060

Statutes/Other Implemented: ORS 411.010, 411.060, 411.710, 411.730, 411.740[ED. NOTE: Table referenced are available from the agency.]

AMEND: 461-155-0250

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-155-0250 about income and payment standard for OSIPM, is being amended to adjust standards to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living. The rule is also being changed to update the name "Intermediate Care Facility - Mental Retardation" (ICF-MR) to "Intermediate Care Facility - Intellectual Disabilities" (ICF-ID). These amendments will take effect January 1.

CHANGES TO RULE:

461-155-0250

Income and Payment Standard; OSIPM ¶

In the OSIPM program:¶

- (1) An individual who is assumed eligible per OAR 461-135-0010 is presumed to meet the income limits for the OSIPM program.¶
- (2) An individual meeting the requirements of OAR 461-135-0745 or OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in sections (3) or (5) of this rule, must have countable (see OAR 461-001-0000) income that is equal to or less than 300 percent of the full SSI standard for a single individual or have established a qualifying trust as specified in OAR 461-145-0540(10)(c).¶
- (3) An individual, other than one identified in sections (1), (2), (5), or (6) of this rule, must have adjusted income (see OAR 461-001-0000) below the standard in this section. [see attached table]¶
- (4) In the OSIPM (except OSIPM-EPD) program, an individual receiving Medicaid services in a nursing facility or an ICF-ID is allowed the following amounts for clothing and personal incidentals:¶
 - (a) For an individual who receives a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.¶
 - (b) For all other individuals, ~~\$64.1194~~ is allowed.¶
 - (c) For an individual identified in subsection (b) of this section with countable income (including any SSI) that is less than ~~\$64.1194~~, the payment standard is equal to the difference between the individual's countable income (including any SSI) and ~~\$64.1194~~. For the purposes of this subsection, countable income includes income that would otherwise be countable for an individual who is assumed eligible under OAR 461-135-0010.¶
- (5) In the OSIPM-EPD program, an individual must have adjusted earned income equal to or below 250 percent of the federal poverty level for a family of one.¶
- (6) An individual who meets the requirements of OAR 461-135-0755, is not assumed eligible, and does not meet the income standard set out in section (3) of this rule, must have adjusted income equal to or below 150 percent of the federal poverty level for a family of one.

Statutory/Other Authority: ORS 411.060, ORS 409.050, 411.070, 411.404, 411.704, 411.706, 413.085, 414.685

Statutes/Other Implemented: ORS 411.060, ORS 409.010, 411.070, 411.404, 411.704, 411.706, P.L. 92-336

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

(3)

OSIPM Adjusted Income Standards		
Number in Need Group	One	Two
AB/AD/OAA	794.00	1,191.00

AMEND: 461-155-0270

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-155-0270 about room and board standards for OSIPM, is being amended to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living. These amendments will take effect January 1.

CHANGES TO RULE:

461-155-0270

Room and Board Standard; OSIPM ¶¶

For an OSIPM program client in a community based care (see OAR 461-001-0000) facility, the room and board standard is ~~\$608~~17.00. A client residing in a community based care facility must pay room and board.

Statutory/Other Authority: ORS 411.060, 411.070, 411.704, 411.706, ORS 409.050, 411.404, 413.085, 414.685

Statutes/Other Implemented: ORS 411.060, 411.070, 411.704, 411.706, ORS 409.010, 411.404, P.L. 92-336

AMEND: 461-160-0580

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-160-0580 about excluded resources (community spouse provision) OSIPM program (except OSIP-EPD and OSIPM-EPD), is being amended to adjust these standards to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living. These amendments will take effect January 1.

CHANGES TO RULE:

461-160-0580

Excluded Resource; Community Spouse Provision (OSIPM except OSIPM-EPD) ¶¶

~~Retroactively effective July 6, 2020, in~~ the OSIPM (except OSIPM-EPD) program:¶¶

(1) This rule applies to an institutionalized spouse (see OAR 461-001-0030) who has applied for benefits because the individual is in or will be in a continuous period of care (see OAR 461-001-0030).¶¶

(2) Whether a legally married (see OAR 461-001-0000) couple lives together or not, the determination of whether the value of the couple's resources exceeds the eligibility limit for the institutionalized spouse for the OSIPM program is made as follows:¶¶

(a) The first step is the determination of what the couple's combined countable (see OAR 461-001-0000) resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)¶¶

(A) Division 461-140 and 461-145 rules applicable to OSIPM describe which of the couple's resources are countable resources, and are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIPM individuals.¶¶

(B) The countable resources of both spouses are combined.¶¶

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.¶¶

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.¶¶

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:¶¶

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than ~~\$128,643~~380.¶¶

(B) ~~\$25,728~~6,076 (the state community-spouse resource allowance).¶¶

(C) A court-ordered community spouse resource allowance. In this paragraph and paragraph (2)(f)(C) of this rule, the term "court-ordered community spouse resource allowance" means a "court-ordered community spouse resource allowance" that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the individual became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the individual's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.¶¶

(D) After considering the income of the community spouse (see OAR 461-001-0030) and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph is the amount required to purchase a single premium immediate annuity to make up the shortfall; and the amount described in this paragraph is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:¶¶

(i) The maintenance needs allowance computed in accordance with OAR 461-160-0620.¶¶

(ii) The difference between:¶¶

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and¶¶

(II) The applicable need standard under OAR 461-160-0620(3)(c).¶¶

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.¶¶

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.¶¶

(f) The sixth step is a comparison of the value of the remaining resources to the OSIPM resource standard for one person (under OAR 461-160-0015). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:¶¶

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than ~~\$128,643~~\$128,643,380) plus the OSIPM resource standard for one person.¶¶

(B) ~~\$25,728~~\$25,728,076 (the state community-spouse resource allowance), plus the OSIPM resource standard for one person.¶¶

(C) A "court-ordered community spouse resource allowance" plus the OSIPM resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the "court-ordered community spouse resource allowance".)¶¶

(D) The OSIPM resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. This amount is the amount required to purchase a single premium immediate annuity to make up the shortfall. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:¶¶

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.¶¶

(ii) The difference between:¶¶

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and¶¶

(II) The applicable need standard under OAR 461-160-0620(3)(c).¶¶

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.¶¶

(4) The provisions of paragraph (2)(c)(C) of this rule requiring income to be considered first may be waived if the Department determines that the resulting community resource allowance would create an undue hardship on the spouse (see OAR 461-001-0000) of the individual.

Statutory/Other Authority: ORS 411.070, 411.083, 411.404, 411.706, ORS 411.060, ORS 409.050, 413.085, 414.685

Statutes/Other Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.706, ORS 409.010

AMEND: 461-160-0620

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-160-0620 and income deductions and client liability for Long Term Care Services and Waivered Services is being amended to adjust standards to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living. These amendments will take effect January 1.

CHANGES TO RULE:

461-160-0620

Income Deductions and Client Liability; Long-Term Care Services or Home and Community-Based Care; OSIPM ¶

In the OSIPM program:¶

(1) Deductions from income are made for an individual residing in or entering a long-term care facility or receiving home and community-based care (see OAR 461-001-0030) as explained in subsections (3)(a) to (3)(h) of this rule.¶

(2) Except as provided otherwise in OAR 461-160-0610, the liability of the individual is determined according to subsection (3)(i) of this rule.¶

(3) Deductions are made in the following order:¶

(a) One standard earned income deduction of \$65 is made from the earned income in the OSIPM program.¶

(b) The deductions under the plan for self-support as allowed by OAR 461-145-0405.¶

(c) One of the following need standards:¶

(A) A ~~\$64.1194~~ personal needs allowance for an individual receiving long-term care services.¶

(B) A \$90 personal needs allowance for an individual receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.¶

(C) For an individual who receives home and community-based care:¶

(i) Except as provided in subparagraph (ii) of this paragraph, the OSIPM maintenance standard.¶

(ii) For an individual who receives in-home services, the OSIPM maintenance standard plus \$500.¶

(d) A community spouse (see OAR 461-001-0030) monthly income allowance is deducted from the income of the institutionalized spouse (see OAR 461-001-0030) to the extent that the income is made available to or for the benefit of the community spouse, using the following calculation.¶

(A) Step 1 - Determine the maintenance needs allowance. \$2,155.00 is added to the amount over \$646.50 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or ~~\$3,216.059.50~~, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the SNAP program (see OAR 461-160-0420). If an all-inclusive rate covers items that are not allowable shelter expenses, including meals or housekeeping in an assisted living facility, or the rate includes utilities, to the extent they can be distinguished, these items must be deducted from the all-inclusive rate to determine allowable shelter expenses.¶

(B) Step 2 - Compare maintenance needs allowance with community spouse's countable income. The countable (see OAR 461-001-0000) income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.¶

(C) Step 3 - If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.¶

(e) A dependent income allowance as follows:¶

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$2,155.00. To determine the income allowance of each eligible dependent:¶

(i) The monthly income of the eligible dependent is deducted from \$2,155.00.¶

- (ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.¶
 - (B) For a case with no community spouse:¶
 - (i) The allowance is the TANF adjusted income standard (see OAR 461-155-0030) for the individual and eligible dependents.¶
 - (ii) The TANF standard is not reduced by the income of the dependent.¶
 - (f) Costs for maintaining a home if the individual meets the criteria in OAR 461-160-0630.¶
 - (g) Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan.¶
 - (h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income (see OAR 461-001-0000).¶
 - (i) The individual's liability is determined as follows:¶
 - (A) For an individual receiving home and community-based care (except an individual identified in OAR 461-160-0610(4)), the liability is the actual cost of the home and community-based care or the adjusted income of the individual, whichever is less. This amount must be paid to the Department or the home and community-based care facility each month as a condition of being eligible for home and community-based care. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.¶
 - (B) For an individual who resides in a nursing facility, the liability is the actual cost of services or the adjusted income of the individual, whichever is less. This amount must be paid to the facility each month as a condition of being eligible for nursing facility services.
- Statutory/Other Authority: ORS 409.050, 413.085, 411.060, 411.070, 411.404, 414.065, 414.685, 411.706
Statutes/Other Implemented: ORS 409.010, 413.085, 411.060, 411.070, 411.404, 414.065, 414.685, 42 USC 1396r-5, 411.706, 42 CFR 435.725 - 435.735

REPEAL: 461-175-0206

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-175-0206 about Notice Situation; Benefit Standard Changes; Not SNAP is being repealed as its provisions are being updated and absorbed into OAR 461-175-0050. This will make the notice situation provisions more accurate, clear, and concise.

CHANGES TO RULE:

~~461-175-0206~~

~~Notice Situation; Benefit Standard Changes; Not SNAP~~

~~(1) If the basis for a decision to reduce, suspend, or close a grant of public assistance or medical assistance is a change to a benefit standard, a timely continuing benefit decision notice is sent at least 30 calendar days before the effective date of the action, or if the Department has fewer than 60 days before the effective date to implement a change to a benefit standard:¶¶~~

~~(a) At least 15 working days before the effective date of the action for clients in the Address Confidentiality Program (see OAR 461-001-0000).¶¶~~

~~(b) At least 10 working days before the effective date of the action for clients not in the Address Confidentiality Program.¶¶~~

~~(2) For purposes of this rule, the term "change to a benefit standard" means a change to the applicable inflation-adjusted contribution, income, or payment standard. It does not include the annual adjustment to a standard based on a federal or state inflation rate.¶¶~~

~~(3) This rule does not apply in the SNAP program.~~

~~Statutory/Other Authority: ORS 409.050, 411.060, 411.404, 412.014, 412.049~~

~~Statutes/Other Implemented: ORS 192.856, 409.010, 411.060, 411.095, 411.404, 412.014, 412.049~~

AMEND: 461-180-0083

NOTICE FILED DATE: 10/30/2020

RULE SUMMARY: OAR 461-180-0083 about effective dates; other changes that cause increases in the OSIPM and QMB Programs, is being amended to change the effective date for individuals moving from CAWEM to OSIPM or CAWEM Plus from the day the individual reports the change to the first of the month in which the individual reports the change.

CHANGES TO RULE:

461-180-0083

Effective Dates; Other Changes That Cause Increases; OSIP, OSIPM, and QMB

(1) In the OSIP, OSIPM, and QMB programs, this rule is used to determine the effective date when reported changes, other than changes in income or income deductions, cause an increase in benefits. See OAR 461-180-0020 for information about changes in income and income deductions that cause increases.¶

(2) The effective date is determined in accordance with OAR 461-180-0090 if a current recipient of OSIPM or QMB program benefits is determined eligible for a new program with a higher benefit level due to any of the following factors:¶

(a) Changes to the number in the need group (see OAR 461-110-0630).¶

(b) Changes to the amount of countable (see OAR 461-001-0000) resources.¶

(c) Changes to employment status.¶

(d) Changes to service eligibility.¶

(3) If a current recipient of OSIPM-CAWEM is determined eligible for the full OSIPM package due to a change in non-citizen status, the effective date is the ~~day~~first day of the month in which the individual reports the change.¶

(4) If a current OSIPM or OSIPM-CAWEM recipient is determined eligible for a higher benefit level due to pregnancy, the effective date is the ~~date~~first day of the month in which the pregnancy was reported.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 41

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706