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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 28-2021

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary Amendments to OSIPM and QMB Programs during COVID-19

EFFECTIVE DATE: 03/25/2021 THROUGH 09/20/2021

AGENCY APPROVED DATE: 03/25/2021

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NEED FOR THE RULE(S):

42 CFR 433.400 which took effect 11/2/2020, clarified CMS's interpretation of the CARES Act. States were directed, among other things, to resume acting on all changes to client liability (post-eligibility treatment of income) and participant fees (cost sharing), and to close medical benefits opened due to agency error, convicted client fraud, or client abuse. States were never instructed to maintain special needs payments during the COVID-19 emergency period; however, ODHS leadership made the decision to include adverse actions to those benefits in its initial COVID-19 emergency period provisions. This rule change brings the Department into compliance with and implements the provisions of 42 CFR 433.300 to the extent possible at this time due to ONE system update constraints. It also allows the Department to mitigate some of the negative fiscal impact that resulted from continuing cash payments for individuals who were no longer eligible. The deletion of the electronic signature language removes redundant language.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-135-0880 will result in serious prejudice to the public interest, the Department, and clients of its programs. The Department needs to proceed by temporary rule due to the immediate need to come into as close compliance with 42 CFR 433.400. The consequences for not making the change immediately includes the Department risking losing its temporary 6.2% increase to the FMAP during the COVID-19 emergency period if it does not make all attempts to comply with 42 CFR 433.300, which could result in a significant negative fiscal impact for both the Department and the Oregon Health Authority. These rule amendments illustrate a good faith effort on Oregon's part to comply with the 11/2/2020 CFR adoption by implementing provisions that can most readily be applied given the significant system modifications necessary to adopt all of the changes from the original interpretation of the CARES Act by CMS. The rule must be amended to support the system updates that will be implemented the night of 3/24/21.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

CMS-9912 Interim Final Rule with Comment Factsheet on Updated Policy for Maintaining Medicaid Enrollment during the Public Health Emergency for COVID-19 available here: <https://www.medicaid.gov/state-resource->

AMEND: 461-135-0880

RULE SUMMARY: OAR 461-135-0880 about OSIPM and QMB Programs; COVID-19, is being amended to remove the following actions from the list of prohibited adverse actions during the COVID-19 emergency period - client liability increases; Employed Persons with Disabilities (EPD) participant fee increases; closure of medical benefits opened in error due to agency error, convicted client fraud, or client abuse; reductions to or closure of special needs payments; and suspensions due to an individual becoming a resident of a correctional facility. It is also being amended to remove the provision allowing electronic signature on all forms related to OSIPM and QMB program eligibility and to make clear the requirements for those who need to verify US citizenship, US national, or qualified non-US citizen status.

CHANGES TO RULE:

461-135-0880

OSIPM and QMB Programs; COVID-19

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

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

(a) OAR 461-115-0700,¶

(b) OAR 461-180-0030, 461-180-0075-0704,¶

(c) OAR 461-180-0040(4) and (5), 30, and ¶

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

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

(a) Program closures when an individual:¶

(A) Passes away,¶

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

(C) Requests a voluntary closure,¶

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

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

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

(G) Is approved for benefits due to an administrative error (see OAR 461-195-0501) or obtained benefits through convicted fraud or abuse by the individual.¶

(b) Benefit reductions when an individual:¶

(A) Requests a voluntary reduction.¶

~~(c) Increase~~ (B) Is to no client liability when restoring previous liability after a one-time medical deduction.¶

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

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

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

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

~~(A) The Department will make an effort to authenticate the identity of the individual providing the telephonic signature, longer eligible for the same level or amount of a special needs payment.~~¶

(c) Increases to client liability when restoring previous liability.¶

~~(Bd) The individual shall be made aware of the rights and re Benefit suspensibilities listed on twhe form,~~¶

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

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

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

~~(4)~~ n an individual becomes a resident of a correctional facility under OAR 461-135-0950.

~~(3)~~ Notwithstanding OAR 461-115-0700, the Department will accept self-attestation (see OAR 461-115-0700(2)(b)) to verify all eligibility criteria, except US citizenship, US national, and non-US citizen status.

~~(4)~~ Notwithstanding OAR 461-115-0704(10), if the Department cannot promptly verify US citizenship, US national, or qualified non-US citizen status; the Department extends the reasonable opportunity period to 180 days from the date the notice is received.

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

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

Statutes/Other Implemented: ORS 411.060, 411.070, 411.083, 412.006, ORS 84.001 to 84.061, 412.009, 412.024, 412.049, 412.064, 412.089, 409.010, 411.081, 411.087, 45 CFR 206.10, 45 CFR 263.2, 45 CFR 400.155, Pub. L. 116-127, 42 CFR 435.907, 42 CFR 435.914, 42 CFR 433.400