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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 461  
DEPARTMENT OF HUMAN SERVICES  
SELF-SUFFICIENCY PROGRAMS

**FILED**  
04/30/2021 11:56 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Proposed Rule Changes to Eight Rules Regarding APD and SS Programs

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/18/2021 11:55 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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Filed By:  
Meorah Solar  
Rules Coordinator

**HEARING(S)**

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 05/25/2021

TIME: 7:00 PM - 8:30 PM

OFFICER: Meorah Solar

ADDRESS: No Physical Location due to  
COVID-19

Phone 1-971-277-2343, code 587 222  
520#

Microsoft Teams link also available

No Physical location, OR 0

**SPECIAL INSTRUCTIONS:**

Everyone has a right to know about  
and use Oregon Department of Human  
Services (ODHS) programs and  
services. DHS provides free help. Some  
examples of the free help ODHS can  
provide are: sign language and spoken  
language interpreters, written  
materials in other languages, braille,  
large print, audio and other formats. If  
you need help or have questions,  
please contact Meorah Solar at (503)  
602-7545, 711 TTY, or  
meorah.a.solar@dhsosha.state.or.us at  
least 48 hours before the meeting.

## NEED FOR THE RULE(S):

OAR 461-101-0010 needs to be amended to update the definition of JOBS Plus and to correct an QMB acronym.

OAR 461-110-0530 need to be amended because the rule as currently written leaves a gap that could be misinterpreted as allowing individuals applying for LTC services who do not live with their spouse to avoid complying with the community spouse resource allowance provisions if they are otherwise eligible for OSIPM. This rule change fills that gap and aligns Oregon administrative rules with federal spousal impoverishment laws as well as current ONE functionality.

OARs 461-115-0430 and 461-115-0050 need to be amended as Federal rules require Medicaid agencies to send Medicaid recipients pre-filled renewal forms at their annual renewal. Those not eligible for passive renewal or those with changes must sign and return the form. This rule change aligns non-MAGI renewal and application rules with federal policy and ONE system functionality.

OAR 461-120-0125 needs to be amended for the following reasons: U.S. Congress passed the Consolidated Appropriations Act of 2021 changing the status of COFA citizens in regard to Medicaid eligibility. Previously, there was no federal Medicaid funds available for these individuals age 19 and older, instead they were granted a special immigration status that allowed them to live and work in the U.S. without the need for a visa. The act referenced above reversed those provisions and effectively made COFA citizens who have immigrated to the U.S. eligible for Medicaid, regardless of age effective the day the legislation was enacted. The bill was signed on 12/27/20. This rule change aligns the Department with federal regulations by moving the reference to COFA citizens to the section that outlines who meets the non-citizen requirements for Medicaid. This amendment makes the 3/12/21 temporary change permanent. This rule also needs to be amended to make it clearer that meeting the definition of a qualified non-US citizen does not make the individual eligible for program benefits, as well as to update outdated language.

OAR 461-135-0880 needs to be changed because 42 CFR 433.400 which took effect 11/2/21, 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, DHS leadership made the decision to include adverse actions to those benefits in its initial COVID-19 emergency period provisions. This rule change allows the Dept. to comply with and implement 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, as allowing electronic signatures is no longer limited to forms requiring a signature during the COVID-19 emergency period.

OAR 461-160-0620 needs to be amended because the Department is required to adjust its post-eligibility treatment of income deduction amounts as a result of this congressionally approved change. This permanent amendment keeps Oregon in line with current federal standards for Department Medicaid programs and changes in the MMMNA and community spouse monthly housing allowance under the Spousal Impoverishment laws.

In 2018, changes were proposed to OAR 461-135-0950. Some of the changes went through the process but were never fully adopted. This change is seeking to correct that fact. After the current version of the rule was adopted, it was decided that two calendar months of cash payments following the closure of OSIPM was excessive. The intent of the original rule change (which took effect 1/1/18) was to ensure that landlords could continue to be paid during a temporary period of incarceration and thus allow individuals to return to a stable a living situation upon release (rather than reverting once again to homelessness); however, ODDS staff have since clarified that it should only apply to individuals incarcerated for 30 days or less. This amendment implements the 30-day limit.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

CMS-1922 Interim Final Rule with Comment Factsheet

<https://www.medicaid.gov/sites/default/files/2020-11/2021-ssi-and-spousal-impoverishment-standards.pdf>

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#### FISCAL AND ECONOMIC IMPACT:

The Department estimates that amending OAR 461-101-0010, 461-110-0530, 461-115-0430, 461-115-0050, will have no fiscal impact on clients, the public, the Department, other state agencies, local government, and business, including small business. There is no cost of compliance for small businesses. No small businesses are subject to this rule.

The Department estimates the following impacts from amending OAR 461-120-0125:

The Department will experience a negative fiscal impact as a result of this rule change as individuals previously ineligible for non-MAGI OHP Plus benefits or Medicare Savings Plan benefits may now qualify. There were 17 individuals who moved from the Citizen/Alien Waived Emergent Medical (CAWEM) to OSIPM, 3 of whom were also approved for QMB. There were an additional 5 individuals who had recently been denied Medicare Savings Program benefits due to not meeting noncitizen requirements but who were approved for Medicare Savings Program benefits when eligibility was redetermined. Out of these 5, 3 were approved for QMB, 1 for SMB, and 1 for SMF. The increased expenditures to the Department for the Part B premium amount for 4 individuals (less the current FMAP of 67.04%) is \$195.78 ( $\$148.50 \times 4 = \$594$  per month  $\times 32.96\%$  state match = \$195.78). There is no impact to the Department for the SMF recipient as the FMAP for SMF is 100%. The Department cannot provide an accurate estimate of the additional fiscal impact because it has no way of knowing what medical benefits the newly OSIPM-eligible or QMB-eligible individuals will access or whether they will opt out of capitated managed care. COFA citizens lawfully residing in the U.S. age 19 and older who meet financial and non-financial requirements for Medicaid will experience a positive fiscal impact as a result of this rule as they were previously only eligible for the OHP package that covered emergency, life-saving medical services. For the 8 who were also Medicare recipients, the minimum positive monthly fiscal impact will be the cost of the current Part B premium, which is \$148.50. The Department estimates no will have no fiscal impact on the public, other state agencies, local government, and business, including small business. There is no cost of compliance for small businesses. No small businesses are subject to this rule.

The Department estimates the following impacts from amending OAR 461-135-0880:

Reversing the adverse action provisions identified above would have a positive impact on the Department and help ensure Oregon's eligible for the enhanced FMAP rate by 6.2% during this period. The Department cannot provide a reasonable estimate of the impact because we have no way of identifying affected individuals at this time or anticipate how long the COVID-19 emergency period will last. Reversing some of the adverse action provisions will have a

negative fiscal impact on clients as those who were enrolled due to agency error will lose coverage, certain LTC service recipients will experience an increase in client liability, and some individuals will lose or experience a reduction in special needs cash payments. The Department cannot provide a reasonable estimate of the impact because we have no way of identifying the affected individuals at this time or anticipate how long the COVID-19 emergency period will last. The Department estimates no will have no fiscal impact on the public, other state agencies, local government, and business, including small business. There is no cost of compliance for small businesses. No small businesses are subject to this rule.

The Department is unable to accurately estimate the fiscal impact of amending OAR 461-160-0620 on the Department and on clients because the 2021 MMMNA and community spouse monthly housing allowance are not yet known. Some clients will receive a slight reduction in their service liability; therefore, it would have a positive fiscal impact on clients and a negative fiscal impact on the Department. However, a portion of the increased liability amounts the Department collected as a result of the January 2021 COLA will be "corrected" by the increase in the MMMNA and community spouse monthly housing allowance in July. In other words, some clients were required to make increased service payments as a result of the 2021 SSA COLA but a subset of these clients will see a reduction of their service liability in July as a result of this amendment, assuming the MMMNA and housing allowance will increase. The Department is waiting on a report that provides current data on the number of affected clients which is used to estimate the fiscal impact on the department. Once the report is generated and the new MMMNA and housing allowance are published, the Department can provide revised fiscal impact information. The Department estimates that these amendments will have no fiscal impact on other state agencies, local government, and business including small business. There is no cost of compliance for small business. No other members of the public will be affected.

The Department estimates the following impacts from amending OAR 461-135-0950:

The GA-related changes are already occurring in practice, as the rule was thought to have been adopted. Overall a slight positive fiscal impact may occur for the Department, as it reduces the amount of housing assistance paid to individuals who are incarcerated more than 30 days. The Department, however, does not believe the impact is significant, as the GA Program has had 25 consumers (3.2%) since its most recent inception, who have experienced incarceration. Of those, 13 consumers never returned to the GA program. The remaining 12 consumers returned to GA upon release and are either still GA consumers or left GA once allowed by SSI or SSDI disability. This is out of a total of 779 GA cases since the inception of the GA program. The GA-related changes would potentially have a negative fiscal impact on clients, as it reduces the amount of housing assistance paid to individuals who are incarcerated more than 30 days. The Department estimates no will have no fiscal impact on the public, other state agencies, local government, and business, including small business. There is no cost of compliance for small businesses. No small businesses are subject to this rule.

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#### COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

See Fiscal and Economic Impact

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#### DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of these rules but are invited to provide input during the public comment period.

RULES PROPOSED:

461-101-0010, 461-110-0530, 461-115-0050, 461-115-0430, 461-120-0125, 461-135-0880, 461-135-0950, 461-160-0620

AMEND: 461-101-0010

RULE SUMMARY: OAR 461-101-0010 about Program Acronyms and Overview is being amended to provide a more broad overview about Able-Bodied Adults Without Dependents, to remove the TANF-PLS acronym as it is not used, and to correct the expansion of the QMB-SMB acronym.

CHANGES TO RULE:

461-101-0010

Program Acronyms and Overview ¶¶

(1) Acronyms are frequently used when referring to a program. There is an acronym for each umbrella program and acronyms for each subprogram.¶¶

(2) When no program acronym appears in a rule in chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.¶¶

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code.¶¶

(4) ABAWD; Able-Bodied Adults Without Dependents. ~~Participants ages at least 18 but not yet 50, with no child under 18 in their filing group (see OAR 461-110-0370).~~ The ABAWD employment program is one of the SNAP employment and training programs. Individuals who are identified as ABAWD are subject to the SNAP time limits.¶¶

(5) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for individuals who are not eligible for other medical programs solely because they do not meet citizenship or noncitizen status requirements.¶¶

(6) DSNAP; Disaster Supplemental Nutrition Assistance Program. Following a presidential declaration of a major disaster in Oregon, DSNAP provides emergency DSNAP program benefits to victims. OAR 461-135-0491 to 461-135-0497 cover DSNAP eligibility and benefits.¶¶

(7) EA; Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.¶¶

(8) ERDC or ERDC-BAS; Employment Related Day Care-Basic. Helps low-income working families pay the cost of child care.¶¶

(9) GA; General Assistance. Cash assistance to certain low-income individuals with disabilities.¶¶

(10) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, service-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 461-135-1335) were repealed July 1, 2001.¶¶

(11) JOBS; Job Opportunity and Basic Skills. An employment program for TANF participants. JOBS helps these individuals attain self-sufficiency through training and employment. The program is part of Welfare Reform.¶¶

(12) JOBS Plus. JOBS Plus is a component of the JOBS Program; ~~TANF-PLS is the acronym used for individuals in the JOBS Plus component.~~ JOBS Plus provides subsidized jobs rather than SNAP or TANF benefits, for individuals receiving TANF and determined JOBS eligible. Eligibility for the JOBS Plus component is determined by the Department. ¶¶

(13) JPI; Job Participation Incentive. An additional \$10 food benefit to help increase the ability of parents with children, who meet federal TANF participation rate, to meet the nutritional needs of their families.¶¶

(14) LIS; Low-Income Subsidy. The Low-Income Subsidy program is a federal assistance program for Medicare recipients who are eligible for extra help meeting their Medicare Part D prescription drug costs.¶¶

- (15) OFSET. The Oregon Food Stamp Employment Transition Program, which helps SNAP program benefit recipients find employment. This program is mandatory for some SNAP program benefit recipients.¶
- (16) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to individuals who are blind, have a disability, or are 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:¶
- (a) OSIP-AB; Oregon Supplemental Income Program - Aid to the Blind.¶
  - (b) OSIP-AD; Oregon Supplemental Income Program - Aid to the Disabled.¶
  - (c) OSIP-EPD; Oregon Supplemental Income Program - Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.¶
  - (d) OSIP-OAA; Oregon Supplemental Income Program - Old Age Assistance.¶
- (17) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for individuals who are elderly or who have a disability. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:¶
- (a) OSIPM-AB; Oregon Supplemental Income Program Medical - Aid to the Blind.¶
  - (b) OSIPM-AD; Oregon Supplemental Income Program Medical - Aid to the Disabled.¶
  - (c) OSIPM-EPD; Oregon Supplemental Income Program Medical - Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.¶
  - (d) OSIPM-OAA; Oregon Supplemental Income Program Medical - Old Age Assistance.¶
  - (e) OSIPM-ICP; Oregon Supplemental Income Program Medical - Independent Choices Program.¶
- (18) The Post-TANF program provided a monthly transitional payment to employed individuals who were no longer eligible for the Pre-TANF or TANF programs due to earnings, and met the other eligibility requirements.¶
- (19) The Pre-TANF program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to assess the individual's employment potential; determine any barriers to employment or family stability; develop an individualized case plan that promotes family stability and financial independence; help individuals find employment or other alternatives; and provide basic living expenses immediately to families in need.¶
- (20) QMB; Qualified Medicare Beneficiaries. Programs providing payment of Medicare premiums and one program also providing additional medical coverage for Medicare recipients. Each of these programs also is considered to be a Medicare Savings Program (MSP). When used alone in a rule, QMB refers to all MSP. The following codes are used for QMB subprograms:¶
- (a) QMB-BAS; Qualified Medicare Beneficiaries - Basic. The basic QMB program.¶
  - (b) QMB-DW; Qualified Medicare Beneficiaries - Disabled Worker. Payment of the Medicare Part A premium for individuals under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.¶
  - (c) QMB-SMB; Qualified Medicare Beneficiaries - Specified Limited-Low-Income Medicare Beneficiary. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.¶
  - (d) QMB-SMF; Qualified Medicare Beneficiaries - Qualified Individuals. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMF. This program has a 100-percent federal match, but also has an allocation that, if reached, results in the closure of the program.¶
- (21) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples, without children, who are not eligible for the TANF program.¶
- (22) REFM; Refugee Assistance Medical. Medical coverage for low-income refugees who are not eligible for Medicaid.¶
- (23) REP; Refugee Employment Program. Any self-sufficiency service, employment service, or case plan that is available to or developed for individuals in the REF program.¶
- (24) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.¶

- (25) SFDNP; Senior Farm Direct Nutrition Program. Food vouchers for low-income seniors. Funded by a grant from the United States Department of Agriculture.¶¶
- (26) SFPSS; State Family Pre-SSI/SSDI Program. A voluntary program providing cash assistance and case management services to families when at least one TANF eligible adult in the household has an impairment (see OAR 461-125-0260) and is or will be applying for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).¶¶
- (27) SNAP; Supplemental Nutrition Assistance Program. Helps low-income households maintain proper nutrition by giving them the means to purchase food. SNAP used to be known as FS or Food Stamps; any reference to SNAP also includes FS and Food Stamps.¶¶
- (28) STEP; SNAP Training and Employment Program. A training and employment program for certain SNAP participants.¶¶
- (29) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Assistance for families where there is a current or future risk of further domestic violence.¶¶
- (30) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment.  
Statutory/Other Authority: ORS 414.025, 414.826, ORS 413.085, 414.685, ORS 329A.500, 409.050, 411.060, 411.404, 411.706, 411.816, 412.014, 412.049  
Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.826, 414.839

AMEND: 461-110-0530

RULE SUMMARY: OAR 461-110-0530 about financial group is being amended to add a section clarifying that married individuals not in the same household group as their spouse who may otherwise be eligible for OSIPM under standard living arrangement rules (i.e. not subject to the 300% SSI income standard) are still subject to the community spouse resource allowance provisions if applying for Long Term Care services.

CHANGES TO RULE:

461-110-0530

Financial Group ¶¶

(1) Except as provided in section (4) of this rule, the "financial group" consists of the filing group (see OAR 461-110-0310) members whose income and resources the Department considers in determining eligibility (see OAR 461-001-0000) and benefits.¶¶

(2) In the ERDC, OSIPM-EPD, QMB, and SNAP programs, the "financial group" consists of each individual in the filing group.¶¶

(3) In the REF and REFM programs, the "financial group" consists of each individual in the filing group, except an individual who is eligible for and receives an SSI cash payment.¶¶

(4) In the OSIPM (except OSIPM-EPD) program:¶¶

(a) For the purposes of this section of this rule, "ineligible" means an individual not eligible to receive either SSI or TANF program benefits.¶¶

(b) When an individual lives in a standard living arrangement (see OAR 461-001-0000):¶¶

(A) Except as provided in paragraph (B) of this subsection, each member of the filing group is in the "financial group".¶¶

(B) When an individual is married, not assumed eligible (see OAR 461-135-0010) for OSIPM, and the individual's spouse (see OAR 461-001-0000) is considered "ineligible" (see subsection (a) of this section):¶¶

(i) If the individual's adjusted income (see OAR 461-001-0000) using the deductions allowed under OAR 461-160-0550(4), or after being evaluated under certain protected groups (see OAR 461-135-0771 to OAR 461-135-0830), is greater than the OSIPM program adjusted income standard for a need group of one under OAR 461-155-0250, the individual is in his or her own "financial group" and not eligible for OSIPM.¶¶

(ii) When there are children in the home, if the ineligible spouse's remaining countable (see OAR 461-001-0000) income after allocation (see OAR 461-160-0551) to each ineligible child is equal to or less than the difference between the couple and the individual SSI standards: the spouse is not included in the "financial group" when determining income eligibility; however, the spouse is included in the "financial group" when determining resource eligibility.¶¶

(iii) When there are no children in the home, if the ineligible spouse's countable income is less than the difference between the couple and the individual SSI standards: the spouse is not included in the "financial group" when determining income eligibility; however, the spouse is included in the "financial group" when determining resource eligibility.¶¶

(c) When an individual or is being evaluated under OAR 461-135-0745 or OAR 461-135-0750, the "financial group" consists only of the individual applying for benefits, except that the community spouse (see OAR 461-001-0030) is included in the "financial group" to determine initial eligibility as follows:¶¶

(A) At initial eligibility, the resources of the community spouse are considered and the provisions of OAR 461-160-0580 apply.¶¶

(B) The income of the community spouse is not considered in determining initial eligibility, and the community spouse is not included in any other eligibility group.¶¶

(d) When an individual is in a nonstandard living arrangement (see OAR 461-001-0000), the individual is not evaluated under either OAR 461-135-0745 or OAR 461-135-0750, and the community spouse is not in the household group; the community spouse is included in the "financial group" to determine initial eligibility as follows:¶¶

(A) At initial eligibility, the resources of the community spouse are considered and the provisions of OAR 461-160-0580 apply.

(B) The income of the community spouse is not considered in determining initial eligibility, and the community spouse is not included in any other eligibility group.

(5) In the TANF program, the "financial group" consists of each individual in the filing group except the following:

(a) A caretaker relative, other than a parent, who chooses not to be included in the need group and has income less than the non-needy countable income limit standard (see OAR 461-155-0030) for the filing group of the caretaker relative.

(b) The spouse of a caretaker relative, when the caretaker relative meets the requirements under subsection (a) of this section.

(c) A dependent child of a caretaker relative when the caretaker relative meets the requirements under subsection (a) of this section.

(d) An individual who is eligible for and receives an SSI cash payment.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.049, 412.064, 412.124, 413.085, 414.685, 414.712

Statutes/Other Implemented: 414.826, 414.839, 411.070, 411.404, 411.706, 411.816, 412.006, 412.049, 412.064, 412.124, 414.712, ORS 409.010, 411.060

AMEND: 461-115-0050

RULE SUMMARY: OAR 461-115-0050 about when an application must be filed is being amended to add a section indicating that OSIPM recipients who are not assumed eligible must complete and sign a renewal form at annual renewal.

CHANGES TO RULE:

461-115-0050

When an Application Must Be Filed ¶

Retroactively effective July 6, 2020:¶

- (1) An individual must file an application, or may amend a completed application, as a prerequisite to receiving benefits as follows:¶
- (a) An individual may apply for the GA program by completing an application for the OSIPM program.¶
  - (b) An individual may apply for the TA-DVS program as provided in OAR 461-135-1200.¶
  - (c) In all programs except the TA-DVS program:¶
    - (A) Except as provided otherwise in this rule, to apply for program benefits, an individual must submit a complete application on a form approved by the Department.¶
    - (B) An application is complete if all of the following requirements are met:¶
      - (i) All information necessary to determine eligibility (see OAR 461-001-0000) and benefit amount is provided on the application for each individual in the filing group (see OAR 461-110-0310).¶
      - (ii) The applicant, even if homeless, provides a valid mailing address.¶
      - (iii) The application is signed by the individual, the authorized representative (see OAR 461-115-0090) of the individual, or another individual applying for benefits on behalf of the individual, and received by the Department.¶
      - (l) An individual required but unable to sign the application may sign with a mark, witnessed by another individual.¶
      - (II) An individual submitting an electronic application (see OAR 461-001-0000) must submit the application with an electronic signature.¶
- (2) A new application is not required in the following situations:¶
- (a) In the GA program, when an individual is receiving OSIPM on the date of request (see OAR 461-115-0030) for GA.¶
  - (b) In the SNAP program, when a single application can be used both to determine an individual is ineligible in the month of application and to determine the individual is eligible the next month. This may be done when--¶
    - (A) Anticipated changes make the filing group (see OAR 461-110-0370) eligible the second month; or¶
    - (B) The filing group provides verification between 30 and 60 days following the filing date (see OAR 461-115-0040), under OAR 461-180-0080.¶
  - (c) In all programs except the SNAP program, when a single application can be used both to determine an individual is ineligible on the filing date (see OAR 461-115-0040) or the date of request (see OAR 461-115-0030) as applicable to the term used by the program, and to determine the individual is eligible when anticipated changes make the filing group eligible within 30 days from the filing date or 45 days from the date of request (as applicable to the term used by the program).¶
  - (d) When the case is closed and reopened during the same calendar month.¶
  - (e) When benefits were suspended for one month because of the level of income, and the case is reopened the month following the month of suspension.¶
  - (f) When reinstating medical benefits for a pregnant woman covered by OAR 461-135-0950, notwithstanding subsection (g) of this section.¶
  - (g) In the ERDC program, when a case closed during the certification period (see OAR 461-001-0000) and the individual reports a change in circumstances prior to the end of the month following the closure and the reported change will make the individual eligible.¶

- (h) In the OSIPM and QMB programs, when the medical benefits of an individual are suspended because the individual lives in a public institution (see OAR 461-135-0950), if the Department is notified within 10 calendar days of the release.¶
- (i) In the REF, TA-DVS, and TANF programs, when a single application can be used both to determine an individual is ineligible in the month of application and to determine the individual is eligible the next month. This may be done when -¶
- (A) Anticipated changes make the filing group (see OAR 461-110-0330 and OAR 461-110-0430) eligible in the following month; or ¶
- (B) Amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.¶
- (3) When an individual establishes a new date of request prior to the end of the month following the month of case closure, unless the Department determines a new application is required, a new application is not required in the following situations:¶
- (a) In the OSIPM program, when the individual's case closed due to failure to make a liability payment required under OAR 461-160-0610.¶
- (b) In the OSIPM-EPD program, when the individual's case closed due to failure to make a participant fee payment required under OAR 461-160-0800.¶
- (4) A new application is required to add a newborn child (see OAR 461-001-0000) to a benefit group (see OAR 461-110-0750) according to the following requirements:¶
- (a) In the ERDC and SNAP programs, an application is not required to add the child to the benefit group.¶
- (b) In the OSIPM, QMB, and REFM programs, an additional application is not required to add an assumed eligible newborn (see OAR 461-135-0010) to a benefit group currently receiving Department medical program benefits.¶
- (c) In the TANF program:¶
- (A) A new application is not required if the child is listed on the application as "unborn" and there is sufficient information about the child to establish its eligibility.¶
- (B) A new application is required if the child is not included on the application as "unborn."¶
- (d) In all programs other than ERDC, QMB, REF, REFM, SNAP, and TANF, an application is required.¶
- (5) A new application is required to add an individual, other than a newborn child, to a benefit group according to the following requirements:¶
- (a) In the ERDC, QMB, OSIP, OSIPM, and SNAP programs, a new application is not required.¶
- (b) In the REF, REFM, and TANF programs, an individual may be added by amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.¶
- (6) An individual whose TANF grant is closing may request ERDC orally or in writing.¶
- (7) Except for an applicant for the OSIPM, QMB, or SNAP program, an individual may change between programs administered by the Department using the current application if the following conditions are met:¶
- (a) The individual makes an oral or written request for the change.¶
- (b) The Department has sufficient evidence to determine eligibility and benefit level for the new program without a new application.¶
- (c) The program change can be effected while the individual is eligible for the first program.¶
- (8) In the OSIP, OSIPM, and QMB programs, ~~a:~~¶
- (a) A new application is not required to redetermine eligibility at annual renewal if one of the following conditions are met:¶
- ~~(a)~~ (A) The individual is currently receiving benefits from one of these programs and the Department has sufficient evidence to redetermine eligibility for the same program or determine eligibility for the new program without a new application or by amending the current application.¶
- ~~(b)~~ (B) The individual was receiving benefits from one of these programs but was terminated for failure to provide requested information during a periodic redetermination (see OAR 461-115-0430), if the requested information is received within 90 days of termination.¶
- (b) Notwithstanding subsection (a) above, in the OSIP and OSIPM programs, individuals who are not assumed

eligible (see OAR 461-135-0010) are required to return and sign a renewal form mailed to them by the Department at annual renewal (see OAR 461-115-0430).

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.025, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.117, 411.404, 411.447, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.041, 414.231, 414.685, 414.839, CFR 435.916

AMEND: 461-115-0430

RULE SUMMARY: OAR 461-115-0430 about periodic redeterminations; not EA, ERDC, SNAP, or TA-DVS is being amended to add a definition of annual renewal and add language describing who must sign and return the pre-filled annual renewal form.

CHANGES TO RULE:

461-115-0430

Periodic Redeterminations; Not EA, ERDC, SNAP, or TA-DVS ¶¶

The Department periodically redetermines the eligibility (see OAR 461-001-0000) of clients for benefits and assigns a redetermination date by which the next determination is required. The Department selects the redetermination date based on the client's circumstances and according to the following requirements:¶¶

(1) In the GA program, the Department redetermines eligibility at least once every 12 months.¶¶

(2) In the OSIP and OSIPM, and QMB programs, ~~the Department determines eligibility at least once every 12 months for clients who are not~~for purposes of this rule, "annual renewal" refers to the process in which the Department completes a redetermination of eligibility at least once every 12 months.¶¶

(a) The Department completes the redetermination of eligibility at "annual renewal" for individuals who are receiving SSI by verifying SSI status using electronic verification sources. No action is required by the individual.¶¶

(b) Individuals who are receiving both QMB program benefits and OSIPM will have their eligible for SSI. No redetermination is required for clients who are eligible for SSI. ility for both programs redetermined at the same time during "annual renewal."¶¶

(c) Except as provided in subsection (a) of this section, the Department sends the individual a pre-filled form at annual renewal. If the individual requires an interview in accordance with OAR 461-115-0230 or if an interview is not required but the information on the renewal form has changed, the individual must sign and return the renewal form. The signature can be gathered electronically.¶¶

(3) In the QMB program, the Department determines eligibility at least once every 12 months for clients who are not eligible for SSI. For QMB recipients who are also eligible for OSIPM, a redetermination for QMB is completed with the redetermination of OSIPM.¶¶

(4) The REF and REFM programs are time limited programs; therefore, no periodic redeterminations are made.¶¶

(5) In the SFPSS program, the Department redetermines eligibility at least once every 12 months. The Department redetermines program eligibility by redetermining eligibility for the TANF program.¶¶

(6) In the TANF program, benefits will end the last day of the certification period (see OAR 461-001-0000). The Department redetermines eligibility according to the following schedule:¶¶

(a) At least once every six months for each of the following:¶¶

(A) Clients not participating in an activity (see OAR 461-001-0025) of an open case plan (see OAR 461-001-0025).¶¶

(B) Clients who are currently serving a JOBS disqualification.¶¶

(b) At least once every 12 months for all other clients.

Statutory/Other Authority: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 412.014, 412.049, 413.085, 414.685, 414.826, 414.839, 409.050

Statutes/Other Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 412.014, 412.049, 413.085, 414.685, 414.826, 414.839, 409.010, 42 CFR 435.916

AMEND: 461-120-0125

RULE SUMMARY: OAR 461-120-0125 about alien status is being amended permanently adopt the temporary rule changes that designate citizens of Compact of Free Association States (i.e., Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) as qualified non-citizens for the OSIPM and QMB programs and include them in the category of individuals who meet the non-citizen requirements for Medicaid. This amendment is retroactively effective December 28, 2020. It is also being amended to update language to be more person-centered and to restructure the rule provisions and add language to make the rule more clear.

CHANGES TO RULE:

461-120-0125

Alien Status ¶

(1) For purposes of this chapter of rules,¶

(a) In all programs, an individual is a "qualified non-citizen" if the individual is any of the following:¶

~~(a)~~ A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq). This includes:¶

~~(A)~~ An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.¶

~~(B)~~ An Amerasian granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.¶

~~(b)~~ A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).¶

~~(c)~~ A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).¶

~~(d)~~ A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).¶

~~(e)~~ A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.¶

~~(f)~~ A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.¶

~~(g)~~ A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).¶

~~(h)~~ A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c), as determined by the U.S. Citizenship and Immigration Services (USCIS).¶

~~(i)~~ A non-citizen who is a "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).¶

~~(j)~~ A non-citizen who is a family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).¶

(b) In the OSIPM and QMB programs, in addition to subsection (a) of this section, an individual is a "qualified non-citizen" if the individual is from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau who lawfully reside in the United States in accordance with the Compacts of Free Association. The provisions in this subsection are retroactively effective December 28, 2020.¶

(2) In all programs except the REF and REFM programs, an individual meets the alien status requirements if the individual is one of the following:¶

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.¶

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).¶

(c) A qualified non-citizen who is any of the following:¶

- (A) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).¶
- (B) A member of the United States Armed Forces on active duty (other than active duty for training).¶
- (C) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in paragraphs (A) or (B) of this subsection.¶
- (3) In the ERDC, TA-DVS, and TANF programs, an individual meets the alien status requirements if the individual is one of the following:¶
- (a) An individual who is a qualified non-citizen (see subsection (1)(a) of this rule).¶
- (b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.¶
- (4) In the OSIPM and QMB programs an individual meets the alien status requirement if:¶
- (a) The individual is a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996 and has been in the U.S. for five years beginning on the date the non-citizen received his or her qualified non-citizen status; or¶
- (b) The individual meets the requirements of one of the following subsections:¶
- (A) An individual granted any of the following alien statuses:¶
- (i) Refugee - under section 207 of the INA.¶
- (ii) Asylum - under section 208 of the INA.¶
- (iii) Deportation being withheld under section 243(h) of the INA.¶
- (iv) Cubans and Haitians who are either public interest or humanitarian parolees.¶
- (v) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.¶
- (vi) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).¶
- (vii) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).¶
- (viii) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.¶
- (ix) Retroactively effective December 28, 2020, an individual from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau who lawfully reside in the United States in accordance with the Compacts of Free Association.¶
- (B) Effective October 1, 2009, an individual is a qualified non-citizen and is under 19 years of age.¶
- (C) Was a qualified non-citizen before August 22, 1996.¶
- (D) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified non-citizen status was obtained. An individual is not continuously present in the United States if the individual is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date qualified non-citizen status was obtained.¶
- (E) Is under the age of 19 and is one of the following:¶
- (i) ~~A citizen of a Compact of Free Association State (i.e., Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who has been admitted to the U.S. as a non-immigrant and is permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S.~~¶
- (ii) An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:¶
- (I) An alien currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);¶
- (II) An alien currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 USC 1229b);¶
- (III) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99-603 (8 USC 1255a), as amended;¶

- (IV) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649 (8 USC 1255a), as amended;¶
- (V) An alien currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;¶
- (VI) An alien currently in deferred action status pursuant to Department of Homeland Security Operating Instruction OI 242.1(a)(22); or¶
- (VII) An alien who is the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status.¶
- (iii) An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including those individuals as specified in section 101(a)(15) of the INA (8 USC 1101).¶
- (F) In the OSIPM program, is receiving SSI benefits.¶
- (G) In the QMB program, is receiving SSI and Medicare Part A benefits.¶
- ~~(H) Meets the alien status requirements in section (2) or (5) of this rule.¶~~
- (5) In the REF and REFM programs, an individual meets the alien status requirements if the individual is admitted lawfully under any of the following provisions of law:¶
  - (a) An individual admitted as a refugee under section 207 of the INA (8 USC 1157).¶
  - (b) An individual granted asylum under section 208 of the INA (8 USC 1158).¶
  - (c) Cuban and Haitian entrants, in accordance with requirements in 45 CFR part 401.¶
  - (d) An individual paroled as a refugee or asylee under section 212(d)(5) of the Immigration and Nationality Act (INA) (8 USC 1182(d)(5)).¶
  - (e) An Amerasian from Vietnam who is admitted to the U.S. as an immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. No. 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100-461 as amended)).¶
  - (f) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.¶
  - (g) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).¶
  - (h) Iraqi and Afghan aliens granted special immigrant status under section 101(a)(27) of the Immigration and Nationality Act.¶
- (6) In the SNAP program, an individual meets the alien status requirement if the individual meets the requirements of one or more of the following subsections:¶
  - (a) An individual granted any of the following alien statuses:¶
    - (A) Refugee - under section 207 of the INA.¶
    - (B) Asylum - under section 208 of the INA.¶
    - (C) Deportation being withheld under section 243(h) of the INA.¶
    - (D) Cubans and Haitians who are either public interest or humanitarian parolees.¶
  - (E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.¶
  - (F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).¶
  - (G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).¶
  - (H) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.¶
    - (b) A qualified non-citizen under 18 years of age.¶
    - (c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.¶
    - (d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).¶

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.¶¶

(f) A qualified non-citizen who has a disability, as defined in OAR 461-001-0015.¶¶

(g) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the SNAP program, subject to the following provisions:¶¶

(A) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means tested benefits include SNAP, TANF, and Medicaid (except emergency medical).¶¶

(B) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.¶¶

(C) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that the individual has fewer than 40 quarters of coverage, may be provisionally certified for SNAP program benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for SNAP program benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 413.085, 414.231, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826, H.R. 133, 116th Cong. (2019-2020)

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. It is also being amended to remove the provision allowing electronic signature on all forms related to OSIPM and QMB program eligibility.

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 461-180-003075-0704, ¶

(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 suspensions listed on the 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

AMEND: 461-135-0950

RULE SUMMARY: OAR 461-135-0950 about eligibility for residents of public institutions and state hospitals is being amended to change the length of time GA recipients who becomes incarcerated can continue to receive housing assistance benefits from two calendar months following the month of incarceration to one calendar month. It is also being amended to change language to more respectful, de-gendered, and person-centered terms.

CHANGES TO RULE:

461-135-0950

Eligibility for ~~Inmates and~~ Residents of Public Institutions and State Hospitals ¶

(1) This rule sets out additional restrictions on the eligibility of ~~inmates and~~ residents of public institutions and state hospitals for programs covered by Chapter 461 of the Oregon Administrative Rules.¶

(2) Definition of an "inmate".¶

(a) An inmate is an individual living in a public institution (see section (3) of this rule) who is:¶

(A) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including an individual being held involuntarily in a detention center awaiting trial or an individual serving a sentence for a criminal offense;¶

(B) Residing involuntarily in a facility under a contract between the facility and a public institution where, under the terms of the contract, the facility is a public institution;¶

(C) Residing involuntarily in a facility that is under governmental control;¶

(D) Receiving care as an outpatient while residing involuntarily in a public institution; or¶

(E) In the OSIPM and QMB programs, released from the public institution during a temporary period of hospitalization in a medical institution outside of the correctional facility.¶

(b) An individual is not considered an inmate when:¶

(A) The individual is released on parole, probation, or post-prison supervision;¶

(B) The individual is on home- or work-release, unless the individual is required to report to a public institution for an overnight stay;¶

(C) The individual is voluntarily residing in a supervised community residential facility and all of the following are true:¶

(i) Residents are not precluded from working outside the facility in employment available to individuals who are not under justice system supervision;¶

(ii) Residents can use community resources such as libraries, grocery stores, recreation and education at will, notwithstanding any house rules such as a requirement to sign in and out, curfews, or hours during which the residence is closed or locked; and¶

(iii) Residents can seek health care treatment in the broader community to the same or similar extent as other Medicaid enrollees in the state.¶

(D) The individual is staying voluntarily in a detention center, jail, or county penal facility after their case has been adjudicated and while other living arrangements are being made for the individual; or¶

(E) The individual is in a public institution pending other arrangements as defined in 42 CFR 435.1010.¶

(3) A "public institution" is any of the following:¶

(a) A state hospital (see ORS 162.135).¶

(b) A local correctional facility (see ORS 169.005): a jail or prison for the reception and confinement of imprisoned persons that is provided, maintained and operated by a county or city and holds individuals for more than 36 hours.¶

(c) A Department of Corrections institution (see ORS 421.005): a facility used for the incarceration of individuals sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.¶

(d) A youth correction facility (see ORS 162.135):¶

(A) A facility used for the confinement of youth offenders and other individuals placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a

residential academy and satellite, and camps and branches of those facilities; or¶

(B) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth, or youth offenders pursuant to a judicial commitment or order.¶

(4) Definition of serious mental illness. An individual has a serious mental illness if the individual has been diagnosed by a psychiatrist, a licensed clinical psychologist or a certified non-medical examiner as having dementia, schizophrenia, bipolar disorder, major depression or other affective disorder or psychotic mental disorder other than a substance abuse disorder and other than a disorder that is caused primarily by substance abuse.¶

(5) An individual who resides in a state hospital (see subsection (3)(a) of this rule) meets the definition of an individual with a serious mental illness (see section (4) of this rule), and applies for medical assistance between 90 and 120 days prior to the expected date of the person's release from the state hospital may be found eligible for medical assistance. If the individual is determined to be eligible, the effective date of the individual's medical assistance is the date the individual is released from the institution.¶

(6) In the OSIPM and QMB programs, except as provided for in section (7) of this rule, an individual who is at least 21 years of age and less than 65 years of age who becomes a resident of a state hospital has medical benefits suspended. When an individual with suspended medical benefits is no longer a resident of the state hospital, or when the individual is admitted to a medical institution outside of the state hospital for a period of hospitalization, medical benefits are reinstated effective the first day the individual is no longer a resident, if the individual continues to meet eligibility for the medical program.¶

(7) An individual residing in a state hospital may be eligible for OSIPM and QMB program benefits if the individual meets the requirements of one of the following subsections:¶

(a) The individual is 65 years of age or older.¶

(b) The individual receives a Certificate of Need for Services from the State-authorized agency, and meets one of the following:¶

(A) The individual is under 21 years of age.¶

(B) The individual is 21 years of age, received a Certificate of Need for Services from the State-authorized agency, and received those services immediately before reaching age 21. Except as provided for in subsection (a) of this section, eligibility ends at age 22.¶

(8) For all programs covered under chapter 461 of the Oregon Administrative Rules:¶

(a) Except as provided otherwise in this rule, an inmate (see section (2) of this rule) of a public institution is not eligible for benefits.¶

(b) If a pregnant ~~woman~~individual receiving medical assistance through the OSIPM program becomes an inmate of a public institution, their medical benefits are suspended. When the Department is informed the ~~woman~~individual is no longer an inmate, their medical benefits are reinstated - effective on the first day sthe-isy are no longer an inmate - if sthe-isy are still in their protected period of eligibility under OAR 461-135-0010.¶

(c) If an individual receiving medical assistance through the OSIPM or QMB programs becomes an inmate of a correctional facility, medical benefits are suspended during the incarceration period.¶

(d) In the OSIPM and QMB programs, when the Department is notified that an individual with suspended benefits has been released or has been admitted to a hospital outside of the public institution for a period of hospitalization, medical benefits are reinstated effective the first day the ~~client~~individual is no longer an inmate if both of the following are true:¶

(A) The ~~client~~individual continues to meet eligibility for the medical program; and¶

(B) The notification takes place within ten calendar days of the release, or the notification takes place more than ten calendar days from the release date and there is good cause for the late reporting.¶

(9) In the GA and SNAP programs, in addition to the other provisions of this rule, an inmate released from a public institution on home arrest and required to wear an electronic device to monitor their activity, is ineligible for benefits if the correctional agency provides room and board to the individual.¶

(10) In the GA program, when an individual becomes an inmate of a public institution:¶

(a) ~~Benefi~~Housing assistance payments may continue for ~~the two~~one calendar months following the month ~~the~~

~~Department is notified of the incarceration, if of incarceration~~ if the following are true:¶

~~(A) The Department can determine that~~ the individual will be released before the end of the ~~second~~-calendar month ~~and the following the month of incarceration, and~~¶

~~(B) The individual's~~ housing arrangement is still available.¶

(b) If the individual will be released after the end of the ~~second~~-calendar month following the month of ~~notific~~ incarceration, or if the release date is not known, ~~benefit~~ housing assistance payments will be closed effective the end of the notice period (see OAR 461-175-0050) for a timely continuing benefit decision notice (see OAR 461-001-0000).

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685, 412.014

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.447, 411.816, 412.014, 412.049, 414.426, 42 CFR 435.1009

AMEND: 461-160-0620

RULE SUMMARY: OAR 461-160-0620 about income deductions and client liability for long-term care services and waived services is being amended to update the minimum community spouse income allowance (Minimum Monthly Maintenance Needs Allowance or MMMNA) and the community spouse monthly housing allowance which are published by the federal government each year. This amendment keeps Oregon in line with current federal standards for Department Medicaid programs and changes to the MMMNA and community spouse monthly housing allowance under the Spousal Impoverishment laws.

CHANGES TO RULE:

461-160-0620

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

THIS RULE WILL BE AMENDED TO REFLECT UPDATES TO THE FEDERAL SPOUSAL IMPOVERISHMENTS STANDARDS PUBLISHED ANNUALLY. 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 \$64.94 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 \$3,259.50, 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-ICP, 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