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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 44-2021

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Adopting Five Pandemic Electronic Benefits Transfer (P-EBT) Rules.

EFFECTIVE DATE: 07/22/2021 THROUGH 01/17/2022

AGENCY APPROVED DATE: 07/22/2021

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NEED FOR THE RULE(S):

OARs 461-135-1501 about Pandemic Electronic Benefits Transfer (P-EBT), 461-135-1502 about Application and Eligibility; P-EBT, 461-135-1503 about Benefit Amount and Issuance of Benefit; P-EBT, 461-135-1504 Benefit Access and Use; P-EBT, and 461-135-1505 about Hearings, Claims, and Liability; P-EBT, need to be adopted to put into rule all provisions that guide Oregon's P-EBT program. P-EBT is being implemented for the 2020-2021 school year, however, no Oregon Administrative Rules exist in Chapter 461 to make the program clear to staff, the public, and regulating agencies.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-135-1501 and adopting OARs 461-135-1502, 461-135-1503, 461-135-1504, and 461-135-1505 will result in serious prejudice to the public interest, the Department, and Pandemic Electronic Benefits Transfer (P-EBT) eligible individuals. The Department needs to proceed by temporary rule due to the detrimental impact the COVID-19 pandemic has had on food access to children and the immediate implementation and issuance of P-EBT. Failure to act immediately could create confusion for ODHS staff, the public, and regulatory agencies. These rule adoptions create clear guidance and transparency regarding P-EBT.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- P-EBT Guidance – Summer 2021 (4/26/2021), available here: <https://www.fns.usda.gov/pandemic-ebt-summer-2021>
- P-EBT Q&A – Summer 2021 (4/26/2021), available here: <https://fns-prod.azureedge.net/sites/default/files/resource-files/2021-pandemic-ebt-summer-qas.pdf>
- P-EBT State Plan Template – Summer 2021 (4/26/2021), available here: <https://fns->

- P-EBT Guidance - Assistance for Children in Schools and Child Care SY 2020-21 (1/29/21), available here: <https://www.fns.usda.gov/disaster/pandemic/covid-19/ebt-state-plans-2020-2021>
- P-EBT Q&A - Assistance for Children in Schools and Child Care SY 2020-21 (1/29/21), available here: <https://fns-prod.azureedge.net/sites/default/files/resource-files/Pandemic%20EBT%20%20State%20Plans%20for%202020-2021%20Schools%20and%20Child%20Care%20January%202021%20Attachment%201%20QA.pdf>
- P-EBT State Plan Template - Children in Schools and Child Care SY 2020-21 (1/29/21), available here: <https://fns-prod.azureedge.net/sites/default/files/resource-files/Pandemic%20EBT%20%E2%80%93%20State%20Plans%20for%202020-2021%20Schools%20and%20Child%20Care%20January%202021%20Attachment%202%20Template.pdf>
- State Plans for SY 2020-21 (11/16/20), available here: <https://www.fns.usda.gov/snap/p-ebt-state-plans-sy-20-21>
- SY 2019-2020 P-EBT State Participation, available here: <https://www.fns.usda.gov/snap/sy-2019-2020-pebt-state-participation>
- Oregon Pandemic EBT State Plan (approved 05/07/2021), available here: https://fns-prod.azureedge.net/sites/default/files/resource-files/Oregon-PEBT-State-Plan-050521_0.pdf

RULES:

461-135-1501, 461-135-1502, 461-135-1503, 461-135-1504, 461-135-1505

AMEND: 461-135-1501

RULE SUMMARY: OAR 461-135-1501 about Pandemic-related Supplemental Nutrition Assistance Program; PSNAP (renumbered from 461-135-0498), is being amended to put into rule the current Food and Nutrition Service (FNS) pandemic food benefit program, Pandemic Electronic Benefits Transfer (P-EBT). OAR 461-135-1501 sets in place general P-EBT information and terms that are specific to the P-EBT OARs 461-135-1501 through 461-135-1505.

CHANGES TO RULE:

461-135-1501

~~Pandemic-related Supplemental Nutrition Assistance Program; PSNAP~~ Electronic Benefits Transfer (P-EBT) ¶

~~In the Pandemic-related Supplemental Nutrition Assistance Program (PSNAP):~~¶

~~(1) The purpose of this rule is to set forth the policies for determining the activation of, eligibility for, and issuance of~~ (1) OARs 461-135-1501 through 461-135-1505 apply to Pandemic Electronic Benefits Transfer (P-EBT). Except as provided for in OARs 461-135-1501 through 461-135-1505, P-EBT is not subject to Chapter 461 rules.¶

~~(2) P-EBT is a food benefits u~~ intended ~~the PSNAP program for children certified eligible to receive free and~~

reduced-price school lunch benefits during a pandemic-related school closure. This program may be activated and benefits issued for the period October 1, 2009 through September 30, 2010.

(2) The PSNAP program is activated when:

(a) The school district notifies the Department of a school closure lasting a minimum of five consecutive school days due to pandemic-related illness; and

(b) The school identifies each child participating in the free or reduced-price school lunch program.

(3) Child care centers. Any person using an Electronic Benefits Transfer (EBT) card issued on behalf of a P-EBT eligible individual shall spend the PSNAP program has been activated, only households meeting the following requirements may qualify for PSNAP program benefits. The school or school district provides the following items to the Department:

(a) The name of the parent (head of the household);

(b) The address of the household; and EBT benefits to provide meals and snacks to the P-EBT eligible individual.

(3) Although P-EBT benefits are issued to an EBT account linked to an EBT card, P-EBT is separate and apart from the SNAP program.

(c) The name and date of birth for each child participating in the free or reduced-price school lunch program.

(4) The Department matches the school data with the existing SNAP program files to identify which children are in households already participating in the SNAP or TANF programs. The Department deems these households to have EBT cards and does not send new EBT cards to them.

(5) The Department issues a new EBT card to each household in the school data that is not currently participating in a Department program via an EBT card. P-EBT is administered in partnership between ODHS and the Oregon Department of Education Child Nutrition Program.

(5) The following definitions apply to OAR 461-135-1501 to 461-135-1505:

(a) "FNS" refers to the Food and Nutrition Service, United States Department of Agriculture.

(b) "NSLP" refers to the National School Lunch Program.

(6) PSNAP program benefits are given to all eligible households for the expected five consecutive days of school closure.

(a) The allotment amount is equal to the value of the school lunch multiplied by the number of lunches that will be missed. The value of the "NSLP school" refers to an Oregon public school, nonprofit private school, or residential child care institution that is a sponsor of the National School Lunch Program. Lunch must be equal to the federal reimbursement rate for the lunch at the free rate.

(b) A household may qualify for a second week of benefits when the school is closed for six or more consecutive school days.

(7) PSNAP program benefits are issued via an EBT account and restricted to the purchase of food only.

(8) PSNAP program benefits are issued to an eligible household within ten business days from the day the Department receives notice of the school closure and the school data. The benefits are issued no later than 45 days following the first day of the school closure.

(9) A household certified to receive PSNAP program benefits receives a written decision notice (see OAR 461-001-0000) which includes the reason for the PSNAP program benefits, the amount of the benefits, how the benefits may be used, and contested case hearing right Program (NSLP).

(d) "NSLP students" refers to individuals enrolled in Oregon public schools, nonprofit private schools, or residential child care institutions that provide meal service as a sponsored National School Lunch Program (NSLP) school.

(e) "ODE" refers to the Oregon Department of Education.

(f) "P-EBT" refers to Pandemic Electronic Benefits Transfer.

(g) "SNAP participants" refers to individuals who are a member of a SNAP benefit group (see OAR 461-110-0750) that received more than \$0 in SNAP benefits.

Statutory/Other Authority: ORS 411.806 - 411.845

Statutes/Other Implemented: ORS 411.806 - 411.845

ADOPT: 461-135-1502

RULE SUMMARY: OAR 461-135-1502 is being adopted to put provisions regarding Pandemic-Electronic Benefits Transfer (P-EBT) application process, verification requirements, and eligibility into rule.

CHANGES TO RULE:

461-135-1502

Application and Eligibility; P-EBT

(1) Apart from applying for free or reduced meals through ODE or an NSLP school, there is no application for P-EBT program period October 2020 through May 2021.

(2) P-EBT eligibility is based upon and evaluated under two separate criteria, NSLP students and SNAP participants.

(a) Individuals who were homeschooled or enrolled in a school that does not participate in the NSLP are not eligible for P-EBT.

(b) NSLP students who were determined eligible for free or reduced meals under Oregon's Extended Income Limits, and were not SNAP participants for at least one month between October 2020 and May 2021, are not eligible for P-EBT.

(c) NSLP student-based P-EBT: P-EBT eligibility for NSLP students is determined by the NSLP school and is based on the individual meeting one of the following criteria, or receiving services from one of the following programs, for any months beginning October 2020 through the 2020-21 school year:

(A) Determined income eligible based on NSLP eligibility criteria as determined by ODE, the local education agency, or a state agency that ODE has designated to determine student eligibility for P-EBT;

(B) SNAP participant or a member of a TANF program benefit group (see OAR 461-110-0750);

(C) Placement in foster care;

(D) Food Distribution Program on "Indian" Reservations (FDPIR);

(E) Migrant Education Program (MEP); or

(F) McKinney-Vento Act's Education of Homeless Children and Youth Program.

(d) SNAP Participant-based P-EBT: P-EBT eligibility for children ages six years old and younger is determined by ODHS and evaluated in two separate age groups, children ages five and younger and children age six years old. P-EBT eligibility begins the month the child became a SNAP participant.

(A) Children ages five years and younger are eligible for P-EBT if they were a SNAP participant for at least one month between October 2020 and May 2021.

(B) Children age six years old are eligible for P-EBT by meeting the following for at least one month between October 2020 and May 2021:

(i) SNAP participant;

(ii) Not enrolled in school (except for an NSLP school, and in such case, eligibility is determined under subsection (c) of this rule), and

(iii) Enrolled in a child care center that reduced hours or attendance due to a designated public health emergency. A caretaker of the child shall provide verification of the enrollment and child care center's reduced hours or attendance. A verbal statement is acceptable verification.

Statutory/Other Authority: ORS 411.816

Statutes/Other Implemented: ORS 411.816, PL 116-127, PL 116-159, PL 116-260, PL 117-2

ADOPT: 461-135-1503

RULE SUMMARY: OAR 461-135-1503 is being adopted to put Pandemic Electronic Benefits Transfer (P-EBT) benefit standards, benefit amounts, and benefit issuance rules into place.

CHANGES TO RULE:

461-135-1503

Benefit Amount and Issuance of Benefit; P-EBT

(1) P-EBT Benefit Standard and Determination¶

(a) The full P-EBT benefit standard is \$136 monthly.¶

(b) The partial P-EBT benefit standard is \$75 monthly.¶

(c) The P-EBT benefit amount is evaluated on a month-by-month basis and may vary from month to month. The September 2020 P-EBT benefit amount is evaluated under subsection (2)(d) of this rule.¶

(d) NSLP students - Each NSLP school determines a P-EBT benefit amount for each month. This amount applies to all NSLP students of the school who are P-EBT eligible (see OAR 461-135-1502) during that month.¶

(e) SNAP participants - Children ages six and younger shall receive, for each month they are P-EBT eligible (see OAR 461-135-1502), the greater of the P-EBT benefit amount determined by any NSLP school in the county in which the child:¶

(A) Resided, or¶

(B) Attended child care, unless a statewide order is present which closed or reduced attendance statewide at child care centers.¶

(2) P-EBT Benefit Amount; Program Period October 2020 through May 2021 and September 2020 Supplement -¶

(a) Full P-EBT benefit of \$136 - An NSLP school shall determine a full P-EBT benefit amount for a month in which the majority of NSLP students attended comprehensive distance learning, or breakfast and lunch meal service was not provided on-site.¶

(b) Partial P-EBT benefit of \$75 - An NSLP school shall determine a partial P-EBT benefit amount for a month in which 75 percent or greater of NSLP students attended both onsite and virtual through a hybrid learning model and breakfast and lunch meal service was provided on-site.¶

(c) No P-EBT benefit - An NSLP school shall determine a zero P-EBT benefit amount when NSLP students attended school on-site and breakfast and lunch meal service was provided.¶

(d) The P-EBT benefit supplement for September 2020 is evaluated by subtracting the P-EBT benefit amount issued during September 2020 from \$136. The difference is the supplement. If the difference is zero, or less than zero, no P-EBT benefit supplement is issued.¶

(3) P-EBT benefits for program period October 2020 through May 2021, and the September 2020 supplement, shall be issued as follows on a date determined by ODHS:¶

(a) P-EBT benefits for the months of October, November, and December 2020 shall be issued in July 2021.¶

(b) P-EBT benefits for the months of January, February, and March 2021 shall be issued in August 2021.¶

(c) P-EBT for the months of April and May 2021, and the supplement for September 2020, shall be issued in September 2021.¶

(d) P-EBT benefits, once issued, shall not be transferred to another EBT account.

Statutory/Other Authority: ORS 411.816

Statutes/Other Implemented: ORS 411.816, PL 116-127, PL 116-159, PL 116-260, PL 117-2

ADOPT: 461-135-1504

RULE SUMMARY: OAR 461-135-1504 is being adopted to put provisions regarding Pandemic Electronic Benefits Transfer (P-EBT) benefit access and use into rule.

CHANGES TO RULE:

461-135-1504

Benefit Access and Use: P-EBT

(1) P-EBT benefit eligibility is based solely on the individual circumstances of the student or child, therefore, P-EBT benefits issued to an EBT account are to be used to provide meals and snacks for the P-EBT eligible individual, except for:

(a) When the P-EBT eligible individual has passed away, or

(b) When the P-EBT eligible individual is a SNAP participant at the time of P-EBT issuance, but not residing with the benefit group (see OAR 461-110-0750).

(2) P-EBT benefits, once issued, shall not be transferred to a new EBT account.

(3) P-EBT benefit EBT accounts that are not also the EBT account of a SNAP case, shall have only one active EBT card at a time. When a new EBT card is issued, the previous EBT card shall be cancelled.

(4) When an individual age six and younger is found eligible for "SNAP participant-based P-EBT" under subsection (2)(d) of OAR 361-135-1502, EBT accounts and EBT cards are handled as follows:

(a) P-EBT benefits are issued to the existing EBT account of the SNAP benefit group, and

(b) No additional EBT card is issued, unless

(c) A primary person (see OAR 461-001-0015) in the SNAP benefit group requests P-EBT benefits be issued separately. When this occurs:

(A) An EBT account is established in the name of the P-EBT eligible child, and

(B) An EBT card linked to the EBT account is sent to the address of the primary person.

(5) When an individual is found eligible for "NSLP student-based P-EBT" under subsection (2)(c) of OAR 361-135-1502, EBT accounts and EBT cards are handled as follows:

(a) NSLP students who are also SNAP participants-

(A) P-EBT benefits are issued to the existing EBT account of the SNAP benefit group, and

(B) No additional EBT card is issued, unless

(i) The Department determines an EBT card shall be issued to a different caretaker of the NSLP student under section (6) of this rule, or

(ii) A primary person (see OAR 461-001-0015) in the SNAP benefit group requests P-EBT benefits be issued separately.

(C) When paragraph (B) of this subsection occurs,

(i) An EBT account is established in the name of the P-EBT eligible child, and

(ii) An EBT card linked to the EBT account is sent to the caretaker or primary person, as determined appropriate by ODHS.

(b) All other NSLP students-

(A) An EBT account is established in the name of the NSLP student,

(B) An EBT card linked to the EBT account is sent to the address (reported to ODHS by ODE) of the NSLP student,

(C) Caretakers of the NSLP student will ensure the EBT card follows the P-EBT eligible individual, and

(D) No additional EBT card is issued, unless the Department determines an EBT card shall be issued to a different caretaker of the NSLP student under section (6) of this rule.

(6) The Department may issue a new EBT card when a caretaker reports to ODHS they are the primary caretaker and meal provider of an NSLP student and requests access to the individual's P-EBT benefits, as follows:

(a) The Department shall only make this evaluation and new EBT card issuance for individuals with NSLP student-based P-EBT (see OAR 461-135-1502(2)(c)).

(b) NSLP students whose P-EBT benefits are issued to the EBT account of a SNAP benefit group:

- (A) Access to remaining P-EBT benefits issued to the EBT account of a SNAP benefit group is not permitted.
- (B) Access to future P-EBT benefit issuances shall begin when the Department establishes an EBT account in the name of the NSLP student, issues a new EBT card to the primary caretaker, and completes all required changes in the system.
- (C) A request for P-EBT benefit access made by the 10th of a month may result in access to the P-EBT benefits issued in the following month.
- (c) NSLP students whose P-EBT benefits are issued to an EBT account in the student's name:
- (A) Access to remaining P-EBT benefits begins on the date the Department issues the new EBT card. When a new EBT card is issued to a caretaker under this section, the previous EBT card is cancelled and access to any remaining P-EBT benefits through the cancelled card ends immediately.
- (B) Access to future P-EBT benefit issuances shall begin on the date the Department issues the new EBT card.
- (d) Evaluating a caretaker request for access to NSLP student-based P-EBT-
- (A) There is a rebuttable presumption that the below individuals are the primary caretaker and meal provider:
- (i) A caretaker granted sole legal custody.
- (ii) An individual who has adopted the child.
- (iii) The parent or guardian of a student temporarily away at school (e.g. attending boarding school) or a child attending but not residing at a Residential Child Care Institution, or
- (iv) An emancipated child or a child independently responsible for their basic needs.
- (B) When a request to access P-EBT comes from parents granted joint custody or an individual not listed in subsection (e) of this section, the Department shall request reasonable verification to assist in determining who is the primary caretaker and meal provider of the NSLP student. This may include, but is not limited to, parenting time schedules, statement from a healthcare or other professional, or a written affidavit from the caretaker.
- (e) No notice is sent when access to the P-EBT benefits of an NSLP student is changed.
- Statutory/Other Authority: ORS 411.816
- Statutes/Other Implemented: ORS 411.816, PL 116-127, PL 116-159, PL116-260, PL 117-2

ADOPT: 461-135-1505

RULE SUMMARY: OAR 461-135-1505 is being adopted to place Pandemic Electronic Benefits Transfer (P-EBT) hearings, claims, and liability provisions into rule.

CHANGES TO RULE:

461-135-1505

Hearings, Claims, and Liability; P-EBT

(1) Excepting an overpayment (see OAR 461-195-0501) or an intentional program violation (see OAR 461-195-0601), there is no right to a contested case hearing to dispute P-EBT and no right to continuing benefits. The Department adopts the general hearings rule provisions (see division 025 of Chapter 461) for allowed contested case hearings.¶

(2) The Department adopts the SNAP program intentional program violation rule provisions (see OARs 461-195-0601 through 461-195-0621) for P-EBT when an individual:¶

(a) Accesses or uses P-EBT benefits outside of intended access or use under OARs 461-135-1501(2) or 461-135-1504(1).¶

(b) Makes a false or misleading statement; misrepresents, conceals or withholds a fact relating to use, presentation, transfer, acquisition, receipt, or possession; or traffics P-EBT (as defined under "trafficking" (see OAR 461-195-0601(2)) for the SNAP program), or¶

(c) Commits any act that constitutes a violation of P-EBT FNS regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking of benefits.¶

(3) The Department adopts the SNAP program overpayment rule provisions in OARs 461-195-0501 through 461-195-0621 for P-EBT when an intentional program violation is established.

Statutory/Other Authority: ORS 411.816

Statutes/Other Implemented: ORS 411.816, PL 116-127, PL 116-159, PL116-260, PL 117-2