



## PERMANENT ADMINISTRATIVE ORDER

### SSP 47-2021

CHAPTER 461  
DEPARTMENT OF HUMAN SERVICES  
SELF-SUFFICIENCY PROGRAMS

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FILING CAPTION: Changing one Rule about Self-Employment for APD Medical Programs

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AMEND: 461-145-0915

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RULE SUMMARY: OAR 461-145-0915 is being amended to adopt into rule an existing Department policy: providers considered an employee of an Aging and People with Disabilities, Office of Developmental Disabilities Services, or Oregon Health Authority benefit recipient are not self-employed.

CHANGES TO RULE:

461-145-0915

Self-Employment; General; OSIP, OSIPM, QMB ¶

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

(1) For purposes of this rule:¶

(a) "Business entity" includes a sole proprietorship, a partnership, and an unincorporated limited liability company.¶

(b) "Principal" means an individual with significant authority in a "business entity" (see subsection (a) of this section), including a sole proprietor, a general partner in a partnership, or a member or manager of an unincorporated limited liability company.¶

(2) Notwithstanding any other sections of this rule:¶

(a) Homecare workers (see OAR 411-031-0020) paid by the Department are not self-employed.¶

(b) Providers considered an employee of an Aging and People with Disabilities, Office of Developmental Disabilities Services, or Oregon Health Authority benefit recipient, such as Independent Choices Program (see OAR 411-030-0100) providers, Personal Support Workers (see OAR 411-375-0000), and Personal Care Attendants (see OAR 410-172-0810) are not self-employed.¶

(c) Child care providers (see OAR 461-165-0180) paid by the Department, adult foster home providers (see OAR 411-050-0602) paid by the Department, realty agents, and individuals who sell plasma, redeem beverage containers, pick mushrooms for sale, or engage in similar enterprises are considered self-employed.¶

(ed) Self-employment does not include non-business activities such as property rentals (see OAR 461-145-0252)

or renting a room out of the financial group's primary residence (see OAR 461-145-0340).¶

(3) Self-employment means active engagement in one's own business, trade, or profession, rather than earning a salary or wage paid by an employer or maintaining a passive ownership interest in a business entity. An individual is considered self-employed if the individual meets the criteria in subsection (2)(b) or section (5) of this rule.¶

(4) A principal (see subsection (1)(b) of this rule) of a corporation or incorporated limited liability company cannot be considered self-employed unless the criteria in either subsection (a) or (b) are met. All other payments for working or performing services for the corporation or holding corporate office are treated in accordance with OAR 461-145-0089 and OAR461-145-0130.¶

(a) The individual files taxes for the incorporated business entity as self-employed on their personal taxes, rather than as a corporation.¶

(b) The individual does not file taxes and meets the criteria in section (5)(c) of this rule.¶

(5) Except as provided in OAR 461-145-0089(3), an individual is self-employed for the purposes of this division of rules if the individual meets the requirements of one or more of (a), (b), or (c):¶

(a) Files taxes as self-employed for their business on their personal taxes.¶

(b) Is considered an independent contractor by the business.¶

(c) Meets all the following criteria:¶

(A) Is not required by the business to complete an IRS W-4 form;¶

(B) Is not required to pay federal income tax or FICA payments from their paycheck(s);¶

(C) Liability or workers' compensation insurance for the individual is not paid by the business;¶

(D) Meets at least one of the following:¶

(i) Creates or provides the products or services they sell, or¶

(ii) Sets the price for the products or services they sell;¶

(E) Is responsible for the business expenses and losses; and¶

(F) Receives profits from the business.¶

(6) For a principal or any individual with an ownership interest in a business entity who cannot be considered self-employed using the criteria in this rule:¶

(a) See OAR 461-145-0089 for individuals who are not actively working in the business entity to determine how to treat income and resources.¶

(b) For individuals who are actively working for the business entity but do not have significant authority or responsibility for its success or failure:¶

(A) See OAR 461-145-0130 to determine how to treat income.¶

(B) See OAR 461-145-0089 to determine how to treat resources.¶

(7) For an individual who is considered self-employed:¶

(a) See OAR 461-145-0920 and 461-145-0930 to determine how to treat income from self-employment.¶

(b) See OAR 461-145-0600 to determine how to treat resources used in self-employment.

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

Statutes/Other Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.400, 411.404, 411.706, 413.085, 414.685, 414.839