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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 81-2021

CHAPTER 461

DEPARTMENT OF HUMAN SERVICES

SELF-SUFFICIENCY PROGRAMS

FILED

12/28/2021 9:25 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Correcting One Temporary Rule about Child Care Programs during COVID-19

EFFECTIVE DATE: 12/28/2021 THROUGH 06/25/2022

AGENCY APPROVED DATE: 12/28/2021

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NEED FOR THE RULE(S):

OAR 461-135-0440 about Child Care Benefit Eligibility and Payment; COVID-19, needs to be amended to end many provisions in the rule effective September 30, 2021, to support online trainings and a one-time supplemental payment for providers, and to set a deadline for retroactive provider payment.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-135-0440 will result in serious prejudice to the public interest, the Department, and clients of its programs. The Department needs to proceed by temporary rule due to the necessity to immediately put into place an end date for Oregon child care COVID-19 rule provisions. Failure to act immediately will delay the OARs from being in compliance with ODHS decisions, budgetary limitations, and system limitations. This rule amendment will help to prevent the enactment of a child care reservation list due to continuing provisions for with ODHS does not have continual funding.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

AMEND: 461-135-0440

SUSPEND: Temporary 461-135-0440 from SSP 80-2021

RULE SUMMARY: OAR 461-135-0440 is being amended to expand acceptable types of child care provider trainings into 2022 and to adopt into rule a one time payment that was already issued to providers. It is also being amended to put into rule the dates that child care COVID-19 related rule provisions put in place through federal waiver or state order will end.

CHANGES TO RULE:

461-135-0440

Child Care Benefit Eligibility and Payment; COVID-19

The provisions in this rule apply to child care benefits and requirements for child care providers in the ERDC and

TANF programs.¶

(1) The Department suspends the following rules or rule sections regarding the ERDC or TANF programs:¶

(a) OAR 461-155-0150(5), (5)(c), (5)(e) through (5)(h), (12) through (14);¶

(b) OAR 461-160-0040(4);¶

(c) OAR 461-160-0193(2);¶

(d) OAR 461-160-0300(2), (3)(b);¶

(e) OAR 461-135-0405(2); and¶

(f) OAR 461-155-0150(3), (3)(g).¶

(2) The Department amends the following rule sections regarding the ERDC or TANF programs as provided in this rule:¶

(a) OAR 461-165-0160(2)(f),¶

(b) OAR 461-165-0180(13)(a)(A), and¶

(c) OAR 461-170-0160(1), (2), (3).¶

(3) The ERDC monthly countable income (see OAR 461-001-0000) standard is the 250 percent FPL or 85 percent state median income (SMI), whichever is higher, described under OAR 461-155-0180. To be eligible, the countable income of the need group (see OAR 461-110-0630) must be less than:¶

(a) The standard listed for the number of individuals in the need group for groups of eight or fewer.¶

(b) The standard listed for eight individuals in the need group for groups of more than eight individuals.¶

(4) Beginning the month of March 2020, the monthly copay is \$0 for the entirety of the certification period (see OAR 461-001-0000). ¶

(5) The Department shall pay for:¶

(a) Absent days each month the child is absent. For the purposes of this rule, absent days will be paid for up to 31 days each month if:¶

(A) The child was scheduled to be in care,¶

(B) The provider bills for the time the child was scheduled to be in care, and¶

(C) It is the provider's policy to bill all families for absent days.¶

(b) Days a child is unable to attend care due to a temporary shutdown related to COVID-19 during the COVID-19 state of emergency period initiated by Executive Order 20-03 of the Governor of Oregon.¶

(c) Days a school-age child is attending child care and participating in distance learning due to concerns, school closures, or medical reasons related to COVID-19.¶

(d) For the months of September, October, and November of 2020; days a child is unable to attend care due to a temporary shutdown related to Oregon wildfires during the COVID-19 state of emergency period initiated by Executive Order 20-03 of the Governor of Oregon; if the location at which care is provided was in an:¶

(A) Evacuation Level 1, 2, or 3 area; or¶

(B) Area with an Air Quality Index of 101 or higher.¶

(e) A one-time supplemental payment of one of the following:¶

(A) In the amount of \$2,312.00 to child care providers who, at the time the Department completed the data pull on November 13, 2020, met the following criteria:¶

(i) Eligible for payment under OAR 461-165-0180,¶

(ii) Designation of a license-exempt standard family or enhanced family provider as identified by a Standard Family Rate provider type (see OAR 461-155-0150) or an Enhanced Family Rate provider type (see OAR 461-155-0150), and¶

(iii) Received a payment from the Department for child care provided during April, May, June, July, August, September, October, or November 2020.¶

(B) In the amount of \$2,842.00 to child care providers who, at the time the Department completed the data pull on November 13, 2020, met the following criteria:¶

(i) Met all criteria in subparagraph (5)(e)(A)(i) through (iii) of this rule, and¶

(ii) Have not received an Emergency Child Care grant from the Oregon Department of Education, Early Learning Division for either phase one or phase two.¶

(C) In the amount of \$735.00 to child care providers who, at the time the Department completed the data pull on June 30, 2021, met the following criteria:¶

(i) Eligible for payment under OAR 461-165-0180,¶

(ii) Designation of a license-exempt standard family or enhanced family provider as identified by a Standard Family Rate provider type (see OAR 461-155-0150) or an Enhanced Family Rate provider type (see OAR 461-155-0150), and¶

(iii) Received a payment from the Department on or after November 13th, 2020, for child care provided during any month from April 2020 through June 2021.¶

(6) In addition to provisions in OAR 461-170-0160, an individual may apply for ERDC benefits using the Department approved "telephonic application" (see section (7) of this rule) and "narrated telephonic signature"

(see section (8) of this rule) processes. An individual submitting a telephonic application must submit the application with a narrated telephonic signature.¶¶

(7) A telephonic application is accepted when the following requirements are met: ¶¶

(a) All ERDC program related questions on the application are answered.¶¶

(b) All information necessary to determine eligibility (see OAR 461-001-0000) and benefit amount is provided for each individual in the filing group (see OAR 461-110-0310). ¶¶

(c) The applicant or their authorized representative (see OAR 461-115-0090) provides a narrated telephonic signature as defined in this rule. ¶¶

(8) A narrated telephonic signature is accepted for an application for ERDC benefits when the Department makes record that the following requirements are met:¶¶

(a) The "Your Rights and Responsibilities" form is reviewed and sent to the mailing address of the applicant.¶¶

(b) The following sections at the end of the application form are reviewed and sent to the mailing address of the applicant:¶¶

(A) "Information about all programs," and¶¶

(B) "Information about your rights and responsibilities." ¶¶

(c) The applicant or their authorized representative affirms that they:¶¶

(A) Have heard and understand their rights and responsibilities; ¶¶

(B) Agree to their rights and responsibilities;¶¶

(C) Have given true, correct, and complete information to the Department; and¶¶

(D) State their full name as their signature.¶¶

(d) The Department makes record of the narrated telephonic signature.¶¶

(9) Notwithstanding OAR 461-165-0180(13)(a)(A), legally exempt (see OAR 461-165-0180) providers that are not a legally exempt relative (see OAR 461-165-0180) to all children in care must have an up-to-date infant and child CPR and first aid certification, within 90 days of approval by the Department. Online infant and child CPR trainings approved through the Oregon Registry will be accepted by the Department until ~~July 31, 2021~~ July 31, 2022.¶¶

(a) Providers and their staff are not subject to the infant and child CPR and first aid certification renewal provisions if the training is not available in their preferred language.¶¶

(b) Individuals to whom subsection (9)(a) applies must complete the infant and child CPR and first aid certification within 60 days of the day the Governor of Oregon ends the COVID-19 state of emergency period initiated by Executive Order 20-03.¶¶

(10) Providers who are approved by the Department on or before August 31, 2021, may receive retroactive payment prior to the Department approval date and beginning the date the following were met:¶¶

(a) The provider was approved through the Office of Child Care (OCC) as an Emergency Child Care provider due to the COVID-19 state of emergency, and¶¶

(b) The provider met all other Department provider requirements.¶¶

(11) Providers who are not legally exempt are not eligible to receive payment from the Department if:¶¶

(a) Their application or approval to operate Emergency Child Care was denied, suspended, or revoked by OCC; or¶¶

(b) They voluntarily surrendered their Emergency Child Care approval while under investigation by the OCC or at any time after OCC gave them notice of any administrative proceeding.¶¶

(12) Unless indicated otherwise in this rule, the provisions in this rule end on ~~the last day of the month in which the Governor of Oregon ends the COVID-19 state of emergency period initiated by Executive Order 20-~~

~~03~~ September 30, 2021.

Statutory/Other Authority: ORS 131.715, 329a.500, ORS 84.001, ORS 411.060, 411.070, 412.006, 412.049, 409.050, 84.061, 84.004, 84.007, 84.010, 84.013, 84.014, 84.016, 84.019, 84.022, 84.025, 84.028, 84.031, 84.034, 84.037, 84.040, 84.043, 84.046, 84.049, 84.052, 84.055, 84.058

Statutes/Other Implemented: ORS 411.122, 411.141, 418.485, ORS 131.715, 329a.500, ORS 84.001, ORS 411.060, 411.070, 412.006, 412.049, 409.610, 84.061, 84.004, 84.007, 84.010, 84.013, 84.014, 84.016, 84.019, 84.022, 84.025, 84.028, 84.031, 84.034, 84.037, 84.040, 84.043, 84.046, 84.049, 84.052, 84.055, 84.058, 329a.260