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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 79-2021

CHAPTER 461

DEPARTMENT OF HUMAN SERVICES

SELF-SUFFICIENCY PROGRAMS

FILED

12/22/2021 9:27 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary Amendments to Four Rules Governing Aging and People with Disabilities Programs

EFFECTIVE DATE: 01/01/2022 THROUGH 06/29/2022

AGENCY APPROVED DATE: 12/22/2021

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NEED FOR THE RULE(S):

OAR 461-135-0771 about (new title) Eligibility for OSIPM Under December 1973 Supplemental Security Income Eligibility, needs to be amended to align the date with federal law and remove the term "grandfathering." This term is rooted in racist and anti-Black/African-American laws passed around the early 1890s by a number of US states that made men eligible to vote if they or their ancestors, or "grandfathers," were previously legally allowed to vote. This was called the grandfather clause and was an effective method to continue racial discrimination in voting after the 15th amendment was ratified, which prohibited racial discrimination in voting, because the law was not based specifically on race. ODHS does not find it appropriate to continue this term in its rules.

OARs 461-155-0700 about Special Need; Personal Incidentals and Room and Board Allowances; OSIPM, 461-160-0610 about (new title) Patient Liability; OSIPM (except OSIPM-EPD), and 461-185-0050 about (new title) Patient Liability Pay-In System; need to be amended to remove patient liability for certain individuals in the OSIPM, OSIPM-ICP and PACE programs. They also need to be amended to align with the new direction from the Centers for Medicare and Medicaid Services.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-135-0771 will result in serious prejudice to the public interest, the Department, and clients of its programs. The Department needs to proceed by temporary rule because the rule currently contains inaccurate dates and language rooted in anti-Black/African-American, racist state statutes from around the 1890s. These temporary changes correct the referenced dates and remove the term "grandfathering."

The Department finds that failure to act promptly by amending OAR 461-155-0700, 461-160-0610, and 461-185-0050 will result in serious prejudice to the public interest, the Department, and clients of its programs. The Department needs to proceed by temporary rule because the Department is ending patient liability for many populations and the rule needs to reflect that change. These temporary changes create a timely alignment of the rule with the new Department policy regarding patient liability for certain programs, which becomes effective January 1, 2022.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

RULES:

461-135-0771, 461-155-0700, 461-160-0610, 461-185-0050

AMEND: 461-135-0771

RULE SUMMARY: OAR 461-135-0771 is being amended to remove the "grandfathering" terminology and replace it with eligibility-specific terminology as well as to correct the date referenced in the rule.

CHANGES TO RULE:

461-135-0771

Eligibility for OSIPM Under "~~Grandfathering~~" Provision December 1973 Supplemental Security Income Eligibility
¶

(1) A ~~person~~ individual is eligible for OSIPM if the ~~person~~ individual was eligible for SSI in ~~January~~ supplemental Security Income (SSI) in December 1974. ¶

(2) A ~~person~~ individual is eligible for OSIPM if the ~~person~~ individual is the essential spouse of a ~~person~~ someone eligible for OSIPM under section (1) of this rule. An essential spouse is one who lives in the same household and provides a service that otherwise would have to be provided by some other means. ¶

(3) A ~~person~~ individual eligible for OSIPM under this rule is considered eligible continuously since ~~January~~ December 1974.

Statutory/Other Authority: ORS 411.060

Statutes/Other Implemented: ORS 411.060

AMEND: 461-155-0700

RULE SUMMARY: OAR 461-155-0700 is being amended to eliminate the assistance in paying the eliminated patient liability for recipients of in-home care but to continue the provision for aiding recipients of care in community-based facilities.

CHANGES TO RULE:

461-155-0700

Special Need; Personal Incidentals and Room and Board Allowances; OSIPM ¶¶

In the OSIPM program:¶¶

(1) In the following circumstances, personal incidentals and room and board allowances may be paid for an individual to reside in a community-based care facility (see OAR 461-155-0630(1)) to avoid placement in a nursing facility or leave a nursing facility or an acute care hospital, when an individual meets the requirements of one of the following subsections:¶¶

(a) Is determined to be eligible based on a disability determination made by the Department (see OAR 461-125-0370).¶¶

(A) To receive this payment, the individual must pursue Supplemental Security Income (SSI) by making application with the Social Security Administration (SSA) and appealing denials until SSA makes a final administrative decision. If SSI is denied at the final SSA administrative level, the individual is no longer eligible for this payment.¶¶

(B) The payment is the difference between the countable (see OAR 461-001-0000) income of the individual and the OSIPM program adjusted income standard (see OAR 461-155-0250).¶¶

(b) Is leaving a nursing facility and limited to a maximum SSI payment of \$30 or to a maximum Veterans benefit payment of \$90. The payment is the difference between the countable income of the individual and the OSIPM program adjusted income standard (see OAR 461-155-0250).¶¶

(c) Is a qualified non-citizen under OAR 461-120-0125 who is not eligible for SSI due to not meeting the requirements to become a naturalized citizen within the SSI time limit.¶¶

(A) The individual must pursue naturalization.¶¶

(B) The payment is the difference between the countable income of the individual and the OSIPM adjusted income standard (see OAR 461-155-0250).¶¶

(d) Does not have sufficient income to divert to the community spouse (see OAR 461-001-0030) due to the difference between the personal needs allowance related to a nursing facility placement and the personal needs allowance and room and board related to a community-based care facility placement. The allowance is issued only when the individual or community spouse requests or chooses a nursing facility placement rather than a community-based care facility placement because the community spouse needs the resulting higher diversion amount to meet his or her monthly expenses.¶¶

(A) For all individuals, the allowance is the difference between the amount of the individual's income that would be available to divert to the community spouse under a nursing facility placement and the amount of the individual's income available under the community-based care facility placement, using the liability calculation as outlined in OAR 461-160-0620.¶¶

(B) For an individual under a community-based care facility placement whose income is less than the adjusted OSIPM program standard, the allowance is the amount calculated under paragraph (A) of this subsection plus the difference between the OSIPM program adjusted income standard and the individual's countable income.¶¶

(2) Room and board allowance (see OAR 461-155-0270), without personal incidentals, may be paid for an individual to reside in a community-based care facility (~~see OAR 461-155-0630~~) to avoid placement in a nursing facility, when an individual is leaving a public institution (see OAR 461-135-0950) and the individual's SSI is suspended, subject to the following provisions:¶¶

(a) The individual's SSI must have been suspended due to placement in a public institution.¶¶

(b) The individual must pursue reinstatement of SSI, and verification must be provided to the Department.¶¶

(c) The payment is the difference between the countable income of the individual and the OSIPM Room and Board Standard (see OAR 461-155-0270).¶¶

(d) If SSI is reinstated or reinstatement of SSI is denied, the individual is no longer eligible for this allowance.¶¶

(3) The payment amount is prorated in the first month for an individual who moves to a community-based care facility on any day other than the first day of the month.

Statutory/Other Authority: ORS 411.060, 411.070, 411.704, 411.706

Statutes/Other Implemented: ORS 411.060, 411.070, 411.704, 411.706

AMEND: 461-160-0610

RULE SUMMARY: OAR 461-160-0610 is being changed to eliminate patient liability for recipients of in-home long-term care services and supports. This includes OSIPM, OSIPM-ICP and PACE. The liability for PACE participants is being eliminated in all service settings.

CHANGES TO RULE:

461-160-0610

~~C~~ Patient Liability; OSIPM (except OSIPM-EPD) ¶

(1) A ~~client~~ individual in the OSIPM (except OSIPM-EPD) program who receives long-term care (see OAR 461-001-0000) services must, in order to remain eligible, make the payment required by this rule, except as provided in sections (2) to (6) of this rule. ~~The client~~ Individuals must apply ~~his or her~~ their adjusted income to the cost of the care or service in the amount, if any, determined by the Department. This amount is the ~~patient~~ liability. If the ~~client~~ individual's adjusted income exceeds the cost of care or service, the ~~client~~ individual must pay the full cost of care but has no additional liability. ¶

(2) A ~~client~~ individual who receives ~~SSI~~ Supplemental Security Income (SSI), or is deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)), is eligible for OSIPM program benefits without having to make a payment. ¶

(3) ~~The IC service payment of a client in the OSIPM-IC program is reduced by the amount of his~~ following end on December 31, 2021: ¶

(a) Independent Choices Program (ICP) patient liability for individuals in OSIPM-ICP (see OAR Chapter 411, Division 030), and ¶

(b) Liability or contribution to the cost of services for her liability Program of All-Inclusive Care for the Elderly (PACE) participants (see OAR Chapter 411 Division 045). ¶

(4) The following ~~client~~ individuals, if they receive the services described in section (5) of this rule, are exempt from payments required by this rule: ¶

(a) A ~~disabled~~ adult child with a disability under OAR 461-135-0830. ¶

(b) A widow or widower under OAR 461-135-0820. ¶

(c) A Pickle amendment ~~client~~ individual under OAR 461-135-0780. ¶

(5) A ~~client~~ individual identified in section (4) of this rule is exempt from payments required by this rule if the ~~client~~ individual receives home and community-based care (see OAR 461-001-0030). ¶

(6) In the initial month of placement, a ~~client~~ individual may be exempt from payments required under this rule if the Department determines that the ~~client~~ individual's income has been exhausted prior to placement. If any income remains, the ~~client~~ individual must contribute to the cost of care or service. ¶

(7) A ~~client~~ individual residing in an acute care hospital or mental health residential treatment facility is exempt from payments required by this rule while residing in the acute care hospital or mental health residential treatment facility. If a service benefit was received prior to admission to the acute care hospital, payment must be made for that service. For purposes of this rule, only the following types of treatment centers qualify as a mental health residential treatment facility: ¶

(a) A mental health adult foster home. ¶

(b) A mental health residential treatment home. ¶

(c) A mental health residential treatment facility. ¶

(d) A mental health secure residential treatment facility.

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

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706

AMEND: 461-185-0050

RULE SUMMARY: OAR 461-185-0050 is being changed to end all provisions in the rule on December 31, 2021.

CHANGES TO RULE:

461-185-0050

~~C~~Patient Liability Pay-In System ¶

(1) ~~The Department ends all provisions in this rule on December 31, 2021.~~ ¶

(2) Except as provided in sections (23) and (34) of this rule, a ~~client~~individual who receives home and community-based care (see OAR 461-001-0030) in-home services and has countable income above the payment standard for the benefit group must pay to the Department the lesser of the following amounts as a condition of being eligible for home and community-based care in-home services: ¶

(a) The ~~client~~individual's adjusted income (see OAR 461-160-0620). ¶

(b) The actual cost of home and community-based care in-home services. ¶

(23) The service liability of ~~client~~individuals in the ~~OSIPM-IC and OSIPM-IC programs~~P is calculated in accordance with section (12) of this rule. ~~Client~~Individuals in the ~~OSIPM-IC and OSIPM-IC programs~~P do not pay the Department directly. The ICP service payment of these ~~client~~individuals will be reduced by the amount of their liability. ¶

(34) A ~~client~~individual exempt from payments under OAR 461-160-0610 is exempt from the payment required by this rule. ¶

(45) Each month, the Department will send the ~~client~~individual an invoice requesting payment based on the calculation in section (12) of this rule. ¶

(56) Payments must be received by the Department in the month of service.

Statutory/Other Authority: ORS 411.060, 411.070, 411.404

Statutes/Other Implemented: ORS 411.060, 411.070, 411.404