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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 77-2021

CHAPTER 461

DEPARTMENT OF HUMAN SERVICES

SELF-SUFFICIENCY PROGRAMS

FILED

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& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary Changes to Eight Rules Governing Aging & People with Disabilities Medical Programs

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NEED FOR THE RULE(S):

OAR 461-115-0230 about interviews needs to be amended to allow local office staff to waive interviews when it is clear an individual is incapable of completing the renewal process without the need to consult policy to receive a waiver on a case-by-case basis. Without a waiver to the interview requirement, Oregon's most vulnerable Medicaid recipients are at risk of losing Medicaid benefits for failure to complete the renewal process. Federal rules allow someone acting responsibly to complete the initial application process (including completing the interview) for incapacitated individuals Page 1 of 19 who cannot designate an authorized representative; however, Centers for Medicare and Medicaid Services has instructed Oregon that this person cannot interact with the Department on an ongoing basis or complete the renewal interview. To note: federal policy does not specifically require interviews for non-MAGI recipients; rather, it simply prohibits state Medicaid agencies from requiring in-person interviews, therefore Oregon is not violating federal policy by waiving interviews at annual renewal.

OAR 461-135-0755, whose title is proposed to change from "Individuals Residing in a 24-Hour Mental Health Residential Care Setting; OSIPM" to the more accurate title "Individuals Eligible for 1915(i) State Plan Home and Community-Based Services; OSIPM" needs to be changed to:

- * Correct the eligibility age for this Medicaid category to the 1915(i) state plan option Oregon elected, which includes both home and community-based settings, and specifies that individuals must be age 21 or over.
- * Align Chapter 461 language with Chapter 410 language, under which the specific services are established and defined under "behavioral health" rather than "mental health."
- * Support the current practice of evaluating in-home 1915(i) service recipients under this rule.
- * Align with Oregon's state Medicaid plan and the Chapter 410 administrative rules that govern 1915(i) services.

OAR 461-135-0780 about Pickle Amendment Clients; OSIPM, 461-145-0220 about treatment of the home, 461-155-0250 about Income and Payment Standard; OSIPM, 461-155-0270 about Room and Board Standard; OSIPM, 461-160-0580 about Excluded Resource; Community Spouse Provision (OSIPM except OSIPM-EPD), and 461-160-0620 about Income Deductions and Client Liability; Long-Term Care Services or Home and Community-Based Care; OSIPM need to be amended because the Department is required to adjust its eligibility standards as a result of these congressionally

approved changes. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

OAR 461-160-0620 about Income Deductions and Client Liability; Long-Term Care Services or Home and Community-Based Care; OSIPM, also needs to be changed to eliminate patient liability for certain individuals.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-115-0230 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 does not allow a local branch to waive interviews when it is clear an individual is incapable of completing the renewal process. These temporary changes remove the risk that Medicaid recipients will lose their Medicaid benefits due to being incapable of completing the renewal process.

The Department finds that failure to act promptly by amending OAR 461-135-0780, 461-145-0220, 461-155-0250, 461-155-0270, 461-160-0580, and 461-160-0620 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 determining eligibility for its clients on a continuous basis and the updated standards as of January 1, 2022, must be used to accurately determine if individuals qualify for its programs. These temporary changes ensure Oregon's standards are aligned with federal standards.

The Department finds that failure to act promptly by amending OAR 461-135-0755 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's title and provisions have inaccuracies and confusing information. The rule needs to be clear and match Chapter 410 language and Oregon's chosen state plan option. These temporary changes bring Oregon rule into alignment with their Medicaid plan and Chapter 410 language.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

RULES:

461-115-0230, 461-135-0755, 461-135-0780, 461-145-0220, 461-155-0250, 461-155-0270, 461-160-0580, 461-160-0620

AMEND: 461-115-0230

RULE SUMMARY: OAR 461-115-0230 is being changed to specify that the interview requirement for non-MAGI Medicaid recipients can be waived at annual renewal if the individual is unable to complete it due to incapacity and does not have an authorized representative designated to act on their behalf.

CHANGES TO RULE:

461-115-0230

Interviews ¶¶

(1) In the REF, REFM, and TANF programs, the Department may conduct a required face-to-face interview by telephone or home visit if an authorized representative (see OAR 461-001-0000 and 461-115-0090) has not been appointed, and participating in a face-to-face interview is a hardship (see section (2) of this rule) for the household.¶¶

(2) For the purposes of this rule, "hardship" includes, but is not limited to:¶¶

(a) Care of a household member;¶¶

(b) An individual's age, disability (see OAR 461-001-0000), or illness;¶¶

(c) A commute of more than two hours from the individual's residence to the nearest branch office (see OAR 461-001-0000);¶

(d) A conflict between the individual's work or training schedule and the business hours of the branch office; and¶

(e) Transportation difficulties due to prolonged severe weather or financial hardship.¶

(3) In the SNAP program:¶

(a) An interview must be scheduled so that the filing group (see OAR 461-110-0370) has at least ten days to provide any needed verification before the deadline under OAR 461-115-0210.¶

(b) A face-to-face interview must be granted at the applicant's request.¶

(c) When an applicant misses the first scheduled interview appointment, the Department must inform the applicant by notice of the missed interview.¶

(d) An applicant who fails to attend a scheduled interview must contact the Department no later than 30 days following the filing date (OAR 461-115-0040) to be eligible for benefits.¶

(e) An adult (see OAR 461-001-0015) or primary person (see OAR 461-001-0015) in the filing group, an adult or primary person excluded from the filing group under OAR 461-110-0370(8)(b), or the authorized representative (see OAR 461-001-0000, 461-115-0090, and 461-135-0510) of the filing group is interviewed once every 12 months.¶

(4) In the ERDC program:¶

(a) Except as provided otherwise in subsection (c) of this section, an interview with an adult in the filing group (see OAR 461-110-0350) or the authorized representative of the filing group is required to process an initial application and a renewal of benefits.¶

(b) A phone interview is preferred; however, a face-to-face interview must be granted at the applicant's request.¶

(c) An interview is not required when the Department has implemented the Child Care Reservation List and it is determined that a decision notice (see OAR 461-001-0000) of ineligibility will be sent under OAR 461-115-0016.¶

(5) In the OSIPM program, the Department must complete an interview with at least one individual authorized to sign the application under OAR 461-115-0071(3), except as follows:¶

(a) Individuals in a standard living arrangement (see OAR 461-001-0000) who are receiving SSI or are in 1619(b) status are not required to complete an interview at initial application.¶

(b) Individuals who are receiving SSI or are in 1619(b) status are not required to complete an interview at annual redetermination.¶

(c) The interview requirement shall be waived at annual redetermination if the individual is unable to complete the interview due to incapacity and an authorized representative has not been designated.¶

(6) In the QMB programs:¶

(a) The Department must complete an interview with at least one individual authorized to sign the application under OAR 461-115-0071(3) at initial application.¶

(b) An interview is not required at redetermination except in the QMB-DW program. ¶

(7) In the REF and REFM programs, a face-to-face interview is required.¶

(8) In the TA-DVS program, the Department will conduct a required face-to-face interview with the survivor, unless there is a safety concern related to the domestic violence (see OAR 461-001-0000) situation or there is a hardship. An interview due to safety concern or hardship may be completed via phone, home visit, or offsite appointment.

Statutory/Other Authority: ORS 411.060, 411.404, 411.706, 411.816, 412.049, 414.826, 414.839, ORS 409.050

Statutes/Other Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.839, 411.117

AMEND: 461-135-0755

RULE SUMMARY: OAR 461-135-0755 is being renamed to "Individuals Eligible for 1915(i) State Plan Home and Community-Based Services; OSIPM" and being amended to replace "mental health 24-hour residential care setting" language with "1915(i) Home and Community-Based Services (HCBS)", the term "mental health" with "behavioral health", incorporate in-home 1915(i) services into the rule, and correct the eligible age from 18 to 21.

CHANGES TO RULE:

461-135-0755

Individual Residing in a 24-Hour Mental Health Residential Care Settings Eligible for 1915(i) State Plan Home and Community-Based Services; OSIPM

In the OSIPM program, an individual who meets all of the requirements below is subject to the OSIPM income limit specified in OAR 461-155-0250(6):¶

(1) The individual has been assessed by an Independent and Qualified Agent (IQA) and determined eligible to receive 1915(i) Home and Community-Based Services (HCBS) as specified in OAR 410-173-0010.¶

(2) The individual meets one of the following:¶

(a) Resides or will reside in a 24-hour ~~ment~~behavioral health residential care setting. For purposes of this rule, only the following types of treatment centers qualify as a 24-hour ~~ment~~behavioral health residential care setting:¶

(aA) A ~~ment~~behavioral health adult foster home.¶

(bB) A ~~ment~~behavioral health residential treatment home.¶

(cC) A ~~ment~~behavioral health residential treatment facility.¶

(dD) A ~~mental health secure treatment facility~~. The individual will receive 1915(i) HCBS services in their own home.¶

(23) The individual is not assumed eligible for OSIPM under OAR 461-135-0010, and does not meet the income requirements for OSIPM for those in a standard living arrangement (see OAR 461-001-0000) under section (3) of OAR 461-155-0250.¶

(34) The individual is age 218 or older.

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

Statutes/Other Implemented: ORS 409.010, 411.060, 411.404, ~~42 CFR 435.219, 42 CFR 435.726~~

RULE SUMMARY: OAR 461-135-0780 is being amended to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

CHANGES TO RULE:

461-135-0780

Pickle Amendment Clients; OSIPM ¶¶

In the OSIPM program:¶¶

(1) The countable (see OAR 461-001-0000) SSB income of an individual is determined according to sections (2) to (4) of this rule if the individual meets all of the following requirements:¶¶

(a) Is receiving Social Security Benefits (SSB);¶¶

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and¶¶

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the individual was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB.¶¶

(2) The SSB amount received by the individual when the individual became ineligible for SSI or OSIP is used as the individual's countable SSB income, for the purposes of the Pickle Amendment. If the spouse (see OAR 461-001-0000) of the individual also had Social Security benefits at the time the individual lost SSI benefits, SSB amount at that time of the spouse is considered the countable income of the spouse. If the amount cannot be determined using the information provided by the SSA, it is calculated in accordance with section (3) of this rule.¶¶

(3) The Department determines the month in which the individual was entitled to SSB and received SSI in the same month. The Department uses the table in section (4) of this rule to find the percentage that applies to that month. The Department multiplies the present amount of the SSB of the individual by the applicable percentage. If the spouse of the individual also had SSB at the time the individual lost SSI benefits, the Department adjusts the SSB of the spouse using the same multiplier that was used for the individual's calculation under this section. This amount, rounded down to the next lower whole dollar, is the individual's countable SSB income.¶¶

(4) The following guide contains the calculations used to determine the SSB for prior years (the Department uses this table only if the prior year's amount using information provided by SSA):¶¶

If SSI was Last Received During Multiply Current SSB by¶¶

¶¶

January 2020 1 - December 2020 198744¶¶
January 2020 - December 2020.....	.932¶¶
January 2019 - December 2019.....	.9172¶¶
January 2018 - December 2018.....	.945893¶¶
January 2017 - December 2017.....	.927875¶¶
January 2015 - December 2016.....	.924.872¶¶
January 2014 - December 2014.....	.90858¶¶
January 2013 - December 2013.....	.8945¶¶
January 2012 - December 2012.....	.88031¶¶
January 2009 - December 2011.....	.84902¶¶
January 2008 - December 2008.....	.803758¶¶
January 2007 - December 2007.....	.78541¶¶
January 2006 - December 2006.....	.76017¶¶
January 2005 - December 2005.....	.730689¶¶
January 2004 - December 2004.....	.6711¶¶
January 2003 - December 2003.....	.69657¶¶
January 2002 - December 2002.....	.6486¶¶
January 2001 - December 2001.....	.66932¶¶
January 2000 - December 2000.....	.64610¶¶
January 1999 - December 1999.....	.631596¶¶
January 1998 - December 1998.....	.623588¶¶
January 1997 - December 1997.....	.610576¶¶
January 1996 - December 1996.....	.59360¶¶
January 1995 - December 1995.....	.57846¶¶

January 1994 - December 1994.....	56231 ¶
January 1993 - December 1993.....	54817 ¶
January 1992 - December 1992.....	5302 ¶
January 1991 - December 1991.....	513484 ¶
January 1990 - December 1990.....	48760 ¶
January 1989 - December 1989.....	46539 ¶
January 1988 - December 1988.....	44722 ¶
January 1987 - December 1987.....	42905 ¶
January 1986 - December 1986.....	42400 ¶
January 1985 - December 1985.....	411388 ¶
January 1984 - December 1984.....	3975 ¶
July 1982 - December 1983.....	38362 ¶
July 1981 - June 1982.....	3537 ¶
July 1980 - June 1981.....	32103 ¶
July 1979 - June 1980.....	28165 ¶
July 1978 - June 1979.....	25641 ¶
July 1977 - June 1978.....	24027 ¶
May or June 1977.....	22714
Statutory/Other Authority: 411.060, 411.070, 411.083, 411.404, ORS 409.050, 413.085, 414.685	
Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.083, 411.404, 411.704, 413.085, 414.685, 42	
CFR 435.135, P.L. 92-336	

AMEND: 461-145-0220

RULE SUMMARY: 461-145-0220 is being amended to include an exclusion of the home during a temporary absence when an individual applies during the absence. The current rule language requires an individual to have applied and be eligible prior to the absence in order to exclude the home. Existing operational practice allows an exclusion of the home when applying during the temporary absence. This amendment will bring the rule in line with current operational practice. It is also being changed to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

CHANGES TO RULE:

461-145-0220

Home ¶¶

(1) Home defined: A home is the place where the filing group (see OAR 461-110-0310) lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:¶¶

(a) Land on which the home is built and contiguous property.¶¶

(A) In all programs except the OSIP, OSIPM, QMB, and SNAP programs, property must meet all the following criteria to be considered contiguous property:¶¶

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group (see OAR 461-110-0530).¶¶

(ii) It must not be separated by a public right-of-way, such as a road.¶¶

(iii) It must be property that cannot be sold separately from the home.¶¶

(B) In the OSIP, OSIPM, QMB, and SNAP programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the financial group.¶¶

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.¶¶

(2) Exclusion of home and other property:¶¶

(a) For an individual who has an initial month (see OAR 461-001-0000) of long-term care (see OAR 461-001-0000) or home and community-based care (see OAR 461-001-0030) on or after January 1, 2006:¶¶

(A) For purposes of this subsection, "child" means a biological or adoptive child who is:¶¶

(i) Under age 21; or¶¶

(ii) Any age and meets the Social Security Administration criteria for blindness or disability.¶¶

(B) The equity value (see OAR 461-001-0000) of a home is excluded if the requirements of at least one of the following subparagraphs are met:¶¶

(i) The child (see paragraph (A) of this subsection) of the individual or relative dependent on the individual for support occupies the home.¶¶

(ii) The spouse (see OAR 461-001-0000) of the individual occupies the home.¶¶

(iii) The equity in the home is \$6036,000 or less, and the requirements of at least one of the following subparagraphs are met:¶¶

(I) The individual occupies the home.¶¶

(II) The home equity is excluded under OAR 461-145-0252.¶¶

(III) The home is listed for sale per OAR 461-145-0420.¶¶

(iv) Notwithstanding OAR 461-120-0330, the equity in the home is more than \$6036,000 and the individual is unable legally to convert the equity value in the home to cash.¶¶

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.¶¶

(c) In the SNAP program, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461-145-0420.¶¶

(3) Exclusion during temporary absence: ~~If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded~~ in each of the following situations:¶¶

(a) For the purposes of this section, "evidence" includes a written statement from a competent individual.¶¶

(b) In all programs except the OSIP, OSIPM, and QMB-DW programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.¶¶

(c) In the OSIP, OSIPM, and QMB-DW programs, when the individual is absent to receive long-term care or home

~~and community-based care, temporarily absent~~

(A) To receive assistance with activities of daily living (see OAR 411-015-9995) under one of the following conditions:

(A*i*) The absent individual has provided evidence that the individual will return to the home. The evidence must reflect the subjective intent of the individual, regardless of the individual's medical condition.

(B*ii*) The home remains occupied by the individual's spouse, child, or a relative dependent on the individual for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.

~~(d*B*) In the OSIP, OSIPM, and QMB-DW programs, when the individual is absent~~ Due to illness, employment or training for future employment, seasonal employment, or uninhabitability; and both of the following conditions are met:

(A*i*) The absent individual has provided evidence that the absent individual will return home, and

(B*ii*) The evidence reflects the subjective intent of the individual, regardless of the individual's medical condition.

(e*d*) In the REF, REFM, and TANF programs, when all members of the filing group are absent because:

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.

~~(f*e*)~~ In the SNAP program, when the financial group is absent because of employment or training for future employment.

Statutory/Other Authority: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 409.050, 410.010, 410.020, 410.070, 410.080, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685, 414.839

AMEND: 461-155-0250

RULE SUMMARY: OAR 461-155-0250 is being amended to adjust the standards to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

CHANGES TO RULE:

461-155-0250

Income and Payment Standard; OSIPM ¶

In the OSIPM program:¶

(1) An individual who is assumed eligible per OAR 461-135-0010 is presumed to meet the income limits for the OSIPM program.¶

(2) An individual meeting the requirements of OAR 461-135-0745 or OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in sections (3) or (5) of this rule, must have countable (see OAR 461-001-0000) income that is equal to or less than 300 percent of the full SSI standard for a single individual or have established a qualifying trust as specified in OAR 461-145-0540(10)(c).¶

(3) An individual, other than one identified in sections (1), (2), (5), or (6) of this rule, must have adjusted income (see OAR 461-001-0000) below the standard in this section. ~~{see attached table}~~¶

OSIPM Adjusted Income Standards¶

¶

Number in Need Group One Two¶

AB/AD/OAA &&&&&&&..... 841.00&&&..... 1,261.00¶

(4) In the OSIPM (except OSIPM-EPD) program, an individual receiving Medicaid services in a nursing facility or an ICF-ID is allowed the following amounts for clothing and personal incidentals:¶

(a) For an individual who receives a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.¶

(b) For all other individuals, ~~\$64.948.77~~ is allowed.¶

(c) For an individual identified in subsection (b) of this section with countable income (including any SSI) that is less than ~~\$64.948.77~~, the payment standard is equal to the difference between the individual's countable income (including any SSI) and ~~\$64.948.77~~. For the purposes of this subsection, countable income includes income that would otherwise be countable for an individual who is assumed eligible under OAR 461-135-0010.¶

(5) In the OSIPM-EPD program, an individual must have adjusted earned income equal to or below 250 percent of the federal poverty level for a family of one.¶

(6) An individual who meets the requirements of OAR 461-135-0755, is not assumed eligible, and does not meet the income standard set out in section (3) of this rule, must have adjusted income equal to or below 150 percent of the federal poverty level for a family of one.

Statutory/Other Authority: ORS 411.060, ORS 409.050, 411.070, 411.404, 411.704, 411.706, 413.085, 414.685

Statutes/Other Implemented: ORS 411.060, ORS 409.010, 411.070, 411.404, 411.704, 411.706, P.L. 92-336

AMEND: 461-155-0270

RULE SUMMARY: OAR 461-155-0270 is being amended to adjust the standard to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living. The rule is also being changed to update a rule reference and language to make the rule more accurate.

CHANGES TO RULE:

461-155-0270

Room and Board Standard; OSIPM ¶¶

For an OSIPM program client in a community-based care facility (see OAR ~~461-001-0000~~ 155-0630(1)), the room and board standard is \$~~617~~54.00. A client residing in a community-based care facility must pay room and board.

Statutory/Other Authority: ORS 411.060, 411.070, 411.704, 411.706, ORS 409.050, 411.404, 413.085, 414.685

Statutes/Other Implemented: ORS 411.060, 411.070, 411.704, 411.706, ORS 409.010, 411.404, P.L. 92-336

AMEND: 461-160-0580

RULE SUMMARY: OAR 461-160-0580 is being amended to adjust the standards to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

CHANGES TO RULE:

461-160-0580

Excluded Resource; Community Spouse Provision (OSIPM except OSIPM-EPD) ¶¶

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

(1) This rule applies to an institutionalized spouse (see OAR 461-001-0030) who has applied for benefits because the individual is in or will be in a continuous period of care (see OAR 461-001-0030).¶¶

(2) Whether a legally married (see OAR 461-001-0000) couple lives together or not, the determination of whether the value of the couple's resources exceeds the eligibility limit for the institutionalized spouse for the OSIPM program is made as follows:¶¶

(a) The first step is the determination of what the couple's combined countable (see OAR 461-001-0000) resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)¶¶

(A) Division 461-140 and 461-145 rules applicable to OSIPM describe which of the couple's resources are countable resources, and are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIPM individuals.¶¶

(B) The countable resources of both spouses are combined.¶¶

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.¶¶

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.¶¶

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:¶¶

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than ~~\$130,387.400.~~¶¶

(B) ~~\$26,076.7480~~ (the state community-spouse resource allowance).¶¶

(C) A court-ordered community spouse resource allowance. In this paragraph and paragraph (2)(f)(C) of this rule, the term "court-ordered community spouse resource allowance" means a "court-ordered community spouse resource allowance" that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the individual became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the individual's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.¶¶

(D) After considering the income of the community spouse (see OAR 461-001-0030) and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph is the amount required to purchase a single premium immediate annuity to make up the shortfall; and the amount described in this paragraph is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:¶¶

(i) The maintenance needs allowance computed in accordance with OAR 461-160-0620.¶¶

(ii) The difference between:¶¶

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and¶¶

(II) The applicable need standard under OAR 461-160-0620(3)(c).¶¶

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.¶¶

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.¶¶

(f) The sixth step is a comparison of the value of the remaining resources to the OSIPM resource standard for one person (under OAR 461-160-0015). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the

standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:¶¶

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than \$130,387,400) plus the OSIPM resource standard for one person.¶¶

(B) ~~\$26,076~~ 7,480 (the state community-spouse resource allowance), plus the OSIPM resource standard for one person.¶¶

(C) A "court-ordered community spouse resource allowance" plus the OSIPM resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the "court-ordered community spouse resource allowance".)¶¶

(D) The OSIPM resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. This amount is the amount required to purchase a single premium immediate annuity to make up the shortfall. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:¶¶

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.¶¶

(ii) The difference between:¶¶

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and¶¶

(II) The applicable need standard under OAR 461-160-0620(3)(c).¶¶

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.¶¶

(4) The provisions of paragraph (2)(c)(C) of this rule requiring income to be considered first may be waived if the Department determines that the resulting community resource allowance would create an undue hardship on the spouse (see OAR 461-001-0000) of the individual.

Statutory/Other Authority: ORS 411.070, 411.083, 411.404, 411.706, ORS 411.060, ORS 409.050, 413.085, 414.685

Statutes/Other Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.706, ORS 409.010

AMEND: 461-160-0620

RULE SUMMARY: OAR 461-160-0620 is being amended to update the title and adjust the standards to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living. The rule is also being amended to eliminate the in-home liability amounts as, effective January 1, 2022 for APD Medical programs, individuals who receive in-home services will be exempted from paying liability amounts.

CHANGES TO RULE:

461-160-0620

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

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, ~~except:¶~~

(a) An individual receiving their portion of home and community-based care consisting of in-home services, including OSIPM-ICP, for whom there is no liability.¶

(b) As provided otherwise in OAR 461-160-0610.¶

(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 ~~\$64,948.77~~ 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. \$2,177.50 is added to the amount over \$653.25 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or ~~\$3,259,5435.00~~, 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 \$2,177.50. To determine the income allowance of each eligible dependent:¶

(i) The monthly income of the eligible dependent is deducted from \$2,177.50.¶

(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 section (2) of this rule and 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