

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 461  
DEPARTMENT OF HUMAN SERVICES  
SELF-SUFFICIENCY PROGRAMS

**FILED**

12/06/2021 12:24 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Permanent Rule Change Proposals to Six Rules Regarding SNAP and Child Care Programs

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/24/2022 11:55 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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Filed By:  
Meorah Solar  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 01/24/2022

TIME: 9:00 AM - 12:00 PM

OFFICER: Meorah Solar

ADDRESS: Virtual Hearing - No Physical Location

Phone 1-971-277-2343, code 428 959 418#

Microsoft Teams link also available

No Physical Location, OR 0

SPECIAL INSTRUCTIONS:

Everyone has a right to know about and use Oregon Department of Human Services (ODHS) programs and services. ODHS provides free help.

Some examples of the free help ODHS can provide are: sign language and spoken language interpreters, written materials in other languages, braille, large print, audio and other formats. If you need help or have questions, please contact Meorah Solar at (503) 602-7545, 711 TTY, or meorah.a.solar@dhsosha.state.or.us at least 48 hours before the meeting.

NEED FOR THE RULE(S)

OAR 461-135-0440 about Child Care Benefit Eligibility and Payment; COVID-19, needs to be amended to permanently adopt temporary changes to the rule; 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.

OAR 461-135-0505 about Categorical Eligibility for SNAP and OAR 461-140-0262 about Loss of Eligibility Due to Lottery or Gambling Winnings, SNAP; need to be amended to permanently adopt temporary changes which corrected categorical eligibility provisions and aligned the rule with federal SNAP requirements regarding gambling and lottery winnings, which changed in 2019. OAR 461-140-0262 about Loss of Eligibility Due to Lottery or Gambling Winnings, SNAP, needs to be amended permanently to adopt this temporary rule which put into place federal SNAP requirements

regarding gambling and lottery winnings, which changed in 2019.

OAR 461-155-0150 about Child Care Eligibility Standard, Payment Rates, and Copayments, needs to be amended to permanently adopt temporary changes that allow all provider types the ability to bill for absent days for which a child was scheduled to be in care, to restrict those absent day payments after a full calendar absence, and to group rule provisions by topic. These changes will create a better separation, navigation, and understanding of child care program rules. The title of the rule also needs to be changed to align with the remaining rule provisions.

OAR 461-155-0151 about High Special Needs; Child Care, needs to be amended to permanently adopt temporary changes that increased compensation for providers caring for vulnerable children with higher needs. The High Special Needs rate has not been increase in over 20 years.

OAR 461-165-0160 about Direct Provider Payments; General Information; needs to be amended to permanently adopt temporary changes which added the new rule provisions from subsection (2)(h) to subsection (2)(a). This amendment brings these sections into alignment with one another and upcoming ODHS policy. It also needs to be changed to allow providers to submit billing forms at the beginning of each month for hours a child is scheduled to be in care and remove the requirement for parents to sign billing forms.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Governor Brown's Executive Orders 20-03 and 21-15, available here:

<https://www.oregon.gov/gov/admin/pages/executive-orders.aspx>

Federal waiver given to Early Learning Division, available from the Early Learning Division.

USDA Memo- Final Rule: Implementation Memo for Lottery and Gambling Winners, available here:

<https://www.fns.usda.gov/snap/final-rule-implementation-memo-lottery-and-gambling-winners>

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#### FISCAL AND ECONOMIC IMPACT:

The Department estimates that the various amendments to OAR 461-135-0440 will have the following fiscal impacts:

- The Department is negatively impacted by moving from a zero copay to the new copay structure, estimated a cost of \$214,537,732 for the 21-23 and 23-25 biennia, and an additional \$106,843,939 for the 25-27 biennium. The Department is positively impacted by returning to the previous income limit for child care eligibility. The exact savings are unknown because fiscal analysis and pricing were unable to be conducted as there was no way to estimate the number of families that will apply in the future with income above 185% FPL. One-time supplemental payments made in July 2021 with Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA) cost approximately \$1 million.
- Providers, including providers who are considered small business owners, were positively impacted by a maximum amount of \$735 by the July 2021 one-time payments.
- Families eligible for ERDC with a \$0 copay for the certification period were positively impacted. There is no way to estimate the full amount because the copay that used to be required was a calculation using each group's unique size, income, and child care facility cost. It can be estimated that for a 12-month period, many families saved hundreds to thousands of dollars in copay costs. The savings for those eligible for a zero copay under this provision will continue into the future until their certification period ends.
- No fiscal impact on the public, other state agencies, local government, and business, including small business, except as provided above. There is no cost of compliance for small businesses.

The Department estimates that amending OAR 461-135-0505 will have no fiscal impact on individuals receiving or applying for SSP programs, the public, the Department, other state agencies, local government, and business, including small business. There is no cost of compliance for small businesses. No small businesses are subject to this rule.

The Department estimates that amending OAR 461-140-0262 will have a fiscal impact on individuals receiving or applying for SSP programs who lose SNAP eligibility due to qualifying winnings. The exact amount will vary based on the SNAP allotment of the individual with a maximum SNAP loss of \$250 monthly for a single individual. The Department estimates no fiscal impact on the public, the Department, other state agencies, local government, and business, including small business. There is no cost of compliance for small businesses. No small businesses are subject to this rule.

The Department estimates that amending OAR 461-155-0150 will have no fiscal impact on those receiving benefits, the public, the Department, other state agencies, local government, and business, including small business. There is no cost of compliance for small businesses. No small businesses are subject to this rule.

The Department estimates that amending OAR 461-155-0151 will have a positive fiscal impact on providers who qualify to receive the additional high special needs payment; and a negative fiscal impact on the Department of approximately the same amount. The exact amount will vary based on the high special needs of the child, but is a maximum of \$10 per hour, an increase from the previous amount of \$5 per hour, or \$1680 per month, an increase from the previous amount of \$840 per month. The Department estimates no fiscal impact on families who receive ERDC benefits, the public, other state agencies, local government, and business who do not provide child care and do not receive an ERDC payment, including small business. There is no cost of compliance for small businesses. No small businesses are subject to this rule.

The Department estimates that amending OAR 461-165-0160 will have no fiscal impact on families who receive child care benefits, the public, the Department, other state agencies, local government, and business, including small business. There is no cost of compliance for small businesses. No small businesses are subject to this rule.

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**COST OF COMPLIANCE:**

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

See Fiscal and Economic Impact

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**DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):**

Small businesses were not involved in the development of these rules but are invited to provide input during the public comment period.

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**WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES**

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**RULES PROPOSED:**

461-135-0440, 461-135-0505, 461-140-0262, 461-155-0150, 461-155-0151, 461-165-0160

AMEND: 461-135-0440

**RULE SUMMARY:** OAR 461-135-0440 is being amended to add into permanent rule the end of most of the child care rule provisions put in place through federal waiver on September 30, 2021, and the end of the Emergency Child Care provisions under Governor Brown's executive order 21-15 on August 31, 2021. It is also being amended place into

permanent rule the provisions for a June 30, 2021, child care provider payment and the extend the ability for providers to complete certain infant and child trainings online through June 30, 2022, as well as the \$735 one-time provider supplemental payment.

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.

(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

AMEND: 461-135-0505

RULE SUMMARY: OAR 461-135-0505 about Categorical Eligibility for SNAP, is being permanently amended to make categorical eligibility more clear by grouping provisions into the groups of individuals, filing groups, and presumed eligibility. It is also being permanently amended to update and make accurate the provisions regarding different types of categorical eligibility, as well as how categorical eligibility, and SNAP eligibility in general, is impacted when an individual has lottery or gambling winnings that exceed the Federally allowed amount for SNAP eligibility. Lastly, it is being permanently amended to make clear that a financial group that includes an individual who meets the Chapter 461 definition of "elderly" or having a "disability" does not have to pass the countable income limit test.

CHANGES TO RULE:

461-135-0505

Categorical Eligibility for SNAP ¶

(1) Individuals and categorical eligibility.¶

(a) Except as provided under sections (2) and (3c) of this rule section, an individual is categorically eligible for SNAP benefits if the individual has countable income (see OAR 461-140-0010) less than 185 percent of the federal poverty level (see OAR 461-155-0180) and:¶

(a) R:¶

(A) When they receives or isare authorized to receive GA or SSI benefits;¶

(bB) IsWhen deemed to be receiving SSI under Section 1619(a) or 1619(b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)); or¶

(cC) RWhen they receives or isare authorized to receive cash, in-kind benefits, or services funded either under Title IV-A of the Social Security Act or by the state as part of the TANF maintenance of effort, which includes:¶

(A) A pamphlet about Information and Referral Services;¶

(B:¶

(i) Employment Related Day Care (ERDC);¶

(Cii) Temporary Assistance to Needy Families (TANF) cash assistance; and¶

(Diii) TANF-related programs:¶

(i) Pre-TANF,¶

(ii) TA-DVS,¶

(iii:¶

(III) TANF-JOBS Plus,¶

(ivIV) Housing Stabilization Program through Housing and Community Services; and¶

(vV) Employment Payments.¶

(2b) An individual may not be categorically eligible for SNAP benefits in either of the following circumstances:For the purposes of categorical eligibility, every individual filing group (see OAR 461-110-0370) member:¶

(A) Of ERDC and TA-DVS programs are considered receiving the benefits of the program.¶

(B) Eligible for transition services or the TA-DVS program is considered receiving benefits for the entire period of eligibility even if benefits are not received during each month of that period.¶

(ac) The individual isfollowing individuals shall not be categorically eligible for SNAP benefits:¶

(A) Those disqualified from receiving SNAP benefits because of an established intentional program violation under OAR 461-195-0611.¶

(bB) The individual is a primary person (see OAR 461-001-0015) disqualified from receiving SNAP benefits for failure to comply with a SNAP employment and training requirement under OAR 461-130-0315.¶

(32) A filing group (see OAR 461-110-0530) may not beand categorical eligibility.¶

(a) Except as provided under subsections (b) and (c) of this section, a filing group is categorically eligible for SNAP benefits in either of the following circumstances:¶

(awhen:¶

(A) All members of the filing group are categorically eligible under section (1) of this rule; or¶

(B) The filing group meets all of the following:¶

(i) Has received, or will receive upon approval, the pamphlet about Information and Referral Services. The receipt of the Information and Referral services pamphlet by one member of the filing group is considered received by the entire group.¶

(ii) The countable income (see OAR 461-140-0010) is less than 185 percent of the federal poverty level (see OAR 461-155-0180).¶

(iii) The filing group has liquid assets from lottery or gambling winnings equal to or in excess ofless than the

resource limit listed in OAR 461-160-0015(7)(a). For the purposes of this rule, liquid assets are assets that are easily accessible and do not need to be sold to access their value.¶

(b) An applicant filing group that lost SNAP eligibility due to receipt of lottery or gambling winnings as described under (3)(a) of this rule.¶

(4) For an entire filing group to be categorically eligible for SNAP benefits when a member of the filing group to be is not categorically eligible for.¶

(c) A filing group that loses SNAP benefits, it must contain only clients who are categorically eligible. For the purpose of determining who is eligible (see OAR 461-001-0000) due to lottery or gambling winnings (see OAR 461-140-0262) is not eligible for SNAP benefits, or to have SNAP eligibility determined using categorically eligible for SNAP benefits, in the ERDC and TA-DVS programs all members of the filing group are considered receiving the benefits of the program even if not all members receive the benefit. The receipt of the Information and Referral services pamphlet by an individual is considered received by the entire filing group until they meet financial eligibility under the following SNAP financial eligibility resource and income requirements (see OAR 461-160-0400): ¶

(A) Resources must be below the resource limit set under OAR 461-160-0015.¶

(5B) A filing group that is eligible for transition services or the TA-DVS program is considered receiving benefits for the entire period of eligibility. Countable income (see OARs 461-001-0000 and 461-140-0010) must be below the countable income limit set at 130 percent of the federal poverty level even if benefits are not received during each month of that period.¶

(6) An individual categorically eligible for the SNAP program is presumed to meet the eligibility requirements for resources and countable and adjusted income limits. The individual is also presumed to meet the requirements for a social security number, sponsored alien information, and residency, if verified in a public assistance or medical assistance program under OAR 461-155-0180, except for a financial group (see OAR 461-110-0530) that includes an individual who is elderly (see OAR 461-001-0015) or has a disability (see OAR 461-001-0015), and¶

(C) Adjusted income (see OAR 461-001-0000) must be below the adjusted income limit set at 100 percent of the federal poverty level under OAR 461-155-0180.¶

(D) This provision applies to all types of categorical eligibility.¶

(E) After a filing group regains eligibility for SNAP under this subsection, future eligibility may be determined using categorical eligibility.¶

(73) When a filing group contains both members who are categorically eligible for SNAP benefits and those who are not, a resource owned in whole or in part by a categorically eligible member is excluded.¶

(8) A filing group that has lost (4) Presumed eligibility.¶

(a) If verified in a public assistance or medical assistance program, an individual found categorically eligible due to lottery or gambling winnings under section (3) of this rule may not have eligibility (see OAR 461-001-0000) determined. For the SNAP program is presumed to meet the following eligibility requirements, unless questionable:¶

(A) Social security number.¶

(B) U.S. Citizenship and Immigration Services sponsorship information, and¶

(C) Oregon residency.¶

(b) A filing group founder categorically eligible until they meet the following SNAP asset limits:¶

(a) Resource limit listed under OAR 461-160-0015(7) for the SNAP program is presumed to meet the following financial eligibility resource and income requirements (see OAR 461-160-0400): ¶

(A) Resource limit,¶

(b) Countable income limit listed under OAR 461-155-0190, and¶

(c) Adjusted income limit listed under OAR 461-155-0190.

Statutory/Other Authority: ORS 411.816

Statutes/Other Implemented: ORS 411.816, 7 CFR 273.11

ADOPT: 461-140-0262

RULE SUMMARY: OAR 461-140-0262 about Loss of Eligibility Due to Lottery or Gambling Winnings, SNAP, is being permanently adopted to implement federal regulations that require SNAP benefits to end when individuals have lottery or gambling winnings over the allowed amount and to make clear that a financial group that includes an individual who meets the Chapter 461 definition of "elderly" or an individual with a "disability" does not have to pass the countable income test for SNAP.

CHANGES TO RULE:

461-140-0262

Loss of Eligibility Due to Lottery or Gambling Winnings, SNAP

In the SNAP Program:

(1) A filing group (see OAR 461-110-0370) shall immediately lose SNAP benefit eligibility (see OAR 461-001-0000), and be sent proper decision notice (see OAR 461-001-0000), due to lottery or gambling winnings when an individual in the filing group, through a single lottery or gambling game:

(a) Wins a cash prize, and

(b) The amount of the winnings, before taxes or other amounts are withheld, is equal to or in excess of the resource limit listed under subsection (7)(a) of OAR 461-160-0015.

(2) A filing group that loses SNAP benefit eligibility (see OAR 461-001-0000) under section (1) of this rule is not eligible for SNAP benefits, or to have SNAP eligibility determined using categorical eligibility, until they meet financial eligibility under the following SNAP resource and income requirements (see OAR 461-160-0400):

(a) Resources must be below the resource limit set under OAR 461-160-0015.

(b) Countable income (see OARs 461-001-0000 and 461-140-0010) must be below the countable income limit set at 130 percent of the federal poverty level under OAR 461-155-0180, except for a financial group (see OAR 461-110-0530) that includes an individual who is elderly (see OAR 461-001-0015) or has a disability (see OAR 461-001-0015), and

(c) Adjusted income (see OAR 461-001-0000) must be below the adjusted income limit set at 100 percent of the federal poverty level under OAR 461-155-0180.

(d) This provision applies to all types of categorical eligibility (see OAR 461-135-0505).

Statutory/Other Authority: ORS 411.816

Statutes/Other Implemented: ORS 411.816, 7 CFR 273.11



AMEND: 461-155-0150

RULE SUMMARY: OAR 461-155-0150 is being permanently amended to continue a collaborative policy change with the Early Learning Division put in place during the COVID-19. The amendment continues to allow providers to bill for absent days that a child was scheduled to be in care, as long as it is the provider's policy to bill absent days to all families. By continuing the expansion of the absent day policy, Oregon follows federal guidance by moving closer in alignment to how most providers bill: enrollment-based. It is also being permanently amended to move rule provisions about ERDC financial eligibility, allowable child care cost, and the copay calculation to OAR 461-160-0300, to prevent payment for absent child care days when a child has been absent for a calendar month, and to remove provisions regarding the 2019 alternative hour care incentives.

CHANGES TO RULE:

461-155-0150

Child Care Eligibility Standard, Payment Rates, and Copayment Payment Limits, and Payable Hours ¶

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, and TANF programs:¶

(1) The following definitions apply to the rules governing child care rates:¶

(a) Infant: For all providers other than licensed (registered or certified) care, a child aged newborn to 1 year. For licensed care, an infant is a child aged newborn to 2 years.¶

(b) Toddler: For all providers other than licensed (registered or certified) care, a child aged 1 year to 3 years. For licensed care, a toddler is a child aged 2 years to 3 years.¶

(c) Preschool: A child aged 3 years to 6 years.¶

(d) School: A child aged 6 years or older.¶

(e) Special Needs: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her their age due to a physical, behavioral, or mental disability. The disability must be verified by one of the following:¶

(A) A physician, nurse practitioner, clinical social worker, or any additional sources in OAR 461-125-0830.¶

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.¶

(C) Eligibility for SSI.¶

(2) The following definitions apply to the types of care specified in the child care rate charts in subsections (4)(a) through (4)(c) of this rule:¶

(a) The Standard Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.¶

(b) The Enhanced Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider meets the training requirements of the Oregon Registry, established by the Oregon Center for Career Development in Childhood Care and Education.¶

(c) The Registered Family Rate applies to child care provided in the provider's own home when the provider meets criteria established by the Office of Child Care.¶

(d) The Certified Family Rate applies to child care provided in a residential dwelling that is certified by the Office of Child Care as a Certified Family Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.¶

(e) The Standard Center Rate applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Office of Child Care Certification rules (see OAR 414-300-0000).¶

(f) The Enhanced Center Rate applies to child care provided in an exempt center whose staff meet the training requirements of the Oregon Registry established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:¶

(A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry training requirements noted in subsection (b) of this section.¶

(B) New staff must meet the Oregon Registry training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.¶

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.¶

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (b) or (f) of this section.¶

(h) The Certified Center Rate applies to child care provided in a center that is certified by the Office of Child Care or participating in the Alternative Pathway program through the Office of Child Care.¶

(3) The following provisions apply to child care payments:¶

(a) Providers not eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.¶

(b) Providers eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 136 hours a month, unless the provider customarily bills all families at a part-time monthly rate subject to the maximum full-time monthly rate and is designated as the primary provider for the case.¶

(c) At their request, providers eligible for the enhanced or licensed rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month, customarily bill all families at a part-time monthly rate, and are designated as the primary provider for the case.¶

(d) Unless required by the circumstances of the ~~client~~ parent or child, the Department will not pay for care at a part-time monthly or a monthly rate to more than one provider for the same child for the same month.¶

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.¶

(f) The Department will pay for absent days each month the child is absent. ~~For all providers receiving payment under the TANF program, absent days are limited to up to five days each month. For all providers receiving payment under the ERDC program except Certified Centers certified by the Office of Child Care, absent days are limited to up to five days each month. For Certified Centers receiving payment under the ERDC program, absent days are limited to up to 30 days each month if the child has attended one day of care in the facility for that month. Absent days can be billed if:~~ can be billed if:¶

(A) It is the provider's policy to bill all families for absent days; and¶

(AB) The child was scheduled to be in care and, the provider bills for the amount of time the child was scheduled to be in care; and¶

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

(g) ~~For all providers receiving payment under the TANF program and for all providers except Certified Centers receiving payment under the ERDC program, the Department will not pay for more than five consecutive days of scheduled care for which the child is absent.~~ the child has not been absent for a calendar month.¶

(hg) Child care providers are eligible to receive an incentive payment upon achieving and maintaining a three star or higher rating with the Quality Rating Improvement System (QRIS) subject to all of the following provisions.¶

(A) The incentive payment is in addition to the Department maximum rate.¶

(B) A provider may receive an incentive payment for any ERDC child that the Department paid the provider for full-time care (136 hours or more).¶

(C) Providers who are contracted for child care services through the ERDC program are not eligible to receive incentive payments, with the exception of Early Head Start providers.¶

(D) Eligibility for the incentive payment is effective the month after the QRIS rating has been achieved.¶

(E) The incentive payment amount is based on the provider's star QRIS rating as follows: [see attached table]¶

Star Rating &&&&& Amount¶

3 &&&&& \$54¶

4 &&&&& \$72¶

5 &&&&& \$90¶

(ih) In the ERDC program, child care providers eligible for the licensed rate may receive payment from the Department for registration and other fees if they are required by the facility for a child to begin or continue care and the fees are also required of the general public. Fees related to penalties, fines, charges exceeding approved ERDC hours or rates (see section (4) of this rule), or advance payment for cost of care are not eligible for payment.¶

(j) In the ERDC program, child care providers are eligible to receive an incentive payment for alternative hour care (see subparagraph (B)(i) of this subsection) subject to all of the following provisions:¶

(A) Alternative hour care incentives are limited to care provided between January 1, 2019 and September 30, 2019.¶

(B) For the purposes of this rule:¶

(i) "Alternative hour care" means child care conducted between the hours of 7:00 P.M. and 6:00 A.M. Monday through Friday or any hours conducted Saturday or Sunday.¶

(ii) A "qualifying child" is a child in alternative hour care for at least 20 hours per calendar month.¶

(C) Providers must submit the appropriate request form to the Direct Pay Unit no later than October 15, 2019.¶

(D) Incentive payments are \$250 for each qualifying child (see subparagraph (B)(ii) of this subsection) in alternative hour care at least 20 hours per calendar month or \$500 for each qualifying child in alternative hour care at least 40 hours per calendar month.¶

(E) Incentive payments are subject to limitations of state funding.¶

- (4) The following are the child care rates based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (hourly or monthly):¶¶
- (a) [see attached table]¶¶
  - (b) [see attached table]¶¶
  - (c) [see attached table]¶¶
- (5) Except to the extent provided otherwise in section (12), (13), or (14) of this rule or for children in contracted child care (see OAR 461-135-0405 and 461-135-0407), this section OAR 461-160-0300 establishes the ERDC eligibility standard and the client's copayment (copay).¶¶
- (a) At initial certification, the ERDC eligibility standard is met for a need group (see OAR 461-110-0630) of eight or less if monthly countable income (see OAR 461-001-0000) for the need group is less than 185 percent of the federal poverty level (FPL), as described in OAR 461-155-0180. The eligibility standard for a need group of eight applies to any need group larger than eight.¶¶
  - (b) During the certification period (see OAR 461-001-0000) and at recertification the ERDC eligibility standard is met for a need group of eight or less if monthly countable income for the need group during the 12 month period is less than 250 percent FPL or 85 percent state median income (SMI), whichever is higher, as described in OAR 461-155-0180. The eligibility standard for a need group of eight applies to any need group larger than eight.¶¶
  - (c) The minimum monthly ERDC copay is \$25.¶¶
  - (d) The filing group may not exceed the resource limit in OAR 461-160-0015.¶¶
  - (e) For a filing group (see OAR 461-110-0310) whose financial eligibility, allowable child care cost, and the copay calculation, except for child care under a countable income is at or below 50 percent of the 2007 FPL, the copay is \$25 or 1.5 percent of the filing group's monthly countable income, whichever is greater.¶¶
  - (f) For a filing group whose countable income is over 50 percent of the 2007 FPL, the copay amount is determined with the following percentage of monthly income:¶¶
    - (A) Divide the filing group's countable income by the 2007 FPL, drop all digits beyond two decimal points, subtract 0.5, and multiply this difference by 0.12.¶¶
    - (B) Add .015 to the amount in paragraph (A) of this subsection. This sum is the percentage of monthly income used to determine the copay amount. Multiply this sum by the filing group's countable income and round to the nearest whole dollar.¶¶
  - (g) For individuals participating in the Occupational Training and Child Care program and the Launch housing stabilization project, the copay is \$27.00.¶¶
  - (h) The 2007 federal poverty level used to determine copay amounts under subsections (e) and (f) of this section is set at the following amounts: [see attached table] tract between a Head Start agency and the Department, which is covered under OAR 461-135-0405.¶¶
- (6) Subject to the provisions in section (9) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:¶¶
- (a) The monthly rate provided in section (4) of this rule.¶¶
  - (b) The product of the hours of care, limited by section (8) of this rule, multiplied by the hourly rate provided in section (4) of this rule.¶¶
- (7) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:¶¶
- (a) The amount billed by the provider or providers.¶¶
  - (b) The monthly rate established in this rule for 215 hours of care.¶¶
- (8) The number of payable billed hours of care for a child is limited as follows:¶¶
- (a) In the ERDC and TANF programs, the total payable hours of care in a month may not exceed the amounts in paragraphs (A) or (B) of this subsection:¶¶
    - (A) 125 percent of the number of child care hours authorized:¶¶
      - (i) Under OAR 461-160-0040(23) and (56); or¶¶
      - (ii) To participate in activities included in a case plan (see OAR 461-001-0025) including, for client caretakers in the JOBS Plus program, the time the client caretaker searches for unsubsidized employment and for which the employer pays the client caretaker.¶¶
    - (B) The monthly rate established in section (4) of this rule multiplied by a factor of not more than 1.5, determined by dividing the number of hours billed by 215, when the client caretaker meets the criteria for extra hours under section (10) of this rule.¶¶
  - (b) In the ERDC program, for a client caretaker who earns less than the Oregon minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time).¶¶
  - (c) In the TANF program, for a client caretaker who earns less than the Oregon minimum wage or is self-employed, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to

exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the ~~client~~caretaker's employment.¶

(d) In the ERDC program, employed caretakers eligible under OAR 461-135-0400 may have education hours added to the authorized work hours. Education hours may not exceed authorized work hours and combined hours may not exceed 215 hours per month. Education hours are hours required to participate in coursework that leads to a certificate, degree, or job-related knowledge or skills attainment at an institution of higher education approved to receive federal financial aid.¶

(9) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (10) of this rule, is the lesser of one of the following:¶

(a) The amount billed by the provider or providers; or¶

(b) The monthly rate established in section (4) of this rule multiplied by a factor, of not more than 1.5, determined by dividing the number of hours billed by 215.¶

(10) The limit allowed by section (9) of this rule is authorized once the Department has determined the ~~client~~caretaker has special circumstances. For the purposes of this section, a ~~client~~caretaker has special circumstances when it is necessary for the ~~client~~caretaker to obtain child care in excess of 215 hours in a month to perform the requirements of ~~his or her~~their employment or training required to keep current employment, not including self-employment. This is limited to the following situations:¶

(a) The commute time to and from work exceeds two hours per day.¶

(b) The caretaker works an overnight shift and care is necessary for both work hours and sleep hours.¶

(c) The caretaker works a split shift and it is not feasible to care for the child between shifts.¶

(d) The caretaker consistently works more than 40 hours per week.¶

(11) The payment available for care of a child who meets the special needs criteria described in subsection (e) of section (1) of this rule is increased in accordance with OAR 461-155-0151 if the requirements of both of the following subsections are met:¶

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age.¶

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.¶

~~(12) Effective May 1, 2012:¶~~

~~(a) The minimum monthly ERDC copay is \$27.¶~~

~~(b) Except as stated in subsection (a) of this section, the Department adds 10 percent to the monthly client copay amount set under section (5) of this rule by multiplying the copay amount by 1.1 and rounding down to the nearest whole dollar.¶~~

~~(13) Effective April 1, 2016, the ERDC copay is \$27 for no more than three months after closure of Pre-TANF, SFPSS, or TANF benefits when:¶~~

~~(a) The closure is because an individual in the need group had earned income that led to the TANF closure;¶~~

~~(b) An ERDC date of request (see OAR 461-115-0030) is established within 90 days of closure; and¶~~

~~(c) The individual is eligible for ERDC at initial certification.¶~~

~~(14) The ERDC copay will be reduced starting the month after the ERDC case has been electronically connected to a Department approved child care provider with a Quality Rating and Improvement System (QRIS) star rating of 3, 4, or 5. The copay will be reduced by the following amounts:¶~~

~~(a) A copay set at \$27 is waived, unless the copay is \$27 under section (13) of this rule in which case the copay is not waived under this section.¶~~

~~(b) Copay amounts of \$28 to \$200 are reduced by \$20.¶~~

~~(c) Copay amounts of \$201 or more are reduced by 10 percent rounding to the nearest dollar.¶~~

[see attached table]

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 412.049

Statutes/Other Implemented: ~~409.010~~, ORS 329A.500, 409.010, 409.610, 411.060, 411.070, 411.122, 411.141, 412.006, 412.049, 412.124, 418.485

AMEND: 461-155-0151

RULE SUMMARY: OAR 461-155-0151 is being changed to double the amount a provider may receive if a child is eligible for the High Special Needs rate.

CHANGES TO RULE:

461-155-0151

High Special Needs; Child Care ¶¶

- (1) The payment authorized by OAR 461-155-0150(11) is calculated by adding the applicable special need payment authorized by section (4) of that rule to the additional amount determined by this rule.¶¶
- (2) The additional amount determined by this rule is allowed in consideration of the additional cost to a child care provider for the additional care and supervision required because of a child's physical, mental or behavioral condition. To determine the additional amount, a factor determined by this rule is multiplied by:¶¶
- (a) ~~\$2,55.00~~ for a payment calculated on an hourly basis; or¶¶
- (b) ~~\$8420~~ for a payment calculated on a monthly basis.¶¶
- (3) The factor used to make the calculation described in section (2) of this rule is determined by first establishing a score for each category listed in section (5) of this rule. The score is established by multiplying a rating and the weight for each category. The weight is given in section (5). The rating is determined as follows:¶¶
- (a) The child's need for care and supervision is assessed and is compared with the needs of other children of the same age, and a rating is determined for each category. The rating is a whole number from zero to ten.¶¶
- (b) Benchmark scores are given in section (5) of this rule for each category using several descriptions of need. The child's level is matched with the benchmark descriptions, and a rating is assigned based on a comparison of the child's needs and the benchmark descriptions. If a child's level of need falls between - or is described in part by - two benchmarks in the rule, an appropriate intermediate rating is assigned based on the benchmarks scores.¶¶
- (4) After a score is determined for each category, the scores are added. The sum of the scores is changed to 100 if it is less than 110 and is reduced to 300 if it exceeds 300. The adjusted score is decreased by 100, and the remainder is divided by 100. The result is the factor used in section (2) of this rule.¶¶
- (5) The categories, their weights, and standards for their ratings are as follows:¶¶
- (a) Level of medical care - weight is 7:¶¶
- (A) Child requires on-site medical attention by a licensed medical or mental health professional and the child care provider must have specialized training related to the child's medical or mental health needs - rating of 10.¶¶
- (B) The provider must have specialized training related to the child's medical or mental health needs and consults frequently with a medical or mental health professional - rating of 8.¶¶
- (C) Child requires medical attention by a caregiver who has received some specialized training related to the child's medical or mental health needs - rating of 4.¶¶
- (D) Child requires medical attention or monitoring by a caregiver who has received special instructions from the parent or a service provider related to the child's medical or mental health needs - rating of 1.¶¶
- (E) Child's needs can be met by staff with general knowledge - rating of zero.¶¶
- (b) Self-sufficiency with daily tasks - weight is 5:¶¶
- (A) Child requires total assistance with eating or toileting, such as requiring tube feedings or with special toileting needs, such as ostomy care - rating of 10.¶¶
- (B) Child requires considerable assistance in eating or toileting - rating of 5.¶¶
- (C) Child requires only minor assistance with eating or toileting - rating of 1.¶¶
- (D) Child can take care of daily tasks with very little assistance - rating of zero.¶¶
- (c) Mobility - weight is 5:¶¶
- (A) Child is unable to help with positioning or movement, needs frequent repositioning, and the child is difficult to move - rating of 10.¶¶
- (B) Child can help with transfers, pivoting and position - rating of 5.¶¶
- (C) Child is able to move independently with minor support - rating of 1.¶¶
- (D) Child's mobility is similar to other children of the same age - rating of zero.¶¶
- (d) Communication skills - weight is 6:¶¶
- (A) Child is unable to communicate needs and wants, and is unable to use alternative communication methods - rating of 10.¶¶
- (B) Child relies entirely upon alternative methods such as sign language, picture boards, gestures, or facial expressions, to communicate the child's needs or to understand requests made of the child - rating of 8.¶¶
- (C) Child has limited verbal skills. The child may require one-on-one communication to gain the child's attention, simplify instructions, or to understand the child's speech or gestures. Child may use alternative methods, mentioned in paragraph (B) of this sub-section, as a supplement to verbal skills - rating of 4.¶¶

- (D) Child's communication skills are roughly similar to other children of the same age - rating of zero.¶
- (e) Need for monitoring and intervention - weight is 11:¶
- (A) The child must remain within the child care provider's direct view at all times and needs frequent intervention to prevent harm to self or other children - rating of 10.¶
- (B) The child must remain within the provider's direct view at all times but does not need frequent intervention - rating of 7.¶
- (C) Child has behaviors that frequently require adult intervention but are not a threat to the child's or other children's safety - rating of 4.¶
- (D) Child needs assistance to initiate, respond to, or engage in peer interactions that are safe, positive, and appropriate - rating of 2.¶
- (E) Child needs some assistance but generally does well if the assistance is provided - rating of zero.¶
- (f) Cognition and comprehension - weight is 7:¶
- (A) Child is unable to recognize danger, is unable to follow instructions without one-on-one assistance, and has difficulty processing basic sensory information about the environment. This does not include vision or hearing as the primary difficulty - rating of 10.¶
- (B) Child needs to be given one instruction at a time and may need reminders of what was asked in order to complete instruction - rating of 5.¶
- (C) Child is able to understand and solve problems with some special attention - rating of zero.¶
- (g) Other special considerations - weight is 5. There are other considerations relating to the level of supervision required for the child that are not included in the above categories. A rating is determined based on how much more supervision the child needs - because of the other consideration - than other children of the same age.
- Statutory/Other Authority: ORS 411.060
- Statutes/Other Implemented: ORS 411.060

AMEND: 461-165-0160

RULE SUMMARY: OAR 461-165-0160 is being changed to allow providers to submit billing forms at the beginning of each month for hours a child is scheduled to be in care, remove the requirement for caretakers to sign billing forms, and to de-gender language.

CHANGES TO RULE:

461-165-0160

Direct Provider Payments; General Information ¶¶

(1) The Department makes payments on behalf of eligible clients to the providers they select to care for their children. The payments are made directly to the provider. To be eligible for payment, a provider must:¶¶

- (a) Charge Department clients at a rate no higher than the rate charged other customers;¶¶
- (b) Provide the Department ~~his or her~~ their social security number (SSN) or IRS identification number; and¶¶
- (c) Meet the requirements of OAR 461-165-0180.¶¶

(2) Payments to a client's provider are subject to each of the following limitations:¶¶

(a) ~~A~~Before August 1, 2021, payment is made only for child care already provided in the TANF program for all providers. ~~A~~Before August 1, 2021, payment is made for child care already provided in the ERDC program for all providers except Certified Centers certified by the Office of Child Care who receive payment in advance for anticipated hours a child is in care for the month.¶¶

(b) Payment is made for the amount charged to the client but may not exceed the rate authorized in OAR 461-155-0150.¶¶

(c) No payment will be authorized unless the client has designated a primary provider.¶¶

(d) No payment will be made for less than one dollar.¶¶

(e) Except as provided otherwise in subsection (f) of this section, a payment is made only for child care provided on or after the date the designated provider has met the requirements to be listed and paid through the Department.¶¶

(f) A designated child care provider who the Department approves to be listed and paid through the Department may receive payment for child care provided prior to obtaining Department approval if the provider met the other Department requirements and was licensed under OAR 414-205-0000 to 414-205-0170, 414-350-0000 to 414-350-0405, or 414-300-0000 to 414-300-0415.¶¶

(g) Beginning July 1, 2021, a caretaker (see OAR 461-001-0000) signature is not required on child care billing forms.¶¶

(h) Beginning August 1, 2021, a provider caring for an eligible child in the TANF or ERDC programs may receive payment in advance for hours the child is scheduled to be in care for the month.¶¶

(3) In the ERDC and TANF programs, the Department may issue a payment to an eligible provider during a month for which child care is being provided to meet an unexpected need of the provider related to the care of a covered child. The payment may be made if, without the payment, continued care by the same provider would be jeopardized and the client could not immediately obtain child care from another provider.

Statutory/Other Authority: 409.050, 411.060, 411.070, 411.122, 412.049, ORS 329A.500

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.122, 412.049, 45 CFR 98.45