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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILED
01/24/2022 8:20 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Proposed Permanent Changes to Seven Rules about APD Medical Programs and Overpayments

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/22/2022 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
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HEARING(S)

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

DATE: 02/22/2022
TIME: 2:30 PM - 5:30 PM
OFFICER: Meorah Solar
ADDRESS: Virtual Hearing - No Physical Location
Phone 1-971-277-2343, code 821 979 412#
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@dhsoha.state.or.us at least 48 hours before the meeting.

NEED FOR THE RULE(S)

OAR 461-135-0771 about (new title) Eligibility for OSIPM Under December 1973 Supplemental Security Income Eligibility, needs to be amended to align the date with federal law and remove the term "grandfathering." This term is rooted in racist and anti-Black/African-American laws passed around the early 1890s by a number of US states that made men eligible to vote if they or their ancestors, or "grandfathers," were previously legally allowed to vote. This was called the grandfather clause and was an effective method to continue racial discrimination in voting after the 15th amendment was ratified, which prohibited racial discrimination in voting, because the law was not based specifically on race. ODHS does not find it appropriate to continue this term in its rules. The rule also needs to be filed to permanently adopt the temporary changes made to this rule on January 1, 2022.

OAR 461-155-0290 about Income Standard; QMB-BAS, OAR 461-155-0291 about Income Standard; QMB-DW, and OAR 461-155-0295 about Income Standard; QMB-SMB, QMB-SMF, 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 Federal Poverty Level effective March 1, 2022.

OAR 461-195-0501 about Definitions and Categories of Overpayments and 461-195-0521 about Calculation of Overpayments need to be changed in order to align the rules with the Department's many-year policy, which disallows medical assistance administrative error overpayments. They also need to be changed to adopt a new provision, which restricts effective April 21, 2021, the establishment of new medical assistance overpayments, except for fraud overpayments or overpayments caused by continued benefits pending the outcome of a contested case (hearing request). The rules also need to be filed to permanently adopt the temporary changes made to these rules regarding medical programs on September 10, 2021.

OAR 461-195-0561 about (new title) Compromise or Adjustment of an Overpayment Claim needs to be changed in order to make clear which medical overpayment claims the Department may adjust, which collected monies the Department may retain, and to support the adjustments. The medical overpayments eligible for an adjustment to $0.00 should have already been completed during 2021 and the rule needs to support these actions. The rule also needs to be filed to permanently adopt the temporary changes made to this rule on December 22, 2021.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Correspondence between Office of Payment and Recovery and Oregon Health Authority available from Office of Payment and Recovery.

Correspondence between OPAR and OHA. Email from 4/20/2021 between Nicky Jeffreys and Sarah E. Dobra available from Office of Payment and Recovery.

Centers for Medicare & Medicaid Services Federal Policy Guidance website here: http://medicaid.gov/Federal-Policy-Guidance/Federal-Policy-Guidance.html

U.S. Federal Poverty Guidelines, here: https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines

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STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Although the adoption of the changes to OAR 461-135-0771 will have no direct affect on racial equity in Oregon, there are articles and studies suggesting that use of "just" language can reduce harm. Removing terminology that is rooted in racist, anti-Black/African American laws moves ODHS closer to a language foundation that does not impose racism-rooted or micro-aggressive language on readers.

The adoption of the changes to OARs 461-155-0290, 461-155-0291, 461-155-0295, will have no affect on racial equity in Oregon.

The adoption of the changes to OARs 461-195-0501, 461-195-0521, and 461-195-0561, may have a positive affect on racial equity in Oregon. The governments of the United States and Oregon have passed many laws that prohibited all or some communities of color from accessing certain benefits, obtaining credit, voting, residing where they chose, being free citizens, or owning land. A few of these laws are:
*Territory of Oregon Provisional Government “Lash Law” authorizing a punishment for any Black settler to be whipped "not less than twenty nor more than thirty-nine stripes" if they remained in the territory. (1844)
* Dead Scott v. Sandford of 1857
* Oregon’s Statehood and Constitution bans any “free negro, mulatto, not residing in this State at the time” from living,

owning property, and making any contracts within the state. (1857)
* Residential School Systems laws - "Indian" Boarding Schools (1879 through the 1900s)
* Dawes General Allotment Act of 1887
* Scott Act of 1888 and Geary Act of 1892
* Plessy v. Ferguson of 1896 and Jim Crow Laws of 1876 - 1965
* Indian Citizenship Act of 1924
* Mexican Repatriation of 1929-1939
* The Social Security Act of 1935
* Indian Termination Policy (mid 1940s to mid 1960s)
* Japanese American Internment of 1942 (Executive Order 9066), which unlawfully interned over 127,000 innocent Japanese American citizens to concentration camps in the 1940s.
Many articles and studies suggest that these and other oppressive laws have had a disproportionate and negative impact on nearly every facet of the lives of communities of color, including employment, wealth, education, access to and accumulation of resources, credit scores, and home ownership. Therefore, the Department estimates that the changes to ODHS medical overpayments will have a beneficial racial equity impact on any community of color members whose debts were zeroed out in accordance with these rule changes.

FISCAL AND ECONOMIC IMPACT:

The Department estimates that amending OARs 461-135-0771 will have no impact on the Department, those eligible or applying for ERDC, the public, 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 the fiscal impact of amending OAR 461-155-0290, 461-155-0921, and 461-155-0295 to result in a positive fiscal impact to the Department and a negative fiscal impact to certain applicants for and recipients of Medicare Savings Program benefits. The Department cannot provide a specific dollar amount of the positive fiscal impact because there is an existing prohibition on certain adverse actions during the COVID-19 Public Health Emergency (PHE), and CMS cannot predict whether the PHE will be extended past the current expiration date of April 16, 2022. Should the PHE extend until or after March 1, 2023, it is possible that individuals will lose eligibility for certain Medicare Savings Programs (MSP) resulting from these changes, since the percentage of Social Security benefits increase due to the 2022 annual Cost of Living Adjustments exceeded that of the overall Federal Poverty Level standards increase. The Department estimates that these amendments will have no fiscal impact on other state agencies, local government, and business including small business. There is no cost of compliance for small business.

The Department estimates that amending OARs 461-195-0501, 461-195-0521, and 461-196-0561, will have a collective negative fiscal impact of $1.6 million per biennium on the Department and any agencies to which the Department sends recovered overpayments, including Oregon Health Authority. The Department estimates a positive fiscal impact on all individuals who were liable for a Medical benefits overpayment and qualify for the balance owed to be reduced to $0.00 in the specific amount of the balance owed. As this amount varies, an individual positive fiscal impact cannot be stated, but the Department estimates the collective positive fiscal impact for all impacted debtors at $3.3 million. The Department estimates no financial impact on the general public who did not owe a Medical benefits overpayment, other state agencies besides those who received recovered medical benefits overpayments, local government, and business, including small business. There is no cost of compliance for small businesses. No small businesses are subject to this rule.

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

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.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

A Rule Advisory Committee (RAC) was consulted for all rules except for OARs 461-155-0290, 461-155-0291, and 461-155-0295. No RAC was used for these rules because each of them involve routine annual adjustments.

RULES PROPOSED:
461-135-0771, 461-155-0290, 461-155-0291, 461-155-0295, 461-195-0501, 461-195-0521, 461-195-0561

AMEND: 461-135-0771

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

CHANGES TO RULE:

461-135-0771
Eligibility for OSIPM Under ~~"Grandfathering" Provision~~ December 1973 Supplemental Security Income Eligibility ¶

(1) A~~person~~n individual is eligible for OSIPM if the ~~person~~individual was eligible for S~~SI in January~~upplemental Security Income (SSI) in December 1974~~3~~.¶
(2) A~~person~~n individual is eligible for OSIPM if the ~~person~~individual is the essential spouse of ~~a pers~~some~~on~~e eligible for OSIPM under section (1) of this rule. An essential spouse is one who lives in the same household and provides a service that otherwise would have to be provided by some other means.¶
(3) A~~person~~n individual eligible for OSIPM under this rule is considered eligible continuously since ~~January~~December 1974~~3~~.
Statutory/Other Authority: ORS 411.060
Statutes/Other Implemented: ORS 411.060

AMEND: 461-155-0290

RULE SUMMARY: OAR 461-155-0290 is being amended to adjust the standards to reflect the annual updates to the Federal Poverty Level that happens every March.

CHANGES TO RULE:

461-155-0290
Income Standard; QMB-BAS ¶

The adjusted income standard for the QMB-BAS program is 100 percent of the 2021~~1~~2 federal poverty level.¶
QMB-BAS Adjusted Income Standard¶
No. in Need Group ..... Amount¶
1 ..... $1,133¶
2 ..... 1,526¶
3 ..... 1,920¶
4 ..... 2,313¶
5 ..... 2,706¶
6 ..... 3,100¶
7 ..... 3,493¶
8 ..... 3,886¶
9 ..... 4,280¶
10 ..... 4,673¶
Each additional person ..... + 394
Statutory/Other Authority: ORS 411.060, 411.070, 411.404, ORS 409.050, 413.085, 414.685
Statutes/Other Implemented: ORS 411.060, 411.070, 411.404, ORS 409.010

AMEND: 461-155-0291

RULE SUMMARY: OAR 461-155-0291 is being amended to adjust the standards to reflect the annual updates to the Federal Poverty Level that happens every March.

CHANGES TO RULE:

461-155-0291
Income Standard; QMB-DW ¶

The adjusted income standard for the QMB-DW program is 200 percent of the 202~~1~~2 federal poverty level (see OAR 461-155-0290).¶

QMB-DW Adjusted Income Standard¶

No. in Need Group	Amount¶
1	$2,265¶
2	3,052¶
3	3,839¶
4	4,625¶
5	5,412¶
6	6,199¶
7	6,985¶
8	7,772¶
9	8,559¶
10	9,345¶
Each additional person	+ 787

Statutory/Other Authority: ORS 411.060, 411.070, 411.404, ORS 409.050, 413.085, 414.685
Statutes/Other Implemented: ORS 411.060, 411.070, 411.404, ORS 409.010

AMEND: 461-155-0295

RULE SUMMARY: OAR 461-155-0295 is being amended to adjust the standards to reflect the annual updates to the Federal Poverty Level that happens every March.

CHANGES TO RULE:

461-155-0295
Income Standard; QMB-SMB, QMB-SMF ¶

(1) Eligibility for QMB-SMB requires income greater than 100 percent (see OAR 461-155-0290) but less than 120 percent of the federal poverty level. The adjusted income standard for QMB-SMB is 120 percent of the 2021~~1~~2 federal poverty level.¶

QMB-SMB Adjusted Income Standard¶
(Case Descriptor SMB) ¶

No. in Need Group	Amount¶
1	$1,359¶
2	1,831¶
3	2,303¶
4	2,775¶
5	3,247¶
6	3,719¶
7	4,191¶
8	4,663¶
9	5,135¶
10	5,607¶
Each additional person	+ 472¶

(2) Eligibility for QMB-SMF requires income equal to or greater than 120 percent (see section (1) of this rule) but less than 135 percent of the federal poverty level. The adjusted income standard for QMB-SMF is 135 percent of the 2021~~1~~2 federal poverty level.¶

QMB-SMF Adjusted Income Standard¶
(Case Descriptor SMF) ¶

No. in Need Group	Amount¶
1	$1,529¶
2	2,060¶
3	2,591¶
4	3,122¶
5	3,653¶
6	4,184¶
7	4,715¶
8	5,246¶
9	5,777¶
10	6,308¶
Each additional person	+ 531

Statutory/Other Authority: ORS 411.060, 411.070, ORS 409.050, 413.085, 414.685
Statutes/Other Implemented: ORS 411.060, 411.070, ORS 409.010

AMEND: 461-195-0501

RULE SUMMARY: OAR 461-195-0501 is being amended to adopt a new definition and criteria for medical assistance overpayment establishment, according to the guidance from the Centers for Medicare and Medicaid Services (CMS) and Oregon Health Authority (OHA). The amendment restricts establishment of new medical assistance overpayments to certain causes.

CHANGES TO RULE:

461-195-0501
Definitions and Categories of Overpayments ¶

This rule applies to benefits and services delivered under chapters 410, 411, and 461 of the Oregon Administrative Rules.¶
(1) "Overpayment" means:¶
(a) A benefit or service received by or on behalf of a client, or a payment made by the Department on behalf of a client, that exceeds the amount for which the client is eligible.¶
(b) A payment made by the Department and designated for a specific purpose which is spent by a person on an expense not approved by the Department.¶
(A) In the REF program, there is a rebuttable presumption that the full amount of cash benefits was improperly spent in violation of OAR 461-165-0010(8)(a) when cash benefits are used or accessed in Oregon, outside of Oregon, or on ŧTribal lands at:¶
(i) Any liquor store (see OAR 461-165-0010);¶
(ii) Any casino, gambling casino, or gaming establishment (see OAR 461-165-0010);¶
(iii) Any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or¶
(iv) Any marijuana dispensary.¶
(B) In the SFPSS and TANF programs, there is a rebuttable presumption that the full amount of cash benefits was improperly spent in violation of OAR 461-165-0010(9)(a) when cash benefits are used or accessed in Oregon, outside of Oregon, or on ŧTribal lands at:¶
(i) Any liquor store;¶
(ii) Any casino, gambling casino, or gaming establishment;¶
(iii) Any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or¶
(iv) Any marijuana dispensary.¶
(C) The rebuttable presumptions in paragraphs (A) and (B) of this section also apply when an individual in a location covered in paragraphs (A) or (B) uses or accesses cash benefits from a private bank account.¶
(c) A payment for child care made by the Department to, or on behalf of, a client that:¶
(A) Is paid to an ineligible provider;¶
(B) Exceeds the amount for which a provider is eligible;¶
(C) Is paid when the client was not engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-001-0025 and 461-190-0151 to 461-190-0401);¶
(D) Is paid when the client was not eligible for child care benefits; or¶
(E) Has given an electronic benefit transfer (EBT) card, card number, or personal identification number (PIN) to a provider for the purpose of checking a child (see OAR 461-001-0000) in or out from the provider's child care.¶
(d) A misappropriated payment when a person cashes and retains the proceeds of a check from the Department on which that person is not the payee and the check has not been lawfully endorsed or assigned to the person.¶
(e) A benefit or service provided for a need when that person is compensated by another source for the same need and the person fails to reimburse the Department when required to do so by law.¶
(f) A cash benefit received by an individual in the GA or SFPSS programs for each month for which the client receives a retroactive SSI lump sum payment.¶
(g) In the TA-DVS program, a payment made by the Department to an individual or on behalf of an individual when the individual intentionally and without intimidation or coercion by an abuser:¶
(A) Makes a false or misleading statement or misrepresents, conceals, or withholds information for the purpose of establishing eligibility (see OAR 461-001-0000) for or receiving a benefit from the TA-DVS program; or¶
(B) Commits any act intended to mislead or misrepresent, conceal, or withhold information for the purpose of establishing eligibility for or receiving a benefit from the TA-DVS program.¶
(2) The Department may establish an overpayment for the initial month (see OAR 461-001-0000) of eligibility under circumstances including, but not limited to:¶

(a) The filing group (see OAR 461-110-0310), ineligible student, or authorized representative (see OAR 461-115-0090) withheld information;¶
(b) The filing group, ineligible student, or authorized representative provided inaccurate information;¶
(c) The Department failed to use income reported as received or anticipated in determining the benefits of the filing group; or¶
(d) The error was due to an error in computation or processing by the Department.¶
(3) ~~In the HSD medical programs (see OAR 461-001-0000), the Department may establish an overpayment for the budget month (see OAR 410-200-0015) when the HSD medical programs eligibility determination group (see OAR 410-200-0015) or authorized representative (see OAR 410-200-0015) withheld or provided inaccurate inf~~Retroactively effective April 21, 2021, for medical assistance the Department:¶
(a) Shall not establish an administrative error overpayment,¶
(b) Shall not establish a client error overpayment unless an individual received unreduced liability or unreduced benefits pending a contested case hearing decision or other final order favorable to the Department, and¶
(c) May establish a fraud overpayment when a court determines the individual made a false or misleading statement or misrepresented, concealed, or withheld a fact for the purpose of establishing or ma~~tion~~intaining eligibility.¶
(4) Overpayments are categorized as follows:¶
(a) An administrative error overpayment is an overpayment caused by any of the following circumstances:¶
(A) The Department fails to reduce, suspend, or end benefits after timely reporting by the filing group, ~~HSD medical programs eligibility determination group,~~ ineligible student, or authorized representative (see OAR 461-115-0090~~ and 410-200-0015~~) of a change covered under OAR 461-170-0011 ~~or 410-200-0235~~ and that reported change requires the Department to reduce, suspend, or end benefits;¶
(B) The Department fails to use the correct benefit standard;¶
(C) The Department fails to compute or process a payment correctly based on accurate information timely provided by the filing group, ~~HSD medical programs eligibility determination group,~~ ineligible student, or authorized representative;¶
(D) In the GA and SFPSS programs, the Department fails to require a client to complete an interim assistance agreement; or¶
(E) The Department commits a procedural error that was no fault of the filing group, ~~HSD medical programs eligibility determination group,~~ ineligible student, or authorized representative.¶
(b) A client error overpayment is any of the following:¶
(A) An overpayment caused by the failure of a filing group, ~~HSD medical programs eligibility determination group,~~ ineligible student, or authorized representative to declare or report information or a change in circumstances as required under OAR 461-170-0011~~ or 410-200-0235~~, including information available to the Department, that affects the client's eligibility to receive benefits or the amount of benefits.¶
(B) A client's unreduced liability or receipt of unreduced benefits pending a contested case hearing decision or other final order favorable to the Department.¶
(C) A client's failure to return a benefit known by the client to exceed the correct amount.¶
(D) A client's use of a JOBS or SFPSS program support payment (see OAR 461-190-0211) for other than the intended purpose.¶
(E) A payment for child care when the client was not engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-001-0025 and OAR 461-190-0151 to OAR 461-190-0401).¶
(F) A payment for child care when the client was not eligible for child care benefits.¶
(G) The failure of a client to pay their entire share of the cost of services or the participant fee (see OAR 461-160-0610 and 461-160-0800) in the month in which it is due.¶
(H) An overpayment caused by a client giving an electronic benefit transfer (EBT) card, card number, or personal identification number (PIN) to a provider for the purpose of checking a child in or out from the provider's child care.¶
(I) In the REF, SFPSS, and TANF programs, an overpayment caused by the client using or accessing cash benefits in any electronic benefit transaction in any liquor store; casino, gambling, or gaming establishment; retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or marijuana dispensary (see OAR 461-165-0010).¶
(c) A fraud overpayment is an overpayment determined to be an intentional program violation (see OAR 461-195-0601 and 461-195-0611) or substantiated through a c~~riminal prosecution~~ourt determining the individual made a false or misleading statement or misrepresented, concealed, or withheld a fact for the purpose of establishing or maintaining eligibility.¶
(d) In the SNAP program, a provider error overpayment is an overpayment made to a drug or alcohol treatment center or residential care facility that acted as a client's authorized representative.¶

(e) In ~~the~~a child care program, a provider error overpayment is a payment made by the Department on behalf of a client to a child care provider when:¶
(A) Paid to an ineligible provider; or¶
(B) The payment exceeds the amount for which a provider is eligible.¶
(5) When an overpayment is caused by both an administrative and client error in the same month, the Department determines the primary cause of the overpayment and assigns as either an administrative or client error overpayment.¶
(6) In the TANF and TA-DVS programs, when an overpayment puts the client at greater risk of domestic violence (see OAR 461-001-0000), the overpayment is waived (see OAR 461-135-1200).¶
(7) Except as provided in section (8) of this rule, the Department establishes an overpayment when the following thresholds are exceeded:¶
(a) Administrative error overpayments concerning:¶
(A) Cash and child care programs, when the amount is greater than $200;¶
(B) SNAP open case, when the amount is greater than $100; and¶
(C) SNAP closed case, when the amount is greater than $200.¶
(b) Client error overpayments in:¶
(A) Cash and child care programs, when the amount is greater than $200;¶
(B) SNAP open case, when the amount is greater than $100; and¶
(C) SNAP closed case, when the amount is greater than $200~~;¶~~
~~(D) Medical programs, when the amount is greater than $750~~.¶
(c) Provider error overpayments in:¶
(A) Cash and child care programs, when the amount is greater than $200;¶
(B) SNAP open case, when the amount is greater than $100;¶
(C) SNAP closed case, when the amount is greater than $200.¶
(8) There are no overpayment thresholds in all of the following situations:¶
(a) In SNAP program, if the overpayment was identified in a quality control review.¶
(b) In all programs, if the overpayment was caused by a client's receipt of continuing benefits in a contested case.¶
(c) In all programs, if the overpayment was caused by possible fraud by a client or provider.
Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.081, 411.404, 411.816, 412.001, 412.014, 412.049, HB 2089 (2013, Section 10)
Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.081, 411.117, 411.404, 411.620, 411.640, 411.690, 411.816, 411.892, 412.001, 412.014, 412.049, 414.025, 416.350

AMEND: 461-195-0521

RULE SUMMARY: OAR 461-195-0521 is being amended to align the rule with Department policy, that the Department shall not establish administrative error overpayments for medical assistance. The rule is also being amended to adopt a new definition and criteria for medical assistance overpayment establishment, according to the guidance from the Centers for Medicare and Medicaid Services (CMS) and Oregon Health Authority (OHA). The amendment restricts establishment of new medical assistance overpayments to certain causes.

CHANGES TO RULE:

461-195-0521
Calculation of Overpayments ¶

This rule specifies how the Department calculates an overpayment (see OAR 461-195-0501).¶
(1) The Department calculates an overpayment by determining the amount the individual received, or the payment made by the Department on behalf of the individual that exceeds the amount for which the individual was eligible.¶
(2) When a filing group, HSD medical programs (see OAR 461-001-0000) eligibility determination group (see OAR 410-200-0015), ineligible student, or authorized representative (see OAR 461-115-0090 and OAR 410-200-0015) fails to report income, the Department establishes, calculates and determines the overpayment by assigning unreported income to the applicable budget month without averaging the unreported income, except:¶
(a) An individual's earned income reported quarterly from the Employment Department is considered received by the individual in equal amounts during the months identified in the report.¶
(b) In the ERDC, REF, SNAP, and TANF programs, an individual's actual self-employment income is annualized retrospectively to calculate the overpayment.¶
(c) In the HSD medical programs, if actual income is not available for the months in which an overpayment occurred, an individual's actual self-employment income (see OAR 410-200-0015) received during the year when an overpayment occurred is annualized to calculate an overpayment.¶
(d) In all programs, if verification of self-employment income is not provided to the Department following the issuance of a subpoena, or is not yet available to the individual, self-employment income from a prior year is annualized prospectively to calculate an overpayment. There is a rebuttable presumption that self-employment income from the prior year is representative of actual self-employment income for the time of overpayment. The presumption may be rebutted only by clear and convincing evidence. ¶
(3) The Department establishes, calculates, and determines an administrative error overpayment (see OAR 461 195 0501) based on information initially provided by a filing group, ~~HSD medical programs eligibility determination group,~~ ineligible student, or authorized representative. The Department may calculate the administrative error overpayment by using any of the following:¶
(a) Correct prospective budgeting (see OAR division 461-150 ~~and division 410-200~~) based on information initially provided; or if it results in a lower overpayment amount;¶
(b) Actual income; or¶
(c) Averaging an individual's earned income reported quarterly from the Employment Department.¶
(4) When using prospective budgeting (see OAR division 461-150) and the actual income differs from the amount determined under OAR 461-150-0020(2), there may be a client error overpayment (see OAR 461-195-0501) only when the filing group, ineligible student, or authorized representative withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an overpayment.¶
(5) ~~W~~Th~~en using anticipated income for the HSD medical programs and the actual income differs from the amount determined under OAR 410-200-0310,~~ Department uses actual income to determine th~~ere may be a client error overpayment only when the HSD medical programs eligibility determination group or authorized representative (see OAR 410-200-0015) knowingly withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an overpayment~~ amount of a medical assistance overpayment caused by possible fraud.¶
(6) When a filing group, ineligible student, or authorized representative fails to report all earned income within the reporting time frame, the earned income deduction (see OAR 461-160-0160, 461-160-0190, 461-160-0430, 461-160-0550, and 461-160-0552) is applied as follows:¶
(a) In the OSIP, OSIPM, QMB, and REFM programs, the Department allows the earned income deduction.¶
(b) In the REF and TANF programs, the Department allows the earned income deduction when good cause (see section (6) of this rule) exists.¶
(c) In the SNAP program, no deduction is applied to earned income if the amount or source of income was not

timely reported.¶
(7) For the purposes of OAR 461-195-0501 to 461-195-0561, "good cause" means circumstances beyond the individual's reasonable control that caused the individual to be unable to report income timely and accurately.¶
(8) When support is retained:¶
(a) In the TANF program, the amount of support (other than cash medical support) the Department of Justice retains as a current reimbursement each month is added to other income to determine eligibility (see OAR 461-001-0000). When an individual is not eligible for TANF program benefits, the overpayment is offset by the support the Department of Justice retains as a current reimbursement.¶
(b) ~~In the~~For medical ~~programs~~assistance, the amount of the cash medical support the Department retains each month is excluded income and not used to determine eligibility ~~for medical program benefits~~. When an individual has incurred a medical ~~program~~assistance overpayment, the overpayment is offset by the amount of the cash medical support the Department retains during each month of the overpayment.¶
(9) In the REF and TANF programs, when an individual directly receives support used to determine eligibility or calculate benefits, the overpayment is:¶
(a) If still eligible for REF or TANF program benefits, the amount of support the individual received directly; or¶
(b) If no longer eligible for REF or TANF program benefits, the amount of program benefits the individual received.¶
(10) When an overpayment occurs due to the failure of an individual to reimburse the Department, when required by law to do so, for benefits or services (including cash medical support) provided for a need for which that individual is compensated by another source, the overpayment is limited to the lesser of the following:¶
(a) The amount of the payment from the Department;¶
(b) Cash medical support; or¶
(c) The amount by which the total of all payments exceeds the amount payable for such a need under the Department's rules.¶
(11) Benefits paid during a required notice period (see OAR 461-175-0050, OAR 410-200-0120) are included in the calculation of the overpayment when:¶
(a) The filing group, HSD medical programs eligibility determination group, ineligible student, or authorized representative (see OAR 461-115-0090 and OAR 410-200-0015) failed to report a change within the reporting time frame under OAR 461-170-0011 or OAR 410-200-0235; and¶
(b) Sufficient time existed for the Department to adjust the benefits to prevent the overpayment if the filing group, HSD medical programs eligibility determination group, ineligible student, or authorized representative (see OAR 461-115-0090 and OAR 410-200-0015) had reported the change at any time within the reporting time frame.¶
(12) In the SNAP program, if the benefit group (see OAR 461-110-0750) was categorically eligible under OAR 461-135-0505, there is no overpayment based on resources.¶
(13) In the OSIP and OSIPM programs, when a individual does not pay their share of the cost of services (see OAR 461-160-0610) or the OSIP-EPD or OSIPM-EPD program participant fee (see OAR 461-160-0800) in the month in which it is due, an overpayment is calculated as follows:¶
(a) All payments made by the Department on behalf of the individual during the month in question are totaled, including but not limited to any payment for:¶
(A) Capitation;¶
(B) Long term care services;¶
(C) Medical expenses for the month in question;¶
(D) Medicare buy-in (when not concurrently eligible for an MSP);¶
(E) Medicare Part D;¶
(F) Mileage reimbursement;¶
(G) Special needs under OAR 461-155-0500 to 461-155-0710; and¶
(H) Home and community-based care (see OAR 461-001-0030), including home delivered meals and non-medical transportation.¶
(b) Any partial or late liability payment made by an individual receiving home and community-based care in-home services or participant fee paid by an OSIP-EPD or OSIPM-EPD program participant is subtracted from the total calculated under subsection (a) of this section. The remainder, if any, is the amount of the overpayment.¶
(14) When an individual's liability is unreduced pending the outcome of a contested case hearing about that liability the overpayment is the difference between the liability amount determined in the final order and the amount, if any, the individual has repaid.¶
(15) ~~In the HSD medical programs, OSIPM, QMB, and REFM programs~~For medical assistance, if the individual was not eligible for one program, but during the period in question was eligible for another program~~:~~¶
~~(a)~~ W with the same benefit level, there is no overpayment.¶
~~(b) With a lesser benefit level, the overpayment is the amount of medical program benefit payments made on behalf of the individual exceeding the amount for which the individual was eligible.¶~~

~~(16) When an overpayment is caused by administrative error (see OAR 461-195-0501), any overpayment of GA, OSIP, REF, SFPSS, or TANF program benefits is not counted as income when determining eligibility for the HSD medical programs, OSIPM, and REFM programs.¶~~
(~~17~~16) Credit against an overpayment is allowed as follows:¶
(a) In the GA, REF, and TANF programs, a credit is allowed for an individual's payment for medical ~~servi~~assistance~~s~~ made during the period covered by the overpayment, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless the Department authorized the procedure prior to its completion.¶
(b) In the SNAP program, if the overpayment was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.¶
(c) In all programs, for an underpayment of benefits in the program in which the overpayment occurred.¶
(1~~8~~7) In the REF program, when an individual used or accessed cash benefits in violation of OAR 461-165-0010(8)(a), the amount of the overpayment is the amount of cash benefits the individual used or accessed.¶
(1~~9~~8) In the SFPSS and TANF programs, when an individual used or accessed cash benefits in violation of OAR 461-165-0010(9)(a), the amount of the overpayment is the amount of cash benefits the individual used or accessed.
Statutory/Other Authority: ORS 329A.500, 413.085, 414.685, ORS 409.050, 411.060, 411.070, 411.404, 411.660, 411.706, 411.816, 412.014, 412.049, 412.124, 414.231
Statutes/Other Implemented: ORS 329A.500, ORS 409.010, 411.060, 411.070, 411.404, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.706, 411.816, 412.014, 412.049, 412.124, 414.231, 416.350

AMEND: 461-195-0561

RULE SUMMARY: OAR 461-195-0561 is being amended to place into rule the adjustments that reduced many Department medical overpayment claim balances to $0.00 during the fall of 2021.

CHANGES TO RULE:

461-195-0561
Compromise or Adjustment of an Overpayment Claim ¶

(1) This rule section specifies when and how the Department may compromise an overpayment (see OAR 461-195-0501) claim.¶
(~~1~~a) The Department may consider a request to compromise an overpayment claim only if the estimated administration and collection costs necessary to collect the account in full likely exceed the current balance of the overpayment.¶
(~~2~~b) The following limitations apply to the compromise of an overpayment claim:¶
(~~a~~A) The authority of the Department to compromise may be limited by federal or state law.¶
(~~b~~B) The Department may compromise a claim only once it is a liquidated claim (see OAR 461-195-0551).¶
(~~c~~C) The Department may compromise a claim only if the requester has made a good faith effort to repay the overpayment.¶
(~~d~~D) The Department may not compromise:¶
(~~A~~i) A fraud overpayment claim;¶
(~~B~~ii) Any overpayment claim, unless 36 months have passed since the requester initially was notified of the overpayment;¶
(~~C~~iii) An overpayment claim if the debtor has the ability to repay the overpayment in full within 36 months of the request date.¶
(~~D~~iv) An overpayment claim for less than 75 percent of the total amount of the claim.¶
(~~E~~v) An overpayment claim if the debtor is a member, currently or in the previous 12 months, of a filing group or HSD medical programs eligibility determination group (see OAR 410-200-0015) that received benefits under the program in which the overpayment occurred.¶
(~~F~~vi) A child care provider overpayment claim if the provider, currently or in the previous 12 months, received a direct provider payment for child care under division 165 of this chapter of rules.¶
(~~3~~c) The Department may allow a compromised claim to be paid in installments over a period not to exceed 90 days.¶
(~~4~~d) During the 12 months following the date of the compromise agreement, the Department reserves the right to collect the original unmitigated claim through benefit reduction under OAR 461-195-0551.¶
(2) The Department may adjust a medical assistance overpayment that as of April 21, 2021, was a liquidated claim, as follows:¶
(a) The liquidated claim may be adjusted so that on or after September 1, 2021 the balance owed is $0.00, except for:¶
(A) A fraud overpayment claim,¶
(B) An overpayment claim caused by receipt of continuing benefits in a contested case, or¶
(C) A medical assistance provider overpayment claim.¶
(b) The Department may retain payments received before September 1, 2021.¶
(c) This rule section does not apply to estate administration (OAR 461-135-0832 to 461-135-0847).
Statutory/Other Authority: ORS 409.050, 411.060, 411.404, 411.816, 412.014, 412.049, 2013 HB 2089 Sect. 10, 409.040
Statutes/Other Implemented: ORS 409.010, 411.060, 411.404, 411.635, 411.816, 412.014, 412.049, 416.350, 409.040