

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

03/31/2022 1:36 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Proposing Permanent Changes about Eligibility for Afghan Refugees, Post-Partum Medical Coverage, and Patient Liability

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/25/2022 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: 04/25/2022

TIME: 11:00 AM - 12:30 PM

OFFICER: Meorah Solar

ADDRESS: Virtual Hearing - No Physical Location

Phone 1-971-277-2343, code 400 350 299#

Ask Hearings Officer for MS Teams link

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. DHS 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)

In addition to the below, all rules need to go through permanent filing as they are currently in a temporary rule status.

OAR 461-120-0125 about (new rule title) Noncitizen Status Requirements needs to be changed as the Oregon Department of Human Services finds the term "alien" offensive and has chosen to remove it from all Chapter 461 rules. It also needs to be amended to add provisions that align the rule with laws which make Afghan Humanitarian Parolees, their children, and their spouse; who meet the criteria set out in law, eligible for all Self-Sufficiency Programs and Aging and People with Disabilities Medical Programs.

OAR 461-135-0010 about Assumed Eligibility for Medical Programs needs to be changed to align with Oregon's

decision to increase the post-partum coverage timeline ahead of the anticipated enactment of the Build Back Better Act, which will make the change mandatory. Currently states have the option to increase the timeline established in 42 CFR 435.170 from 60 days to 12 months. This change supports that decision and will align non-MAGI medical programs with MAGI medical programs.

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

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

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Document titled "Application for 1915(c) Home and Community Based Services Waiver: OR.0185.R07.00 - Jan 01, 2022," and any waiver approval or response, available from APD policy analyst unit.

Document titled "Application for 1915(c) Home and Community Based Services Waiver: Draft OR.006.04.03 - Dec 01, 2021," and any waiver approval or response, available from APD policy analyst unit.

Email communications from Centers for Medicare & Medicaid Services (CMS) available from Non-MAGI Medicaid Financial Policy unit.

Medicaid Federal Policy Guidance, available here: <https://www.medicaid.gov/federal-policy-guidance/index.html>

Build Back Better Act: Health Coverage Provisions Explained, available here: <https://ccf.georgetown.edu/wp-content/uploads/2021/11/Build-Back-Better-FINAL-Nov19.pdf>

Guidance provided to ODHS via email from the Office of Refugee Resettlement, Food and Nutrition Service, Center for Medicare and Medicaid Services, and Administration for Children and Families available from ODHS policy analyst units.

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

Changes to OAR 461-120-0125 will specifically beneficially impact the Afghan refugee community who will qualify for benefits under the rule changes. Without the rule changes, many of the recently arrived Afghans would not be eligible for many program benefits without meeting other criteria, including waiting periods. ODHS has been and remains in ongoing communication with the community organizations who serve the refugee community to make them aware of these rule changes, and any other rule changes that may impact the communities they help us support. The Department is currently working to quickly translate the Rights and Responsibilities and 415F Application Form into Dari and Pashtu.

The Department estimates there will be no racial equity impact from changes to OAR 461-135-0010. Under current rule, individuals most often return to another medical program uninterrupted, following the two month post-partum coverage. This is expected to continue, but after twelve months rather than two.

The changes the Department is making to OARs 461-155-0700, 461-160-0610, 461-160-0620, and 461-185-0050, will have a positive effect on all whose patient liability is reduced to zero. All Program of All-Inclusive Care for the Elderly (PACE) participants, regardless of living situation, will benefit in proportion to the amount of patient liability they no longer must pay. Homeowners and renters who were required to pay an in-home Long Term Care or Independent Choice Program patient liability will also benefit in proportion to the amount previously due. ODHS estimates a possible negative racial equity impact to individuals whose patient liability will not be eliminated. ODHS arrives at the estimation due to recent studies regarding the disproportionate number of Communities of Color experiencing homelessness in Oregon. Portland's most recent Homelessness Statistics specifically cite Black adults as the fastest growing racial group of unsheltered individuals, along with women and individuals older than 55. (see <https://www.portlandoregon.gov/toolkit/article/562207>) Similarly, the recently published "Findings and Recommendations of the Task Force on Homelessness and Racial Disparities in Oregon" January 2022 report to the Oregon legislature found that "American Indian/Alaska Native Oregonians are represented in homelessness more than four times their share of the total state population." It also found that "Black Oregonians are represented in homelessness more than three times their share of the total state population." (see <https://www.oregon.gov/ohcs/get-involved/Documents/01-21-2022-Findings-and-Recommendation.pdf>) The disproportionate rates of Communities of Color experiencing homelessness in Oregon coupled with the fact that the rule change will only benefit those who are sheltered (excluding PACE participants), brings ODHS to estimate a negative racial equity impact.

FISCAL AND ECONOMIC IMPACT:

The Department estimates that amending OAR 461-120-0125 will have a positive fiscal impact on Afghan families who are eligible for benefits under the new rule changes. The specific monthly cumulative positive fiscal impact cannot be known as many benefit amounts are group-size based and based on other eligibility factors, and group sizes and other eligibility factors for all applying Afghan individuals and families cannot be known. The Department estimates no impact on the Department, those eligible or applying for benefits or services, 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 that amending OAR 461-135-0010 will have no fiscal impact on the Department, those eligible or applying for benefits or services, 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.

Regarding OARs 461-155-0700, 461-160-0610, 461-160-0620, and 461-185-0050:

- * The Department may experience caseload growth due to this rule change due to the cost elimination to receive services in one's own home. The Department does not have an exact estimate of how this might impact caseload growth. As part of the legislatively approved budget, Aging & People with Disabilities (APD) budgeted a total of \$5,000,000 for this change for the current biennium (\$1,187,500 GF, \$3,812,500 FF). It is important to note that this investment is being implemented as a part of the additional 10% FMAP that is being provided through ARPA.
- * Individuals receiving Home and Community-Based care in their own home that have income above the OSIPM maintenance standard plus \$500 will benefit as they will no longer be required to make any payment for their services. The exact amount will vary based on each individual's required payment amount.
- * Area Agency on Aging offices may experience caseload growth due to this rule change due to the cost elimination to receive services in their own home. APD does not have an estimate of how this will impact caseload growth.
- * There is a positive economic impact to In-home care agencies and individual homecare workers, as they may be authorized additional hours and services in response the change in rule. There are approximately 107 in-home care agencies. There are approximately 22,000 active homecare workers. APD is not able to estimate the actual impact to in-

home care agencies or homecare workers because each one is paid an individual amount, however the change is not estimated to be significant for each agency or homecare worker.

* The Department estimates no impact on the public, other state agencies or local government unless mentioned, 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? YES

RULES PROPOSED:

461-120-0125, 461-135-0010, 461-155-0700, 461-160-0610, 461-160-0620, 461-185-0050

AMEND: 461-120-0125

RULE SUMMARY: OAR 461-120-0125 is being amended to add, in permanent rule, Afghan Humanitarian Parolees to the groups of individuals who meet the noncitizen status for all ODHS programs for the length of time allowed under Public Law 117-43. It is also being amended to remove the outdated and derogatory term "alien" from the permanent rule and to remove a hyphen from the word "noncitizen."

CHANGES TO RULE:

461-120-0125

"~~Ali~~Noncitizen" Status Requirements ¶¶

An individual who must meet "~~ali~~noncitizen" status requirements under OAR 461-120-0110, must meet the "~~ali~~noncitizen" status requirements of the program for which they are applying. The requirements are listed in sections (2) through (6) of this rule.¶¶

(1) For purposes of this chapter of rules,¶¶

(a) In all programs, an individual is a "qualified non-citizen" if the individual is any of the following:¶¶

(A) An individual who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq). ¶¶

(B) An Iraqi or Afghan individual granted special immigrant visa status (SIV) under section 101(a)(27) of the INA. These individuals are lawfully admitted for permanent residence under the INA.¶¶

(C) An individual who is an "Amerasian" who is granted immigration status under section 584 of Public Law 100-202; the Foreign Operations, Export Financing, and Related Program Appropriations Act of 1988; as amended by Public Law 100-461. These individuals are lawfully admitted for permanent residence under the INA.¶¶

(D) An individual who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).¶¶

(E) An individual who is granted asylum under section 208 of the INA (8 U.S.C. 1158).¶¶

(F) An individual who is a "Cuban or Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).¶¶

(G) An individual who is a "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).¶¶

(H) An individual who is a family member of a victim of a severe form of trafficking in persons who holds a visa for

family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).¶

(I) An individual whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).¶

(J) An individual who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.¶

(K) An individual who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.¶

(L) An individual who is a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c), as determined by the U.S. Citizenship and Immigration Services (USCIS).¶

(b) In the OSIPM and QMB programs, in addition to subsection (a) of this section, an individual is a "qualified non-citizen" if the individual is from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau who lawfully reside in the United States in accordance with the Compacts of Free Association. The provisions in this subsection are retroactively effective December 28, 2020.¶

(2) In all programs except the REF and REFM programs, an individual meets the "~~an~~noncitizen" status requirements if the individual is one of the following:¶

(a) An individual who is an "American Indian" born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.¶

(b) A member of an "Indian tribe," as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).¶

(c) A qualified non-citizen (see section (1) of this rule) who is any of the following:¶

(A) A veteran of the United States Armed Forces who was honorably discharged for reasons other than "~~an~~noncitizen" status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).¶

(B) A member of the United States Armed Forces on active duty (other than active duty for training).¶

(C) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in paragraphs (A) or (B) of this subsection.¶

(3) In the ERDC, TA-DVS, and TANF programs, an individual meets the "~~an~~noncitizen" status requirements if the individual is one of the following:¶

(a) An individual who is a qualified non-citizen (see subsection (1)(a) of this rule).¶

(b) An individual who is a non-US citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.¶

(c) Effective October 1, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶

(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2022.¶

(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection.¶

(4) In the OSIPM and QMB programs an individual meets the "~~an~~noncitizen" status requirements if the individual meets any of the following:¶

(a) The individual has been granted a USCIS status listed under paragraphs (1)(a)(B) through (1)(a)(I) or paragraph (1)(b) of this rule.¶

(b) Effective October 1, 2009, the individual is a qualified non-citizen and is under 19 years of age.¶

(c) The individual was a qualified non-citizen before August 22, 1996.¶

(d) The individual has been granted a USCIS status listed under paragraphs (1)(a)(A), and (1)(a)(J) through (1)(a)(L) and meets one of the following:¶

(A) Physically entered the United States or was granted the USCIS status on or after August 22, 1996; and has been in the U.S. for five years beginning on the date the USCIS status was granted.¶

(B) Physically entered the United States before August 22, 1996 and was continuously present in the United States between August 22, 1996, and the date the USCIS status was granted. An individual is not continuously present in the United States if the individual is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date the USCIS status was granted.¶

(e) The individual is under the age of 19 and is one of the following:¶

(A) An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of non-US citizens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:¶

(i) An individual currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);¶

(ii) An individual currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 USC

1229b);¶

(iii) An individual who is a "Cuban or Haitian entrant," as defined in section 202(b) Pub. L. 99-603 (8 USC 1255a), as amended;¶

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649 (8 USC 1255a), as amended;¶

(v) An individual currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;¶

(vi) An individual currently in deferred action status pursuant to Department of Homeland Security Operating Instruction OI 242.1(a)(22); or¶

(vii) An individual who is the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status.¶

(B) An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including those individuals as specified in section 101(a)(15) of the INA (8 USC 1101).¶

(f) In the OSIPM program, is receiving SSI benefits.¶

(g) In the QMB program, is receiving SSI and Medicare Part A benefits.¶

(h) Effective July 31, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶

(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2022.¶

(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection.¶

(5) In the REF and REFM programs, an individual meets the "~~an~~noncitizen" status requirements if the individual is admitted lawfully under any of the following provisions of law:¶

(a) The individual has been granted a USCIS status listed under paragraphs (1)(a)(B) through (1)(a)(H), or¶

(b) The individual has been paroled as a refugee or asylee under section 212(d)(5) of the Immigration and Nationality Act (INA) (8 USC 1182(d)(5)).¶

(c) Effective October 1, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶

(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2022.¶

(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection.¶

(6) In the SNAP program,¶

(a) An individual meets the "~~an~~noncitizen" status requirements if the individual:¶

(A) Has been granted a USCIS status listed under paragraphs (1)(a)(B) through (1)(a)(I) of this rule.¶

(B) Has been granted a qualified non-citizen USCIS status and is under age 18.¶

(C) Has been granted a qualified non-citizen USCIS status and has a disability (see OAR 461-001-0015).¶

(D) Was born on or before August 22, 1931, and on August 22, 1996, was lawfully residing in the United States.¶

(E) Was a member of a Hmong or Highland Laotian Tribe at the time that the Tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101), and is a non-US-citizen who is lawfully residing in the United States.¶

(F) Is a spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in paragraph (E) of this subsection.¶

(b) An individual meets the "~~an~~noncitizen" status requirements when the individual has been granted a USCIS status listed under paragraph (1)(a)(A) or paragraphs (1)(a)(J) through (1)(a)(L) of this rule, and has completed one of the following:¶

(A) The individual has been residing in the United States for at least five years while a qualified non-citizen.¶

(B) The individual has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, subject to the following provisions:¶

(i) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means-tested benefits include SNAP, TANF, and Medicaid (except emergency medical).¶

(ii) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.¶

(iii) A lawful permanent resident who would meet the "~~an~~noncitizen" status requirements, except for a determination by the Social Security Administration (SSA) that the individual has fewer than 40 quarters of coverage, may be provisionally certified for SNAP program benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for SNAP program benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six

months from the date of original determination by SSA that the client does not have sufficient quarters.¶
(c) Effective October 1, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶
(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2022.¶
(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection.
Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 413.085, 414.231, 414.685
Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826, H.R. 133, 116th Cong. (2019-2020), Public Law 117-43

AMEND: 461-135-0010

RULE SUMMARY: OAR 461-135-0010 is being changed to extend the continuous eligibility for post-partum (after pregnancy) medical coverage from two months to twelve months in permanent rule. It is also being changed to remove references to HSD medical program eligibility, as the eligibility for those programs is found in Chapter 410, Division 200.

CHANGES TO RULE:

461-135-0010

Assumed Eligibility for Medical Programs ¶¶

(1) This rule sets out when a ~~client~~ individual is assumed eligible for certain medical programs because the ~~client~~ individual receives or is deemed to receive benefits of another program. ¶¶

(2) A pregnant ~~woman~~ individual who is eligible for and receiving benefits the day the pregnancy ends is assumed eligible for the OSIPM program until the last day of the ~~calendar month in which the 60th day after~~ twelfth month following the month in which the last day of the pregnancy falls. ¶¶

(3) A pregnant ~~woman~~ individual who was eligible for and receiving medical assistance under the OSIPM program or ~~OCCS Medical Programs (see OAR 461-001-0000)~~ and becomes ineligible while pregnant is assumed eligible for Medicaid and can continue to receive OSIPM or ~~OCCS Medical Programs~~ benefits until the last day of the ~~calendar month in which the 60th day after~~ twelfth month following the month in which the last day of the pregnancy falls. ¶¶

(4) A child (see OAR 461-001-0000) born to a ~~mother~~ individual eligible for and receiving OSIPM benefits is assumed eligible for medical benefits under this section until the end of the month the child turns one year of age. ¶¶

(5) The individuals described in subsection (a) and (b) of this section are assumed eligible for OSIPM (except OSIPM-EPD) unless subsection (c), ~~(d)~~, or ~~(e)~~ of this section applies: ¶¶

(a) A recipient of ~~SSI~~ Supplemental Security Income (SSI) benefits who meets all non-financial requirements for the OSIPM program except citizen and non-citizen status. SSI recipients are presumed to meet all citizen and non-citizen status requirements for the OSIP program. ¶¶

(b) An individual who meets all non-financial requirements for the OSIPM program except citizen and non-citizen status and is deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)), which cover individuals with disabilities whose impairments have not changed but who have become gainfully employed and have continuing need for OSIPM. Individuals deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act are assumed to meet all citizen and non-citizen status requirements for the OSIPM program. ¶¶

(c) An individual described in subsection (a) or (b) of this section who is in a nonstandard living arrangement (see OAR 461-001-0000) is not eligible for long-term care (see OAR 461-001-0000) services if the individual would otherwise be ineligible for OSIPM due to a disqualifying transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client). ¶¶

(d) An individual described in subsection (a) or (b) of the section who is in a nonstandard living arrangement is not assumed eligible for long-term care services if countable (see OAR 461-001-0000) resources exceed the limit after performing the calculation under OAR 461-160-0580. ¶¶

(6) For the purposes of this section the definition of a "child" means an unmarried individual under age 19 and includes natural, step, and adoptive children. A child found eligible for OSIPM is assumed eligible until the end of the twelfth month following the determination of the child's OSIPM eligibility or redetermination of eligibility unless the child: ¶¶

(a) No longer meets the definition of a child given in this section; ¶¶

(b) Moves out of state; ¶¶

(c) Voluntarily ends benefits; or ¶¶

(d) Is eligible for any other Medicaid program that provides OHP Plus benefits. ¶¶

(7) A ~~client~~ individual who receives both benefits under Part A of Medicare and SSI benefits is assumed eligible for the QMB-BAS program unless the individual does not meet the requirements of OAR 461-120-0345 or the residency requirements (see OAR 461-120-0010).

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

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

AMEND: 461-155-0700

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

CHANGES TO RULE:

461-155-0700

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

In the OSIPM program:¶¶

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

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

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

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

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

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

(A) The individual must pursue naturalization.¶¶

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

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

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

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

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

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

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

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

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

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

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

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

AMEND: 461-160-0610

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

CHANGES TO RULE:

461-160-0610

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A mental health adult foster home. ¶

(b) A mental health residential treatment home. ¶

(c) A mental health residential treatment facility. ¶

(d) A mental health secure residential treatment facility.

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

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

AMEND: 461-160-0620

RULE SUMMARY: OAR 461-160-0620 is being amended to, in permanent rule, eliminate patient liability for certain individuals.

CHANGES TO RULE:

461-160-0620

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

In the OSIPM program:¶

(1) Deductions from income are made for an individual residing in or entering a long-term care facility or receiving home and community-based care (see OAR 461-001-0030) as explained in subsections (3)(a) to (3)(h) of this rule.¶

(2) ~~Except as provided otherwise in OAR 461-160-0610, the~~ liability of the an individual is determined according to subsection (3)(i) of this rule, except:¶

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

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

(3) Deductions are made in the following order:¶

(a) One standard earned income deduction of \$65 is made from the earned income in the OSIPM program.¶

(b) The deductions under the plan for self-support as allowed by OAR 461-145-0405.¶

(c) One of the following need standards:¶

(A) A \$68.77 personal needs allowance for an individual receiving long-term care services.¶

(B) A \$90 personal needs allowance for an individual receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.¶

(C) For an individual who receives home and community-based care:¶

(i) Except as provided in subparagraph (ii) of this paragraph, the OSIPM maintenance standard.¶

(ii) For an individual who receives in-home services, the OSIPM maintenance standard plus \$500.¶

(d) A community spouse (see OAR 461-001-0030) monthly income allowance is deducted from the income of the institutionalized spouse (see OAR 461-001-0030) to the extent that the income is made available to or for the benefit of the community spouse, using the following calculation.¶

(A) Step 1---Determine the maintenance needs allowance. \$2,177.50 is added to the amount over \$653.25 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$3,435.00, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the SNAP program (see OAR 461-160-0420). If an all-inclusive rate covers items that are not allowable shelter expenses, including meals or housekeeping in an assisted living facility, or the rate includes utilities, to the extent they can be distinguished, these items must be deducted from the all-inclusive rate to determine allowable shelter expenses.¶

(B) Step 2---Compare maintenance needs allowance with community spouse's countable income. The countable (see OAR 461-001-0000) income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.¶

(C) Step 3---If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.¶

(e) A dependent income allowance as follows:¶

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$2,177.50. To determine the income allowance of each eligible dependent:¶

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

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.¶

(B) For a case with no community spouse:¶

(i) The allowance is the TANF adjusted income standard (see OAR 461-155-0030) for the individual and eligible dependents.¶

(ii) The TANF standard is not reduced by the income of the dependent.¶

(f) Costs for maintaining a home if the individual meets the criteria in OAR 461-160-0630.¶

(g) Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan.¶

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income (see OAR 461-001-0000).¶

(i) The individual's liability is determined as follows:¶

(A) For an individual receiving home and community-based care (except ~~an individual~~ identified in section (2) of this rule and in OAR 461-160-0610(4)), the liability is the actual cost of the home and community-based care or the adjusted income of the individual, whichever is less. This amount must be paid to the Department or the home and community-based care facility each month as a condition of being eligible for home and community-based care. ~~In OSIPM-ICP, the liability is subtracted from the gross monthly benefit.~~¶

(B) For an individual who resides in a nursing facility, the liability is the actual cost of services or the adjusted income of the individual, whichever is less. This amount must be paid to the facility each month as a condition of being eligible for nursing facility services.

Statutory/Other Authority: ORS 409.050, 413.085, 411.060, 411.070, 411.404, 414.065, 414.685, 411.706

Statutes/Other Implemented: ORS 409.010, 413.085, 411.060, 411.070, 411.404, 414.065, 414.685, 42 USC 1396r-5, 411.706, 42 CFR 435.725 - 435.735

AMEND: 461-185-0050

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

CHANGES TO RULE:

461-185-0050

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

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

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

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

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

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

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

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

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

Statutory/Other Authority: ORS 411.060, 411.070, 411.404

Statutes/Other Implemented: ORS 411.060, 411.070, 411.404