



PERMANENT ADMINISTRATIVE ORDER

FILED

04/28/2022 9:59 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

SSP 34-2022

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

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

EFFECTIVE DATE: 05/01/2022

AGENCY APPROVED DATE: 04/26/2022

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RULES:

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

AMEND: 461-120-0125

REPEAL: Temporary 461-120-0125 from SSP 26-2022

NOTICE FILED DATE: 03/31/2022

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 It is also being amended to remove the outdated and derogatory term "alien" from the permanent rule and to remove a hyphen from the word "noncitizen."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 "~~ali~~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 "~~ali~~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 "~~ali~~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 "~~ali~~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

REPEAL: Temporary 461-135-0010 from SSP 31-2022

NOTICE FILED DATE: 03/31/2022

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 ~~(ed)~~ 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

REPEAL: Temporary 461-155-0700 from SSP 79-2021

NOTICE FILED DATE: 03/31/2022

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

REPEAL: Temporary 461-160-0610 from SSP 79-2021

NOTICE FILED DATE: 03/31/2022

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 ~~el~~ 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 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) Patient liability for individuals receiving home and community-based care in-home services (see OAR 461-001-0030 and OAR Chapter 411, Division 030). ¶¶

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

(c) 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

NOTICE FILED DATE: 03/31/2022

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 individual is determined according to subsection (3)(i) of this rule, except 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 ~~OAR 461-160-0610(4)~~ section (2) of this rule), 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

REPEAL: Temporary 461-185-0050 from SSP 79-2021

NOTICE FILED DATE: 03/31/2022

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 is calculated in accordance with section (12) of this rule. Client individuals in the OSIPM-IC and OSIPM-IC programs 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