

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN  
SECRETARY OF STATE

CHERYL MYERS  
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK  
DIRECTOR

800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**SSP 42-2022**

CHAPTER 461

DEPARTMENT OF HUMAN SERVICES

SELF-SUFFICIENCY PROGRAMS

**FILED**

07/18/2022 9:25 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary Rule Changes Regarding GA Asset Limits and OSIPM/QMB Eligibility Requirements

EFFECTIVE DATE: 07/18/2022 THROUGH 01/13/2023

AGENCY APPROVED DATE: 07/15/2022

CONTACT: Meorah Solar

503-602-7545

meorah.a.solar@dhsosha.state.or.us

2885 Chad Drive

Eugene, OR 97408

Filed By:

Meorah Solar

Rules Coordinator

NEED FOR THE RULE(S):

OAR 461-120-0345 about Requirement to Obtain Health Care Coverage and Cash Medical Support; OSIPM, QMB, needs to be changed to implement guidance from Center for Medicare and Medicaid Services (CMS) and align rule with Oregon's Medicaid State Plan. CMS has clarified that for any individual to be required to apply for Medicare as a condition of Medicaid eligibility, the state in which the individual is seeking Medicaid eligibility must have affirmatively elected under its state plan to require Medicare enrollment as a condition of such eligibility. Oregon has not made this election under its state plan; therefore, Supplemental Security Income beneficiaries in Oregon, or any other individuals, may not be required as a condition of Medicaid eligibility to apply for Medicare. The reference to Tricare is being removed because the Department can only require individuals to pursue cost-effective employer-sponsored health insurance, and that by definition includes Tricare for active military members; therefore, a specific reference is unnecessary as veterans cannot be required to enroll. The Department also needs to replace "penalty" language with eligibility-related language to make clear how not meeting this requirement impacts individuals.

OAR 461-135-0700 about Specific Requirements; General Assistance (GA), needs to be changed to make GA eligibility clear in rule. Section (3) of the current rule states we must use OSIPM income and resource methodology but does not specify which OSIPM income and resource methodology. As the income and resource limits for OSIPM-EPD are higher than standard OSIPM, the Department needs to clarify that the OSIPM adjusted income and resource limits used to determine GA financial eligibility are solely based on the OSIPM standards listed in 461-155-0230 (3) and 461-160-0015(3)(a), which match the income and resource limits set by the Social Security Administration (SSA) for Supplemental Security Income (SSI).

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-120-0345 will result in serious prejudice to the public interest, the Department, and individuals applying for or receiving OSIPM or QMB program benefits. The Department needs to proceed by temporary filing so its non-financial eligibility rules regarding pursuit of health care coverage and cash medical support align with Oregon's Medicaid State Plan and Center for Medicare and Medicaid

Services (CMS) requirements for states to adhere to their plan. Failure to immediately change rule and policy regarding this eligibility provision continues a mistake in state eligibility policy that began at least 10 years ago and could result in a financial penalty from CMS if the Department fails to show its attempts at immediately correcting this mistake. Making these rule changes will align these rule provisions with the State Plan, remove an unnecessary and disallowed eligibility requirement, and may help demonstrate Oregon's commitment to program integrity to CMS.

The Department finds that failure to act promptly by amending OAR 461-135-0700 will result in serious prejudice to the public interest, the Department, and individuals applying for the GA program. The Department needs to proceed by temporary filing so its asset limit eligibility provisions clearly align regulations and Department intention. Failure to immediately change the rule could cause confusion, including rulings from the Office of Administrative Hearings that misinterpret GA eligibility or overpayments. Benefits paid to those eligible for GA are reimbursed by the SSA from the consumer's SSI back award. GA would not be reimbursed for individuals determined eligible for GA under the higher, and incorrect EPD asset limits. The changes are not a change in policy. The GA program's policy analysts have always interpreted rule to reflect the temporary changes being filed. The Department recently noticed how certain readers, including GA applicants, the public, ALJs, and attorneys might misinterpret this rule section. Making these rule changes will help to eliminate confusion about GA financial eligibility provisions for all parties.

---

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR 461-120-0345

\* Oregon Medicaid State Plan available from APD Medical Policy Analyst team.

\* Any written communication on this topic with CMS available from the APD Medical Policy Analyst team.

No documents relied upon for changes to OAR 461-135-0700.

---

RULES:

461-120-0345, 461-135-0700

AMEND: 461-120-0345

RULE SUMMARY: OAR 461-120-0345 is being amended to remove the OSIPM and QMB program eligibility requirement to pursue Medicare and Tricare. It is also being amended to make more clear that not meeting the remaining health care coverage and cash medical support requirements results in loss or denial of eligibility. This clarification is being made by replacing the term "penalty" with eligibility language.

CHANGES TO RULE:

461-120-0345

~~Client~~ Requirement to Obtain Health Care Coverage and Cash Medical Support; OSIPM, QMB ¶

This rule explains the obligation of individuals applying for or receiving benefits under the OSIPM or QMB programs to obtain health care coverage and cash medical support for any individual receiving Medicaid under the state plan for which the individual can legally assign rights (see OAR 461-120-0310).¶

(1) Unless excused from the requirements of subsection (d) of this section or for good cause defined in OAR 461-120-0350:¶

(a) Individuals must cooperate with the Department and the Division of Child Support of the Department of Justice in establishing the identity of the parents (see OAR 461-001-0000) of any child (see OAR 461-001-0000) receiving Medicaid under the state plan for which the individual can legally assign rights.¶

(b) Individuals must cooperate with obtaining cash medical support.¶

~~(c) Each individual must make a good faith effort to obtain available coverage under Medicare. In the OSIPM program, the applicant is not required to enroll in Medicare Part A coverage if all of the following are true:¶~~

~~(A) The applicant will incur a cost for the coverage.¶~~

~~(B) The applicant is otherwise ineligible for QMB-BAS.~~

~~(C) The applicant does not have a service liability in excess of the Part A premium.~~

~~(d) The Department may not refer a case for medical support enforcement when the referral is based solely on health care services provided through an Indian Health Program to a child who is eligible for health care services from the Indian Health Service.~~

~~(2) Each individual must make a good faith effort to obtain available coverage under Tri-Care.~~

~~(3) To be eligible for the OSIPM program, once informed of the requirement, an individual who is able to must apply for, accept, and maintain cost-effective, employer-sponsored health insurance (see OAR 461-155-0360). The individual is not required to incur a cost for the health insurance.~~

~~(4) An individual who fails to meet an applicable requirement in sections (1), (2), or (3) of this rule is ineligible.~~

~~(5a) In the case of an individual failing to meet the requirements of section (1) of this rule, the Department applies the penalty shall deny or close program benefits after providing the client individual with notice and an opportunity to show the provisions of good cause (see OAR 461-120-0350 apply).~~

~~(6b) The penalty provided by this rule ends when the individual meets the requirements of this rule.~~

~~(7) The penalty loss of eligibility does not apply to individuals who are not legally able to assign rights on behalf of themselves.~~

Statutory/Other Authority: ORS 411.060, 411.070, 412.024, 412.049, 414.042

Statutes/Other Implemented: ORS 411.060, 411.070, 412.001, 412.024, 412.049, 414.025, 414.042, 42 CFR 433.147, 42 CFR 435.610

AMEND: 461-135-0700

RULE SUMMARY: OAR 461-135-0700 is being changed to make clear that, for GA program eligibility, an individual must have adjusted income below the OSIPM adjusted income amount from OAR 461-155-0250, which is currently \$841 for a need group of one and \$1261 for a need group of two. It's also being amended to make clear that for GA eligibility, an individual must have countable income below the OSIP and OSIPM resource limit, excluding the limit for EPD, which is currently \$2,000 for a one-person need group and \$3,000 for a two-person need group.

CHANGES TO RULE:

461-135-0700

Specific Requirements; General Assistance (GA) ¶¶

(1) For purposes of this rule, referring to an individual's housing circumstances as "homeless" means any of the following:¶¶

(a) The individual does not have a fixed or regular nighttime residence.¶¶

(b) The individual provides the Department with verification, under OAR 461-115-0700, that they are required to leave their place of residence within the upcoming 90 days. If the individual is not able to provide documentary verification, the Department will accept, on a case-by-case basis, self-attestation under the following circumstances:¶¶

(A) Documentation does not exist at application; or¶¶

(B) Documentation is not reasonably available at application, such as in the case of homelessness, domestic violence, or natural disaster.¶¶

(c) The individual's primary residence is one of the following:¶¶

(A) A supervised shelter that provides temporary accommodations.¶¶

(B) A halfway house or residence for individuals who may become institutionalized.¶¶

(C) A temporary accommodation in another individual's or family's residence for 90 days or less.¶¶

(D) A place not designed to be or ordinarily used as a place for individuals to sleep, such as a hallway, bus station, or similar place.¶¶

(E) A place lacking consistent and operational access to essential utilities.¶¶

(F) A temporary accommodation rented or leased by another person or entity, on behalf of the individual, for 90 or fewer days.¶¶

(2) To be eligible for General Assistance (GA), an individual must meet all of the following requirements:¶¶

(a) The individual must be 18 years of age or older.¶¶

(b) The individual must be an individual whose housing circumstances qualify as homeless (see section (1) of this rule).¶¶

(c) The individual may not be in the same OSIPM household group (see OAR 461-110-0210) with their child (see OAR 461-001-0000).¶¶

(d) The individual may not be receiving TANF benefits.¶¶

(e) The individual must be eligible for and receiving OSIPM with a basis of need established under OAR 461-125-0370(1)(c).¶¶

(f) The individual may not be in a nonstandard living arrangement (see OAR 461-001-0000) other than at home receiving in-home services (see OAR 411-030-0020).¶¶

(g) The individual must file a Supplemental Security Income (SSI) claim for benefits. The Department considers an SSI claim for benefits "filed" when all of the following criteria are met:¶¶

(A) An application form designated by the Social Security Administration (SSA) to pursue an SSI claim for benefits is filled out.¶¶

(B) The application is submitted to the SSA or to another Federal office, State office, or person authorized to receive applications on behalf of the SSA.¶¶

(C) The Department receives verification the individual's application for SSI claim for benefits has been received by the SSA.¶¶

(h) The individual must actively pursue the SSI claim for benefits, including: ¶¶

(A) Cooperate with the Department in applying to the SSA for SSI; ¶¶

(B) Appeal all denials of SSI made prior to a decision or recommended decision issued by an administrative law judge at the hearing level; and ¶¶

(C) Attend all appointments designated by the Department relating to obtaining SSI.¶¶

(i) The individual must meet the non-financial, non-disability requirements for SSI.¶¶

(j) The individual must complete and sign an interim assistance agreement authorizing the Department to recover interim GA benefits paid to the client (or paid to providers on the client's behalf) from the initial SSI payment or

initial post-eligibility payment. The SSA must also receive the interim assistance agreement. The following provisions are considered part of the interim assistance agreement:¶

(A) Interim GA benefits include only those GA cash benefits paid during the period of time that the SSI benefit covers.¶

(B) For any month in which SSI is prorated, the Department may recover only a prorated amount of the interim GA cash benefit.¶

(C) If the Department is unable to stop delivery of a GA benefit issued after the SSI payment is made, the GA payment will be included in the interim assistance to be reimbursed to the Department.¶

(3) Financial Eligibility.¶

(a) The OSIPM income and resource methodology are used to determine financial eligibility for the GA program, with the following asset limitations: ¶

(A) Individuals must have an adjusted income (see OAR 461-001-0000) below the amount listed under section (3) of OAR 461-155-0250.¶

(B) Individuals must meet the countable (see OAR 461-001-0000) resource limit under subsection (3)(a) of OAR 461-160-0015.¶

(b) The GA benefit amount is determined according to OAR 461-155-0210 and 461-160-0500.¶

(4) If the Department determines that the individual no longer has an impairment that meets the criteria in OAR 461-125-0370, the individual is ineligible for GA.¶

(5) An individual found by the SSA not to meet disability criteria at the initial or reconsideration level may continue receiving GA benefits until a decision or a recommended decision is issued by an SSA administrative law judge at the hearing level, pursuant to 20 CFR 416.1453.

Statutory/Other Authority: ORS 411.060

Statutes/Other Implemented: ORS 411.710, OL 2016 ch 93, 20 CFR 416.310, 20 CFR 416.1453