

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

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

FILED

10/31/2022 10:38 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Proposed Rule Changes for APD Programs: Annual Standards, Income Availability, and Effective Dates

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/20/2022 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.

CONTACT: Meorah Solar
503-602-7545
meorah.a.solar@odhs.oregon.gov

2885 Chad Drive
Eugene, OR 97408

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: 11/30/2022

TIME: 10:00 AM - 12:00 PM

OFFICER: Meorah Solar

ADDRESS: Virtual Hearing - No Physical Location

Phone: 971-277-2343, Code: 848 355 138

Ask Hearings Officer for MS Teams link

None, 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.

DATE: 11/30/2022

TIME: 6:00 PM - 8:00 PM

OFFICER: Meorah Solar

ADDRESS: Virtual Hearing - No Physical Location

Phone: 971-277-2343, Code: 545 131 965

Ask Hearings Officer for MS Teams link

None, 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)

OAR 461-135-0780 about eligibility for Pickle Amendment clients in the OSIPM program, 461-145-0220 about treatment of the home, 461-155-0250 about income and payment standard for OSIPM, 461-155-0270 about room and board standards for OSIPM, 461-160-0580 about excluded resources (community spouse provision) OSIPM program (except OSIP-EPD and OSIPM-EPD), and 461-160-0620 about Income Deductions and Patient Liability for Long-Term Care Services or Home and Community-Based Care in the OSIPM program, need to be amended because the Department is required to adjust its eligibility standards as a result of these congressionally approved changes. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

OAR 461-140-0040 about Determining Availability of Income needs to be changed as Department rule does not currently allow income to be considered unavailable based on incapacity for the OSIP, OSIPM and QMB programs. This can result in incapacitated individuals being charged a liability when they are unable to manage this payment and have no legal or financial representative available to assist. This change will allow the Department to consider income that cannot be accessed due to incapacity, unavailable for up to three months while a legal or financial representative is being established, and extend that three month period if additional time is needed to establish a representative.

OAR 461-155-0630 about Special Need; Community-Based Care in the OSIPM program needs to be amended as Department rule does not currently allow a Special Need payment for room and board based on incapacity. Individuals living in a community-based care setting are responsible for payment of room and board. An incapacitated individual with no legal or financial representative is unlikely to be able to make this payment, similar to liability, and can result in eviction if unpaid, or the inability to secure long-term care placement if the facility is unwilling to accept the individual without guarantee of payment. This change will allow the Department to pay room and board for up to three months (and longer in some situations) while a legal or financial representative is being established.

OAR 461-180-0050 about Effective Dates; Suspending or Closing Benefits and JOBS and REP Support Service Payments, needs to be amended to reduce potential harm to individuals whose circumstance is in the new rule provisions. Many states will not approve medical benefits when an individual's benefits are still active in their previous home state. This can create a hardship and in some cases cause harm to an individual in scenarios where the Medicaid agency fails to take timely action after an individual makes the good-faith effort to request closure of benefits prior to moving. This amendment will allow the Department to correct its error and close benefits retroactively so that benefits can be approved in the individual's new state of residence. The change pertaining to retroactive closures to Medicare Savings Programs ends the practice of requiring timely notice which is both illogical and inefficient for this situation. There is no way to issue or pay Medicare Savings Program benefits when an individual is not enrolled in Medicare, so providing timely notice prior to closing has no value or meaning. Ending the restriction on retroactive closures in this scenario ends an impractical and pointless practice.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

OAR 461-135-0780, 461-145-0220, 461-155-0250, 461-155-0270, 461-160-0580, 461-160-0620:
Social Security Administration's "Cost-of-Living Adjustment" document, available here: <https://www.ssa.gov/pubs/EN-05-10526.pdf>

Centers for Medicare & Medicaid Services (CMS) Federal Policy Guidance website will reflect standards in November here: <http://medicaid.gov/Federal-Policy-Guidance/Federal-Policy-Guidance.html>

Centers for Medicare & Medicaid Services (CMS) Spousal Impoverishment website will reflect standards here:
<https://www.medicare.gov/medicaid/eligibility/spousal-impoverishment/index.html>

OAR 461-140-0040, 461-155-0630, 461-180-0050:

No documents relied upon

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

OAR 461-135-0780, 461-145-0220, 461-155-0250, 461-155-0270, 461-160-0580, and 461-160-0620:

The Department estimates no racial equity impact.

OAR 461-140-0040, 461-155-0630:

As the Department is unable to predict the racial make-up of who will become incapacitated without an established financial or legal representative, the Department is unable to provide a racial equity impact statement.

OAR 461-180-0050:

The Department estimates a positive racial equity impact to:

- Migrant seasonal farmworkers who leave Oregon to work in other states. According to OHA's Migrant Health website, there are an estimated 174,000 migrant and seasonal farmworkers in Oregon, a majority of which are from Mexico, Central America, and South America.
- American Indian/Native American Tribal Members who traverse lands that the U.S. later divided into Oregon and bordering states, for example, the Fort McDermitt Paiute and Shoshone Tribes who have reservation lands in areas that the U.S. divided into Oregon and Nevada.
- This change will put into rule the ability for the Department to remove a possible barrier for many individuals who were receiving Medical benefits from Oregon and need to access medical benefits quickly in the area where they reside. As a Tribal Representative pointed out to ODHS, Sovereign Tribal Nations with rights to the land that predate the US government, and who frequently move around in land that the U.S. later decided should be divided into the states of Oregon and Washington, struggle to meet residency requirements of either state. ODHS policy analysts have continued to agree to discuss these concerns.
- This rule change is not expected to negatively impact racial equity; therefore, no mitigation is necessary.

FISCAL AND ECONOMIC IMPACT:

The Department is unable to estimate the exact fiscal impact of amending OAR 461-135-0780, 461-145-0220, 461-155-0250, 461-155-0270, 461-160-0580, and 461-160-0620 on the Department at this time as the standards are not available until November.

The amendment to OAR 461-135-0780 generally results as a negative impact on the Department as the number of individuals who could qualify for OSIPM will increase, or for those currently receiving OSIPM and home and community-based services, the Department would begin paying the full cost of services. This annual amendment generally results in a positive fiscal impact for individuals who were potentially eligible for protected OSIPM eligibility through the Pickle amendment in 2022 but who now may qualify with a new multiplier. For those currently receiving OSIPM and home and community-based care, they would no longer have a service liability. The Department does not estimate a fiscal impact to 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.

OAR 461-140-0040, 461-155-0630:

The Department estimates a negative fiscal impact due to increased service payments as a result of unavailable income

when calculating a liability for incapacitated individuals receiving community-based care or nursing facility service and making room and board payments on the incapacitated individual's behalf. However, the Department has been allowing these payments through a case by case leadership exception process, so most of the payments will not cause a fiscal impact from current process. Based on available data of previously approved requests for unavailable income and room and board payments, the negative fiscal impact is estimated to be a minimum of \$4,161.84 per month.

The Department estimates a positive fiscal impact to incapacitated individuals receiving community-based care or nursing facility services whose circumstances meet the rule. may be positively impacted as the Department can consider income not accessible due to incapacity as unavailable, reducing their liability cost. An incapacitated individual receiving an income exclusion and room and board payment may see an average positive fiscal impact of \$1,124.70 per month for up to three months, or longer if extended by the Department. This is based on available data of previously approved requests for unavailable income and room and board payments.

The Department does not estimate a fiscal impact to 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 amendment to OAR 461-145-0220 could potentially have a negative impact on the Department as individuals with home equity values below the new limit may qualify for long-term care services without the need to sell their home or otherwise decrease the equity value. Any increase in long-term care recipients would result in a negative fiscal impact on the Department. The amendment could potentially have a positive impact on individuals with home equity values below the new limit as they may qualify for long-term care services without the need to sell their home or otherwise decrease the equity value. The Department does not estimate a fiscal impact to 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 annual amendments to OAR 461-155-0250 and OAR 461-160-0620 typically result in mixed results regarding fiscal impacts. The Social Security COLA increased dramatically in 2022 from past years and is expected to increase in 2023 at a similar or larger rate, and Oregon uses SSI criteria when setting OSIPM standards. This can often result in a positive fiscal impact for the Department and in mixed fiscal impacts for benefit recipients. This is because the COLA percentage applied to the SSI one-person payment standard (which is used in the service liability calculation) is much smaller than the COLA percentage applied to individuals receiving Title II benefits. For example, in 2022, the COLA was 5.9%. Then SSI payment standard for one person increased by \$41 (from \$794 to \$841). An unmarried individual receiving \$1,000 of Title benefits in 2021 will now receive \$1,059. In 2021, that individual's service liability was \$206 (\$1,000 - \$794). In 2022, the same individual's service liability increased to \$218 (\$1,059 - \$841). The Social Security COLA increased dramatically in 2022 from past years, and Oregon uses SSI criteria when setting OSIPM standards. Individuals receiving Title II benefits in excess of the SSI payment standard who are also receiving long-term services and supports typically experience a negative fiscal impact in the form of increased service liability. This is because the COLA percentage applied to the SSI one-person payment standard (which is used in the service liability calculation) is much smaller than the COLA percentage applied to individuals receiving Title II benefits. Individuals with income not subject to the SSA COLA would typically experience a positive fiscal impact; liability decreased by \$77 in 2022 (though room and board for community-based care settings increased by \$47). The Department does not estimate a fiscal impact to 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 amendment to OAR 461-155-0270 could also result in a negative impact on the Department because payments to individuals receiving a personal incidental and room and board allowance amount will increase. The amendments will most likely result in a positive impact on individuals receiving a personal incidental and room and board allowance because the amount of this payment will increase in January 2023. The Department does not estimate a fiscal impact to 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 may be negatively affected by the amendment to OAR 461-160-0580 only inasmuch as an increased resource allowance may result in an earlier OSIPM and service effective date for new married applicants. The Department does not estimate a fiscal impact to those applying for or receiving 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 changing OAR 461-180-0050 will have no fiscal impact to the Department, those applying for or receiving 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.

COST OF COMPLIANCE:

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

See Fiscal and Economic Impact

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

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

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

An Administrative Rule Advisory Committee (RAC) was consulted for all rule changes except changes to OAR 461-135-0780, 461-145-0220, 461-155-0250, 461-155-0270, 461-160-0580, and 461-160-0620. These rule changes were given a RAC exception as the amendments were to implement annual federal cost of living and spousal impoverishment standard adjustments, which occur every January.

RULES PROPOSED:

461-135-0780, 461-140-0040, 461-145-0220, 461-155-0250, 461-155-0270, 461-155-0630, 461-160-0580, 461-160-0620, 461-180-0050

AMEND: 461-135-0780

RULE SUMMARY: OAR 461-135-0780 is being amended to adjust these standards to reflect the annual federal cost of living and spousal impoverishment standard adjustments that happen every January. These amendments are intended to take effect January 1.

CHANGES TO RULE:

461-135-0780

Pickle Amendment Clients; OSIPM ¶¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY. In the OSIPM program:¶¶

(1) The countable (see OAR 461-001-0000) SSB income of an individual is determined according to sections (2) to (4) of this rule if the individual meets all of the following requirements:¶¶

(a) Is receiving Social Security Benefits (SSB);¶¶

July 1979 - June 1980..... .265¶
 July 1978 - June 1979..... .241¶
 July 1977 - June 1978..... .227¶
 May or June 1977..... .214

Statutory/Other Authority: 411.060, 411.070, 411.083, 411.404, ORS 409.050, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.083, 411.404, 411.704, 413.085, 414.685, 42
 CFR 435.135, P.L. 92-336

AMEND: 461-140-0040

RULE SUMMARY: OAR 461-140-0040 is being amended to make income that cannot be accessed due to incapacity, unavailable for up to three months (or longer in certain situations) for certain individuals who are determined eligible for community-based care or nursing facility services. It is also being changed to move subsection (5)(i) to paragraph (5)(e)(C) to combine OSIP, OSIPM, and QMB provisions to a single section. Certain words are also being updated to more respectful words.

CHANGES TO RULE:

461-140-0040

Determining Availability of Income ¶¶

(1) This rule describes the date income is considered available, what amount of income is considered available, and situations in which income is considered unavailable.¶¶

(2) Income is considered available the date it is received or the date a member of the financial group (see OAR 461-110-0530) has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:¶¶

(a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend.¶¶

(b) Income withheld or diverted at the request of an individual is considered available on the date the income would have been paid without the withholding or diversion.¶¶

(c) An advance or draw of earned income is considered available on the date it is received.¶¶

(d) Income that is averaged, annualized, converted, or prorated is considered available throughout the period for which the calculation applies.¶¶

(e) A payment due to a member of the financial group, but paid to a third party for a household expense, is considered available when the third party receives the payment.¶¶

(f) In prospective budgeting, income is considered available in the month the income is expected to be received (see OAR 461-150-0020).¶¶

(g) In the OSIP, OSIPM, and QMB programs, except for self-employment (see OAR 461-145-0915), wages that are earned in one period of time but paid in another are considered available when they are received, such as a teacher who works for nine months but is paid over twelve.¶¶

(3) The following income is considered available even if not received:¶¶

(a) Deemed income.¶¶

(b) In the ERDC, REF, REFM, and TANF programs, the portion of a payment from an assistance program, such as public assistance, unemployment compensation, or Social Security, withheld to repay an overpayment.¶¶

(c) In the OSIPM and QMB programs, the portion of a payment from an assistance program (such as public assistance, unemployment compensation, or Social Security) withheld to repay an overpayment of the same source:¶¶

(A) If withheld prior to July 1, 2014.¶¶

(B) If withheld on or after July 1, 2014 and:¶¶

(i) No member of the financial group was receiving OSIP, OSIPM, or QMB during the period the benefit was overpaid; or¶¶

(ii) The withheld amount is not excluded under paragraph (5)(e)(A) of this rule.¶¶

(d) In the SNAP program, the portion of a payment from the TANF program counted as disqualifying income under OAR 461-145-0105.¶¶

(4) The amount of income considered available is the gross before deductions, such as garnishments, taxes, or other payroll deductions including flexible spending accounts.¶¶

(5) The following income is not considered available:¶¶

(a) Wages withheld by an employer in violation of the law.¶¶

(b) Income received by another individual who does not pay the client ~~his or her~~ their share.¶¶

(c) Income received by a member of the financial group after the individual has left the household.¶¶

(d) Moneys withheld from or returned to the source of the income to repay an overpayment from that source unless the repayment is countable (see OAR 461-001-0000):¶¶

(A) In the SNAP program, under OAR 461-145-0105.¶¶

(B) In the ERDC, REF, REFM, and TANF programs, under subsection (3)(b) of this rule.¶¶

(e) In the OSIP, OSIPM, and QMB programs:¶¶

(A) The portion of a payment from an assistance program, such as public assistance, unemployment compensation, or Social Security withheld on or after July 1, 2014 to repay an overpayment from the same source if at least one

member of the financial group was receiving OSIP, OSIPM, or QMB during the period the benefit was overpaid. The amount considered unavailable cannot exceed the amount of the overpaid benefit previously counted in determining eligibility (see OAR 461-001-0000) for OSIP, OSIPM, or QMB.¶

(B) Monies withheld from or returned to a source of income, when the source is not an assistance program, to repay an overpayment of the same source.¶

(C) Unearned income not received because a payment was reduced to cover expenses incurred by a member of the financial group to secure the payment. (For example, if a retroactive check is received from a benefit program other than SSI, legal fees connected with the claim are subtracted to determine available income. Or, if payment is received for damages received as a result of an accident the amount of legal, medical, or other expenses incurred by a member of the financial group to secure the payment are subtracted to determine available income.)¶

(D) For an individual determined eligible for community-based care (see OAR 461-155-0630) or nursing facility services, income that cannot be accessed due to incapacity shall be considered unavailable for up to three months while a legal or financial representative is being established, if necessary to secure placement. The Department may continue to consider this income unavailable past the three months if additional time is needed to establish a legal or financial representative.¶

(f) For an individual who is not self-employed, income required to be expended on an ongoing, monthly basis on an expense necessary to produce the income, such as supplies or rental of work space.¶

(g) Income received by the financial group but intended and used for the care of an individual not in the financial group as follows:¶

(A) If the income is intended both for an individual in the financial group and an individual not in the financial group, the portion of the income intended for the care of the individual not in the financial group is considered unavailable.¶

(B) If the income is intended only for an individual not in the financial group, the portion of the income used for the care of the individual not in the financial group is considered unavailable.¶

(C) If the income is intended both for an individual in the financial group and an individual not in the financial group and the portion intended for the care of the individual not in the financial group cannot readily be identified, the income is prorated evenly among the individuals for whom the income is intended. The prorated share intended for the care of the individual not in the financial group is then considered unavailable.¶

(h) In the ERDC, REF, REFM, SNAP, and TANF programs, income controlled by the client's abuser if the client is a ~~victim~~survivor of domestic violence (see OAR 461-001-0000), the client's abuser controls the income and will not make the money available to the filing group (see OAR 461-110-0310), and the abuser is not in the client's filing group.¶

~~(i) In the OSIP, OSIPM, and QMB programs, unearned income not received because a payment was reduced to cover expenses incurred by a member of the financial group to secure the payment. For example, if a retroactive check is received from a benefit program other than SSI, legal fees connected with the claim are subtracted. Or, if payment is received for damages received as a result of an accident the amount of legal, medical, or other expenses incurred by a member of the financial group to secure the payment are subtracted.¶~~

(6) The availability of lump-sum income (see OAR 461-001-0000) is covered in OAR 461-140-0120.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839

AMEND: 461-145-0220

RULE SUMMARY: OAR 461-145-0220 is being amended to adjust these standards to reflect the annual federal cost of living and spousal impoverishment standard adjustments that happen every January. These amendments are intended to take effect January 1.

CHANGES TO RULE:

461-145-0220

Home ¶¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY¶¶

(1) Home defined: A home is the place where the filing group (see OAR 461-110-0310) lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:¶¶

(a) Land on which the home is built and contiguous property.¶¶

(A) In all programs except the OSIP, OSIPM, QMB, and SNAP programs, property must meet all the following criteria to be considered contiguous property:¶¶

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group (see OAR 461-110-0530).¶¶

(ii) It must not be separated by a public right-of-way, such as a road.¶¶

(iii) It must be property that cannot be sold separately from the home.¶¶

(B) In the OSIP, OSIPM, QMB, and SNAP programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the financial group.¶¶

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.¶¶

(2) Exclusion of home and other property:¶¶

(a) For an individual who has an initial month (see OAR 461-001-0000) of long-term care (see OAR 461-001-0000) or home and community-based care (see OAR 461-001-0030) on or after January 1, 2006:¶¶

(A) For purposes of this subsection, "child" means a biological or adoptive child who is:¶¶

(i) Under age 21; or¶¶

(ii) Any age and meets the Social Security Administration criteria for blindness or disability.¶¶

(B) The equity value (see OAR 461-001-0000) of a home is excluded if the requirements of at least one of the following subparagraphs are met:¶¶

(i) The child (see paragraph (A) of this subsection) of the individual or relative dependent on the individual for support occupies the home.¶¶

(ii) The spouse (see OAR 461-001-0000) of the individual occupies the home.¶¶

(iii) The equity in the home is \$636,000 or less, and the requirements of at least one of the following subparagraphs are met:¶¶

(I) The individual occupies the home.¶¶

(II) The home equity is excluded under OAR 461-145-0252.¶¶

(III) The home is listed for sale per OAR 461-145-0420.¶¶

(iv) Notwithstanding OAR 461-120-0330, the equity in the home is more than \$636,000 and the individual is unable legally to convert the equity value in the home to cash.¶¶

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.¶¶

(c) In the SNAP program, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461-145-0420.¶¶

(3) Exclusion during temporary absence: The value of a home is excluded in each of the following situations:¶¶

(a) For the purposes of this section, "evidence" includes a written statement from a competent individual.¶¶

(b) In all programs except the OSIP, OSIPM, and QMB-DW programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.¶¶

(c) In the OSIP, OSIPM, and QMB-DW programs, when the individual is temporarily absent:¶¶

(A) To receive assistance with activities of daily living (see OAR 411-015-9995) under one of the following conditions:¶¶

(i) The absent individual has provided evidence that the individual will return to the home. The evidence must reflect the subjective intent of the individual, regardless of the individual's medical condition.¶¶

(ii) The home remains occupied by the individual's spouse, child, or a relative dependent on the individual for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.¶¶

(B) Due to illness, employment or training for future employment, seasonal employment, or uninhabitability; and both of the following conditions are met:¶¶

(i) The absent individual has provided evidence that the absent individual will return home, and¶¶

(ii) The evidence reflects the subjective intent of the individual, regardless of the individual's medical condition.¶¶

(d) In the REF, REFM, and TANF programs, when all members of the filing group are absent because:¶¶

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or¶¶

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.¶¶

(e) In the SNAP program, when the financial group is absent because of employment or training for future employment.

Statutory/Other Authority: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 409.050, 410.010, 410.020, 410.070, 410.080, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685, 414.839

AMEND: 461-155-0250

RULE SUMMARY: OAR 461-155-0250 is being amended to adjust these standards to reflect the annual federal cost of living and spousal impoverishment standard adjustments that happen every January. These amendments are intended to take effect January 1.

CHANGES TO RULE:

461-155-0250

Income and Payment Standard; OSIPM ¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY. In the OSIPM program:¶

(1) An individual who is assumed eligible per OAR 461-135-0010 is presumed to meet the income limits for the OSIPM program.¶

(2) An individual meeting the requirements of OAR 461-135-0745 or OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in sections (3) or (5) of this rule, must have countable (see OAR 461-001-0000) income that is equal to or less than 300 percent of the full Supplemental Security Income (SSI) standard for a single individual or have established a qualifying trust as specified in OAR 461-145-0540(10)(c).¶

(3) An individual, other than one identified in sections (1), (2), (5), or (6) of this rule, must have adjusted income (see OAR 461-001-0000) below the standard in this section.¶

OSIPM Adjusted Income Standards¶

Number in Need Group &&&..... One &&&..... Two¶

AB/AD/OAA &&&&&&&..... 841.00&&&..... 1,261.00¶

(4) In the OSIPM (except OSIPM-EPD) program, an individual receiving Medicaid services in a nursing facility or an ICF-ID is allowed the following amounts for clothing and personal incidentals:¶

(a) For an individual who receives a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.¶

(b) For all other individuals, \$68.77 is allowed.¶

(c) For an individual identified in subsection (b) of this section with countable income (including any SSI) that is less than \$68.77, the payment standard is equal to the difference between the individual's countable income (including any SSI) and \$68.77. For the purposes of this subsection, countable income includes income that would otherwise be countable for an individual who is assumed eligible under OAR 461-135-0010.¶

(5) In the OSIPM-EPD program, an individual must have adjusted earned income equal to or below 250 percent of the federal poverty level for a family of one.¶

(6) An individual who meets the requirements of OAR 461-135-0755, is not assumed eligible, and does not meet the income standard set out in section (3) of this rule, must have adjusted income equal to or below 150 percent of the federal poverty level for a family of one.

Statutory/Other Authority: ORS 411.060, ORS 409.050, 411.070, 411.404, 411.704, 411.706, 413.085, 414.685

Statutes/Other Implemented: ORS 411.060, ORS 409.010, 411.070, 411.404, 411.704, 411.706, P.L. 92-336

AMEND: 461-155-0270

RULE SUMMARY: OAR 461-155-0270 is being amended to adjust these standards to reflect the annual federal cost of living and spousal impoverishment standard adjustments that happen every January. These amendments are intended to take effect January 1.

CHANGES TO RULE:

461-155-0270

Room and Board Standard; Community-Based Care ¶¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY. For an individual residing in a community-based care facility (see OAR 461-155-0630(1)), the room and board standard is \$654.00. An individual residing in a community-based care facility must pay room and board.

Statutory/Other Authority: ORS 411.060, 411.070, 411.704, 411.706, ORS 409.050, 411.404, 413.085, 414.685

Statutes/Other Implemented: ORS 411.060, 411.070, 411.704, 411.706, ORS 409.010, 411.404, P.L. 92-336

AMEND: 461-155-0630

RULE SUMMARY: OAR 461-155-0630 is being amended to allow payment for room and board for up to three months (or longer if allowed by the Department) for certain incapacitated individuals who are determined eligible for community-based care or nursing facility services, in order to allow time for a legal or financial representative to be established.

CHANGES TO RULE:

461-155-0630

Special Need; Community-Based Care; OSIPM ¶

In the OSIPM program:¶

(1) A ~~client~~ individual is considered living in a community-based care facility (see OAR 461-001-000155-0630) if the ~~client~~ individual resides at one of the following care settings licensed by the Department:¶

(a) Adult Foster Home.¶

(b) Residential Care Facility.¶

(c) Assisted Living Facility.¶

(d) Specialized Living Facility.¶

(e) Group Care Home.¶

(2) If a ~~client~~ individual who meets the applicable income requirements begins living in a community-based care facility:¶

(a) Payment for room and board may be authorized during the month of admission at the initial placement, limited to the approved rate.¶

(b) Room and board payments may be paid to the community-based care facility during the temporary absence of a ~~client~~ the individual if all of the following criteria are met:¶

(A) The absence occurs because the ~~client~~ individual is admitted to a hospital or nursing home.¶

(B) The Department determines the intent of the ~~client~~ individual to return to the community-based care facility.¶

(C) The community-based care facility is willing to accept the room and board payment.¶

(D) The ~~client~~ individual returns within the calendar month following the month in which the absence began.¶

(3) Spouses who each receive ~~SSI~~ Supplemental Security Income (SSI) and receive services in a community-based care facility are eligible for a payment in the amount that equals the difference between the OSIPM standard for a one-person need group (see OAR 461-110-0630) and the individual's total countable (see OAR 461-001-0000) income. If one spouse (see OAR 461-001-0000) has income above the OSIPM standard, the excess income is applied to the countable income of the other spouse.¶

(4) The Department may authorize payment for room and board for up to three months for an incapacitated individual when the individual is determined eligible for community-based care, the individual has no legal or financial representative, and payment for room and board is necessary to secure placement. The payments are allowed while a legal or financial representative is being established and may be extended past the three month period if the Department determines additional time is needed to establish a legal or financial representative.

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

Statutes/Other Implemented: ORS 409.010, 411.060, 411.404, 413.085, 414.685

AMEND: 461-160-0580

RULE SUMMARY: OAR 461-160-0580 is being amended to adjust these standards to reflect the annual federal cost of living and spousal impoverishment standard adjustments that happen every January. These amendments are intended to take effect January 1.

CHANGES TO RULE:

461-160-0580

Excluded Resource; Community Spouse Provision (OSIPM except OSIPM-EPD) ¶¶

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY. In the OSIPM (except OSIPM-EPD) program:¶¶

(1) This rule applies to an institutionalized spouse (see OAR 461-001-0030) who has applied for benefits because the individual is in or will be in a continuous period of care (see OAR 461-001-0030).¶¶

(2) Whether a legally married (see OAR 461-001-0000) couple lives together or not, the determination of whether the value of the couple's resources exceeds the eligibility limit for the institutionalized spouse for the OSIPM program is made as follows:¶¶

(a) The first step is the determination of what the couple's combined countable (see OAR 461-001-0000) resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)¶¶

(A) Division 461-140 and 461-145 rules applicable to OSIPM describe which of the couple's resources are countable resources, and are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIPM individuals.¶¶

(B) The countable resources of both spouses are combined.¶¶

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.¶¶

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.¶¶

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:¶¶

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than \$137,400.¶¶

(B) \$27,480 (the state community-spouse resource allowance).¶¶

(C) A court-ordered community spouse resource allowance. In this paragraph and paragraph (2)(f)(C) of this rule, the term "court-ordered community spouse resource allowance" means a "court-ordered community spouse resource allowance" that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the individual became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the individual's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.¶¶

(D) After considering the income of the community spouse (see OAR 461-001-0030) and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph is the amount required to purchase a single premium immediate annuity to make up the shortfall; and the amount described in this paragraph is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:¶¶

(i) The maintenance needs allowance computed in accordance with OAR 461-160-0620.¶¶

(ii) The difference between:¶¶

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and¶¶

(II) The applicable need standard under OAR 461-160-0620(3)(c).¶¶

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.¶¶

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.¶¶

(f) The sixth step is a comparison of the value of the remaining resources to the OSIPM resource standard for one person (under OAR 461-160-0015). If the value of the remaining resources is at or below the standard, the

institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:¶¶

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than \$137,400) plus the OSIPM resource standard for one person.¶¶

(B) \$27,480 (the state community-spouse resource allowance), plus the OSIPM resource standard for one person.¶¶

(C) A "court-ordered community spouse resource allowance" plus the OSIPM resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the "court-ordered community spouse resource allowance".)¶¶

(D) The OSIPM resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. This amount is the amount required to purchase a single premium immediate annuity to make up the shortfall. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:¶¶

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.¶¶

(ii) The difference between:¶¶

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and¶¶

(II) The applicable need standard under OAR 461-160-0620(3)(c).¶¶

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate their intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.¶¶

(4) The provisions of paragraph (2)(c)(C) of this rule requiring income to be considered first may be waived if the Department determines that the resulting community resource allowance would create an undue hardship on the spouse (see OAR 461-001-0000) of the individual.

Statutory/Other Authority: ORS 411.070, 411.083, 411.404, 411.706, ORS 411.060, ORS 409.050, 413.085, 414.685

Statutes/Other Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.706, ORS 409.010

AMEND: 461-160-0620

RULE SUMMARY: OAR 461-160-0620 is being amended to adjust these standards to reflect the annual federal cost of living and spousal impoverishment standard adjustments that happen every January. These amendments are intended to take effect January 1.

CHANGES TO RULE:

461-160-0620

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

THIS RULE WILL BE AMENDED TO REFLECT FEDERAL COST OF LIVING ADJUSTMENTS PUBLISHED ANNUALLY. 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) The liability of an 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. \$2,288.75 is added to the amount over \$686.63 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 \$2,288.75. To determine the income allowance of each eligible dependent:¶

(i) The monthly income of the eligible dependent is deducted from \$2,288.75.¶

(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 individuals identified in 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.¶

(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: 461-180-0050

RULE SUMMARY: OAR 461-180-0050 is being amended to allow retroactive closures of OSIPM and Medicare Savings Program benefits when the Department did not act timely after an individual reports they have moved out of state. It is also being amended to allow closures of Medicare Savings Program benefits without timely notice when an individual is disenrolled from Medicare, and to update some words to more respectful and inclusive words.

CHANGES TO RULE:

461-180-0050

Effective Dates; Suspending or Closing Benefits and JOBS and REP Support Service Payments ¶¶

- (1) This rule explains the effective date for closing or suspending benefits for the entire benefit group (see OAR 461-110-0750) and the effective date for ending JOBS and REP support service payments.¶¶
- (2) In all programs except the ERDC program, when the only individual in a benefit group dies, the effective date of the closure is:¶¶
- (a) In the REF, SNAP, and TANF programs, the last day of the month in which the death occurred.¶¶
- (b) In all other programs, the date of the death.¶¶
- (3) For all closures and suspensions not covered by section (2) of this rule, the effective date is determined as follows:¶¶
- (a) When prospective eligibility is used, the effective date for closing or suspending benefits is the last day of the month in which the notice period ends.¶¶
- (b) For a pregnant ~~female~~individual receiving benefits of the OSIPM program, the effective date for closing benefits is no earlier than the last day of the calendar month in which the 60th day after the last day of pregnancy falls, except at the ~~client~~individual's request.¶¶
- (c) For a ~~client~~individual who is receiving medical assistance and becomes incarcerated with an expected stay of a year or less, the effective date for suspending medical benefits is the effective date on the decision notice (see OAR 461-001-0000).¶¶
- (d) The effective date for ending support service payments authorized under OAR 461-190-0211 is the earlier of the following:¶¶
- (A) The date the related JOBS or REP activity is scheduled to end.¶¶
- (B) The date the ~~client~~individual no longer meets the requirements of OAR 461-190-0211.¶¶
- (e) In the OSIP, OSIPM, and QMB programs, notwithstanding any other provision in Chapter 461, benefits can be closed retroactively under any of the conditions listed below:¶¶
- (A) The individual has moved out of state, requested closure of benefits prior to the move, but the Department failed to take the action. The effective date is the end of the month prior to the month in which the individual established residency in the new state.¶¶
- (B) In the QMB programs, the individual became disenrolled from Medicare. The effective date is the end of the month prior to the month the individual was disenrolled.¶¶
- (C) The effective date of a retroactive closure described in paragraph (A) above cannot be before the end of the month in which medical claims were incurred and paid.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.009

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049