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
01/31/2023 10:09 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Proposing Changes: OSIPM, QMB, Public Institution Resident Eligibility; Notice of Claim/Action; Asset Transfer Disqualifications

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/20/2023 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@dhsoha.state.or.us

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: 03/02/2023
TIME: 1:00 PM - 2:30 PM
OFFICER: Meorah Solar

REMOTE MEETING DETAILS
MEETING URL: Click here to join the meeting
PHONE NUMBER: 1-971-277-2343
CONFERENCE ID: 199300029
SPECIAL INSTRUCTIONS:
Meeting ID for Teams app or online (non-phone): 289 545 500 831

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@dhsoha.state.or.us at least 48 hours before the meeting.

NEED FOR THE RULE(S)

OAR 461-135-0880 about "OSIPM and QMB Programs; COVID-19" needs to be changed due to the Consolidated Appropriations Act, 2023. The Consolidated Appropriations Act, 2023 uncouples the continuous Medicaid enrollment provisions from the end of the COVID-19 Public Health Emergency and directs states to begin unwinding the provisions beginning April 1, 2023. The rule must be amended to comply with federal legislation as well as reflect the Center for Medicare and Medicaid's existing requirement for states to stagger ending enrollment protections using the eligibility renewal process. In addition, OHDS and OHA leadership has established extended timeframes for completing the

renewal process as well as the timely notice period for closing or reducing benefits. This amendment reflects the various requirements.

OAR 461-135-0950 about "Eligibility for Residents of Public Institutions" needs to be changed due to recent policy changes that expand and better protect health care coverage for individuals who leave a public institution.
Currently, individuals must complete the eligibility determination process to restore OSIPM and QMB benefits when they are no longer a resident of a public institution or enter a period of hospitalization. This delays their access to medical benefits due to the need for an interview, verification, and possibly more. The Department has changed policy and will allow immediate benefit restoration. By restoring immediately and determining ongoing eligibility after restoration, the individual has access to medical care while ongoing eligibility is being determined.
In addition, under current rule, individuals are denied coverage for past periods when they were not a resident of a public institution if they did not report the change within ten days and did not have what the Department determines as good cause for meeting this deadline. Removing this reporting requirement allows the Department to restore medical benefits up to 12 months in the past when an individual leaves a public institution and fails to report it. It also allows benefits to be restored for any previous period of hospitalization.

OAR 461-140-0296 about "Length of Disqualification Due to an Asset Transfer; OSIP and OSIPM" needs to be changed to add a new divisor required by federal law and decrease the length of disqualifications in light of the increases in the average monthly cost to a private patient of nursing facility services in Oregon. This amendment keeps Oregon in line with current standards for Department Medicaid programs and changes in the cost of living. This amendment brings the rule up to date for the required amount that is calculated every two years by using the average monthly cost to a private patient of nursing facility services in Oregon.

OAR 461-195-0310 about "Notice of Claim or Action by Applicant or Recipient" needs to be changed to reduce workloads and processing times for the Office of Payment Accuracy and Recovery's (OPAR) Personal Injury Liens (PIL) unit staff caseloads. In particular, OPAR-PIL needs to utilize their database technology to assist in the automation of data entry.
Currently, OAR 461-195-0310 requires that Medicaid recipients or applicants with a personal injury claim or lawsuit notify the PIL unit by mail or facsimile. OPAR-PIL has a web portal that allows recipients, their attorneys, CCOs, and insurance adjusters to enter the notice information. While it is not in the rule, OPAR-PIL currently considers the requirement for notification to have been met if the PIL portal is used.
At this time, OPAR-PIL receives over 1000 required notices per year. Approximately 25 percent are received through the PIL web portal and the remaining are received through mail or fax. The processing time for the mail or fax notices is significantly higher than the web portal processing times. OPAR-PIL is currently working on integrating the web portal with their database system. When that system is in place, requiring the use of the portal will greatly reduce the time in which PIL staff will have to manually enter information on cases into their database. PIL anticipates that this would reduce processing times by approximately 75 percent. PIL is already currently short staffed by multiple positions. PIL anticipates that this rule and policy change may reduce the need for 1 position, and staff could be utilized for backlogs and other necessary work.
Requiring that attorney of represented parties and insurance companies use the web portal will greatly assist OPAR-PIL in their processing times, allowing them to meet other needs of the unit in a more efficient manner.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

OAR 461-135-0880: CMCS Informational Bulletin: Key Dates Related to the Medicaid Continuous Enrollment Condition Provisions in the Consolidated Appropriations Act, 2023, available here: https://www.medicaid.gov/federal-policy-guidance/downloads/cib010523.pdf

SHO# 22-001 RE: Promoting Continuity of Coverage and Distributing Eligibility and Enrollment Workload in Medicaid, the Children's Health Insurance Program (CHIP), and Basic Health Program (BHP) Upon Conclusion of the COVID-19 Public Health Emergency, available here:
https://www.medicaid.gov/federal-policy-guidance/downloads/sho22001.pdf

OAR 461-135-0950: No documents relied upon.

OAR 461-140-0296: Genworth Cost of Care, available here: https://www.genworth.com/aging-and-you/finances/cost-of-care.html

OAR 461-195-0310: For responses regarding law firms, the businesses affected by this rule change, the Department relied on the Oregon State Bar 2017 Economic Survey, which was the most recently published data from the Oregon State Bar regarding firm size and practice areas. The survey can be found here:
https://www.osbar.org/surveys_research/snrtoc.html#economicsurveys

---

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

OAR 461-135-0880
The Department cannot identify specific racial groups that will be affected by this rule change as the required data continue to be unavailable for analysis. The only available data at this time is anecdotal.
This rule change will affect a wide range of races and communities; however, the restoration of the 90-day Reasonable Opportunity Period from 180 days afforded as part of the continuous enrollment provisions may negatively affect certain noncitizens who have experienced difficulty obtaining the necessary noncitizen status documentation. More specifically, it will affect individuals aged 26 – 54, since individuals outside of that age range may qualify for the Healthier Oregon Program available to individuals who either do not meet the qualified noncitizen requirements or cannot verify their citizenship or qualified status.
There are workgroups comprised of OHA and ODHS staff that are developing an expansive communication plan intended to reach a wide variety of marginalized populations and Communities of Color. The Department has already adopted policies to try and lessen the impact of this policy change to noncitizens, such as the above-referenced Healthier Oregon program launched in July of 2022.

OAR 461-135-0950
These changes will positively affect individuals who are residents of public institutions and are needing access to medical care upon release or upon entry into period of hospitalization. 2015 data at Vera shows that the carceral population in Oregon is 74% White, 13% Latinx, 9% Black, 2% Native American, and 1% Asian. As the latest data provides an overall Oregon population of 75.7% White, 13% Hispanic/Latino, 1.8% Black, 0.9% American Indian/Alaska Native, and 4.3% Asian; the Department estimates these changes will have a positive racial equity impact for Communities of Color who are overrepresented in the incarcerated population of Oregon.

The Department has identified no ways in which the changes to OARs 461-140-0296 and 461-195-0310 will affect racial equity in Oregon.

FISCAL AND ECONOMIC IMPACT:

OAR 461-135-0880:
ODHS will likely experience an overall positive fiscal impact as a result of this change, as it is expected that a large number of individuals will lose Medicaid coverage once the protections afforded by the Families First Coronavirus Response Act (FFCRA) (P.L. 116-127). It is important to note that the Department will no longer qualify for the

temporary 6.2 Federal Medical Assistance Percentage (FMAP) increase under section 6008 of the FFCRA. The elimination of the additional 6.2% FMAP will reduce the positive fiscal impact resulting from fewer overall Medicaid recipients. The Department is unable to provide an accurate overall estimate of the impact as it has no way of determining how many individuals will lose benefits; however, below is a breakdown of the average total cost per month for specific categories of OHP Plus recipients. Note that these figures represent both MAGI and non-MAGI categories.

Managed Care Enrollees

- Individuals with OHP Plus with Limited Drug (i.e. also receiving Medicare): $520.94 per member, per month (PMPM). After 60.32% FMAP, total state savings would be $206.71 per month for each recipient terminated.
- Individuals with OHP Plus (no Medicare): $837.65 PMPM. After 60.32% FMAP, state savings would be $332.38 per month for each recipient terminated.
- Individuals with OHP Plus and QMB: $461.38 PMPM. After 60.32% FMAP, state savings would be $183.08 per month for each recipient terminated. Note: This does not take into account whether the individual would remain eligible for QMB. Total state expenditures for a QMB recipient were previously calculated at less than $100 per month on average.

Fee-for Service

- Individuals with OHP Plus with Limited Drug (i.e. also receiving Medicare): $7,691.66 per member, per month (PMPM). After 60.32% FMAP, total state savings would be $3,052.050 per month for each recipient terminated.
- Individuals with OHP Plus (no Medicare): $591.73 PMPM. After 60.32% FMAP, state savings would be $234.80 per month for each recipient terminated.
- Individuals with OHP Plus and QMB: $3,867.80 PMPM. After 60.32% FMAP, state savings would be $1,534.74 per month for each recipient terminated. Note: This does not take into account whether the individual would remain eligible for QMB. Total state expenditures for a QMB recipient were previously calculated at less than $100 per month on average.

Medicare Savings Programs (Non-MAGI only)

- For each SMB QMB benefit that is closed, the state would save $65.43 on payment of Part B premiums ($164.90 premium less 60.32% FMAP).
- There is no fiscal impact to the Department for terminating SMF benefits as they have 100% FMAP.

Benefit recipients who are ineligible for their current benefit but who have maintained coverage strictly due to the protections provided by the continuous enrollment provisions will experience a negative fiscal impact when their benefits are closed. Providers who are paid with Medicaid funds may also experience a negative fiscal impact as a result of this change. The Department is unable to provide specific numbers as it is not known how many individuals will lose coverage until after the unwinding period is over.

The Department estimates no fiscal impact to other state agencies, local government, and business including small business. There is no cost of compliance for small business.

OAR 461-135-0950

ODHS and OHA may be negatively impacted by the removal of eligibility determination prior to restoration and by covering past releases and periods of hospitalization. The changes could increase billing for past claims for these periods and potential coverage for individual ineligible at restoration. ODHS is unable to estimate the fiscal impact of this as we do not have a way of tracking unreported releases from public institutions or delays in restoration due to late reporting without good cause.

Individuals released form a public institution or entering a period of hospitalization and medical providers may be positively impacted by increased claim coverage and; therefore, lower out-of-pocket cost to individuals and fewer unpaid claim write-offs for providers. ODHS is unable to estimate the fiscal impact of this as we do not have a way of tracking unreported releases from public institutions or delays in restoration due to late reporting without good cause.

The Department estimates no fiscal impact to other state agencies, local government, and business including small business. There is no cost of compliance for small business.

The Department estimates the amendment to OAR 461-140-0296 to result in a negative impact on the Department as individuals who make disqualifying transfers could serve shorter periods of disqualification; thus, the Department would begin paying for services sooner. The Department estimates a positive impact on those individuals who are eligible for services except for serving the disqualification due to these shorter disqualification periods. No exact amount is known as eligibility and disqualification period is unique for each individual. The Department estimates no fiscal impact to other state agencies, local government, and business including small business. There is no cost of compliance for small business.

OAR 461-195-0310

The Department, specifically the Office of Payment Accuracy and Recovery - Personal Injury Liens (OPAR-PIL) unit, would be positively affected. This will be a reduction in workload and data entry and processing time. OPAR-PIL anticipates the reduction on data entry for new cases to be reduced by approximately 75%.

OPAR-PIL will be able to reduce turnaround time and provide requests for information from attorneys and other partners in a more efficient manner.

OPAR-PIL does not believe that there is going to be a negative economic affect due to this change. If anything, this could be a cost-savings to recipients who have personal injury settlements and judgments as it would cut down on costs to their attorneys. Attorneys are generally required to use electronic means in other areas, for example, e-filing of court cases in both state, federal and tax courts. OPAR-PIL has written the rule narrowly to only include attorneys who are representing Medicaid recipients as it is almost certain that attorneys already have technology and ability meet the needs of this rule.

Law firms and attorneys will be subject to this change. Specifically, the types of law firms and attorneys that practice in tort and personal injury are going to be affected. According to the Oregon State Bar economic survey, personal injury firms make approximately 10% of all Oregon law practices. The survey contained 1,000 responses to this question, and the survey itself had an approximately 34% response rate. The survey showed that only 7% of law practices have more than 60 attorneys. Due to the fairly low response rate, it is difficult to make an exact inference from the data about the exact number of firms that would have to comply with this new rule, but it would likely be well over 100 firms.

It is unlikely that there would be any cost to comply with this rule. The rule would require attorneys to submit a notice online rather than by mail or fax. As stated above, Oregon law already requires that attorneys file documents with the court electronically, as do Federal courts, as does the IRS and Oregon DOR. Therefore, it is reasonable to make a conclusion that an attorney would already have a computer and internet connection, which is the equipment needed to comply with this rule change.

PIL does not have exact data on which staff at law firms might be doing the compliance and training. Attorneys will likely be responsible for understanding the rule and letting their paraprofessional staff know how to comply with the rule and use the web portal. In 2017, the mean compensation for Personal Injury attorneys in Oregon was $188,441 per year. As using the web portal form is similar to tasks that paraprofessional and assistant staff at law firms do, such as filing, drafting letters, etc, it is our guess that these staff will also be using the web portal. PIL does not have data about salaries for staff. PIL has spent significant time in both creating the portal to be user friendly and easy to use, as well as creating written trainings for the portal, and those trainings are currently accessible on the PIL website.

While there may be some initial employee-hours in learning and training to use the web portal, the overall cost of compliance should be low and not significantly adverse. PIL has created training to make understanding the portal easier. Firms may also reduce costs in postage or fax charges by using the web portal.

The rule also requires insurance adjusters to submit the notice electronically. The Department does not believe that the cost of compliance will have an economic impact on those businesses.

The Department estimates no fiscal impact to local government or members of the public.

COST OF COMPLIANCE:

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

see fiscal and economic impact

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

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

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:
461-135-0880, 461-135-0950, 461-140-0296, 461-195-0310

AMEND: 461-135-0880

RULE SUMMARY: OAR 461-135-0880 is being amended to comply with the Consolidated Appropriations Act, ending the continuous Medicaid enrollment provisions established by the FCCRA during the COVID-19 Public Health Emergency and adopting a staggered renewal process with additional allowances for response and timely notice.

CHANGES TO RULE:

461-135-0880
OSIPM and QMB Programs; COVID-19
The provisions in this rule apply to the OSIPM and QMB programs. ¶
(1) ~~T~~Subject to subsection (5)(b) of this rule, the Department amends the following rules or rule sections regarding the OSIPM and QMB programs.¶
(a) OAR 461-115-0700,¶
(b) OAR 461-175-0704,¶
(c) OAR 461-180-0030, and¶
(d) OAR 461-180-0120(1), (2), and (3)(b).¶
(2) ~~N~~Subject to subsection (5)(b) of this rule, and notwithstanding OAR 461-180-0030 and OAR 461-180-0120(1), (2), and (3)(b), the Department shall suspend the effective date for all actions that reduce or close OSIPM or QMB program benefits, except for: ¶
(a) Program closures when an individual:¶
(A) Passes away,¶
(B) Is confirmed to have moved out of state,¶
(C) Requests a voluntary closure,¶
(D) In the QMB programs, is no longer eligible for Medicare, ¶
(E) Is approved for a one-time cash payment, such as a special needs payment for home repairs, ¶
(F) Is no longer eligible for an ongoing special needs payment,¶
(G) Is approved for benefits due to an administrative error (see OAR 461-195-0501), or¶
(H) When a court determines the individual made a false or misleading statement, or misrepresented, concealed, or withheld a fact for the purpose of establishing or maintaining eligibility.¶
(b) Benefit reductions when an individual ¶
(A) Requests a voluntary reduction.¶
(B) Is no longer eligible for the same level or amount of a special needs payment.¶
(c) Increases to ~~cl~~patient liability when restoring previous liability.¶
(d) Benefit suspension when an individual becomes a resident of a correctional facility under OAR 461-135-0950.¶
(3) ~~N~~Subject to subsection (5)(b) of this rule, and notwithstanding OAR 461-115-0700, the Department will accept self-attestation (see OAR 461-115-0700(2)(b)) to verify all eligibility criteria, except US citizenship, US national, and non-US citizen status. ¶
(4) ~~N~~Subject to subsection (5)(b) of this rule, and notwithstanding OAR 461-115-0704(10), if the Department

cannot promptly verify US citizenship, US national, or qualified non-US citizen status; the Department extends the reasonable opportunity period to 180 days from the date the notice is received.¶
(5) ~~The provisions of this rule shall end on the last day of the month in which the public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak of coronavirus disease 2019 (COVID-19) is lifted~~In accordance with the Consolidated Appropriations Act, 2023, the provisions of this rule shall end effective April 1, 2023, as outlined in subsections below. ¶
(a) Individuals continuously receiving benefits prior to March 31, 2023 will maintain the protections afforded under this rule until the Department initiates a renewal of benefit eligibility (see OAR 461-001-0000). The Department will begin renewals in April 2023.¶
(A) When a completed and signed renewal form is required, the individual will have 90 days to provide the required documents.¶
(B) When additional information is required to complete the renewal, the individual will have 90 days to provide the requested information.¶
(C) When, during the renewal process, an individual is found ineligible for benefits, eligible for a lesser benefit, or the individual fails to complete the renewal process, the Department will send a decision notice (see OAR 461-001-0000) at least 60 days before the effective date of the closure or reduction. ¶
(b) Once the renewal process of an individual is complete under subsection (a) of this section, the provisions of this rule no longer apply to that individual.
Statutory/Other Authority: ORS 409.050, ORS 411.060, 411.070, 411.083, 412.006, ORS 84.001 to 84.061, 412.009, 412.024, 412.049, 412.064, 412.089
Statutes/Other Implemented: ORS 411.060, 411.070, 411.083, 412.006, ORS 84.001 to 84.061, 412.009, 412.024, 412.049, 412.064, 412.089, 409.010, 411.081, 411.087, 45 CFR 206.10, 45 CFR 263.2, 45 CFR 400.155, Pub. L. 116-127, 42 CFR 435.907, 42 CFR 435.914, 42 CFR 433.400, H.R. 2617 (117th)

AMEND: 461-135-0950

RULE SUMMARY: OAR 461-135-0950 is being amended to allow more immediate access to medical benefits for individuals whose benefits were suspend when they became a resident of a public institution. Suspended medical benefits will now be restored as soon as the department learns an individual is no longer a resident of a public institution, or has entered a period of hospitalization, without requiring the individual to complete the full eligibility determination process. Once medical benefits are restored, ongoing eligibility will be redetermined. It is also being amended to remove the 10 day reporting requirement and allow restoration of benefits when the individual fails to report to the Department.

CHANGES TO RULE:

461-135-0950
Eligibility for Residents of Public Institutions ¶

(1) This rule sets out additional restrictions on the eligibility of residents of public institutions for programs covered by Chapter 461 of the Oregon Administrative Rules.¶
(2) Definition of a "resident of a public institution".¶
(a) An individual living in a public institution (see section (3) of this rule) who is:¶
(A) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including an individual being held involuntarily in a detention center awaiting trial or an individual serving a sentence for a criminal offense;¶
(B) Residing involuntarily in a facility under a contract between the facility and a public institution where, under the terms of the contract, the facility is a public institution;¶
(C) Residing involuntarily in a facility that is under governmental control;¶
(D) Receiving care as an outpatient while residing involuntarily in a public institution; or¶
(E) In the OSIPM and QMB programs, released from the public institution during a temporary period of hospitalization in a medical institution outside of the correctional facility.¶
(b) An individual is not considered a resident of a public institution when:¶
(A) The individual is released on parole, probation, or post-prison supervision;¶
(B) The individual is on home- or work-release, unless the individual is required to report to a public institution for an overnight stay;¶
(C) The individual is voluntarily residing in a supervised community residential facility and all of the following are true:¶
(i) Residents are not precluded from working outside the facility in employment available to individuals who are not under justice system supervision;¶
(ii) Residents can use community resources such as libraries, grocery stores, recreation and education at will, notwithstanding any house rules such as a requirement to sign in and out, curfews, or hours during which the residence is closed or locked; and¶
(iii) Residents can seek health care treatment in the broader community to the same or similar extent as other Medicaid enrollees in the state.¶
(D) The individual is staying voluntarily in a detention center, jail, or county penal facility after their case has been adjudicated and while other living arrangements are being made for the individual; or¶
(E) The individual is in a public institution pending other arrangements as defined in 42 CFR 435.1010.¶
(3) A "public institution" is any of the following:¶
(a) A "state hospital" (see ORS 162.135).¶
(b) A local correctional facility (see ORS 169.005): a jail or prison for the reception and confinement of individuals that is provided, maintained and operated by a county or city and holds individuals for more than 36 hours.¶
(c) A Department of Corrections institution (see ORS 421.005): a facility used for the incarceration of individuals sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.¶
(d) A youth correction facility (see ORS 162.135):¶
(A) A facility used for the confinement of individuals placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a residential academy and satellite, and camps and branches of those facilities; or¶
(B) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of individuals pursuant to a judicial commitment or order.¶
(4) Definition of serious mental illness. An individual has a serious mental illness if the individual has been diagnosed by a psychiatrist, a licensed clinical psychologist or a certified non-medical examiner as having

dementia, schizophrenia, bipolar disorder, major depression or other affective disorder or psychotic mental disorder other than a substance abuse disorder and other than a disorder that is caused primarily by substance abuse.¶
(5) An individual who resides in a state hospital (see subsection (3)(a) of this rule), meets the definition of having a serious mental illness (see section (4) of this rule), and applies for medical assistance between 90 and 120 days prior to the expected date of the person's release from the state hospital may be found eligible for medical assistance. If the individual is determined to be eligible, the effective date of the individual's medical assistance is the date the individual is ~~released from~~no longer a resident of the institution.¶
(6) In the OSIPM and QMB programs, except as provided for in section (7) of this rule, an individual who is at least 21 years of age and less than 65 years of age who becomes a resident of a state hospital has medical benefits suspended. When an individual with suspended medical benefits is no longer a resident of the state hospital, or when the individual is admitted to a medical institution outside of the state hospital for a period of hospitalization, medical benefits are reinstated effective the first day the individual is no longer a resident~~, if the individual continues to meet eligibility for the medical program~~.¶
(7) An individual residing in a state hospital may be eligible for OSIPM and QMB program benefits if the individual meets the requirements of one of the following subsections:¶
(a) The individual is 65 years of age or older.¶
(b) The individual receives a Certificate of Need for Services from the State-authorized agency, and meets one of the following:¶
(A) The individual is under 21 years of age.¶
(B) The individual is 21 years of age, received a Certificate of Need for Services from the State-authorized agency, and received those services immediately before reaching age 21. Except as provided for in subsection (a) of this section, eligibility ends at age 22.¶
(8) For all programs covered under chapter 461 of the Oregon Administrative Rules:¶
(a) Except as provided otherwise in this rule, a resident of a public institution (see section (2) of this rule) is not eligible for benefits.¶
(b) Except as provided otherwise in this rule, if a pregnant individual receiving medical assistance through the OSIPM program becomes a resident of a public institution, their medical benefits are suspended. When the Department ~~is informed~~learns the individual is no longer a resident of a public institution, their medical benefits are reinstated - effective on the first day they are no longer a resident of a public institution - if they are still in their protected period of eligibility under OAR 461-135-0010.¶
(c) If an individual receiving medical assistance through the OSIPM or QMB programs becomes a resident of a public institution at a correctional facility (see subsections (3)(b) through (3)(d) of this rule), medical benefits are suspended during the incarceration period.¶
(d) In the OSIPM and QMB programs~~, w~~:¶
(A) When the Department ~~is notified that an individual with suspended benefits has been released or~~learns the individual is no longer a resident of a public institution within 12 calendar months of the change, suspended benefits may be restored, effective the first day the individual was no longer a resident of a public institution. ¶
(B) When the Department learns the individual has been admitted to a hospital outside of the public institution for a period of hospitalization, ~~medical~~suspended benefits ~~are reinstat~~may be restored effective the first day of the ~~individual is no longer a resident of a public institution if both of the following are true:¶~~
~~(A) The individual continues to meet eligibility for the medical program; and~~period of hospitalization. ¶
(C) When the date benefits are reinstated is prior to the individual's eligibility renewal date, the eligibility renewal date will be maintained.¶
(~~B~~D) ~~T~~When ~~notification takes place within ten calendar days of the release, or the notification takes place more than ten calendar days from the release date and there is good cause for the late reporting~~n the date benefits are reinstated is after the individual's eligibility renewal date, eligibility must be redetermined immediately after benefits are restored.¶
(9) In the GA and SNAP programs, in addition to the other provisions of this rule, a resident of a public institution released from a public institution on home arrest and required to wear an electronic device to monitor their activity, is ineligible for benefits if the correctional agency provides room and board to the individual.¶
(10) In the GA program, when an individual becomes a resident of a public institution:¶
(a) Housing assistance payments may continue for one calendar month following the month ~~of incarcera~~the individual became a resident of a public institution if the following are true:¶
(A) The Department can determine that the individual will ~~be released~~no longer be a resident of a public institution before the end of the calendar month following the month ~~of incarcera~~the individual became a resident of a public institution, and¶
(B) The individual's housing arrangement is still available.¶
(b) ~~If~~When the individual will ~~be released~~no longer be a resident of a public institution after the end of the

calendar month following the month ~~of incarcera~~the individual became a resident of a public institution, or ~~if~~when the ~~release date~~date the individual will no longer be a resident of a public institution is not known, housing assistance payments will be closed effective the end of the notice period (see OAR 461-175-0050) for a timely continuing benefit decision notice (see OAR 461-001-0000).
Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685, 412.014
Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.447, 411.816, 412.014, 412.049, 414.426, 42 CFR 435.1009

AMEND: 461-140-0296

RULE SUMMARY: OAR 461-140-0296 about the divisor for the computation of periods of disqualification from the Oregon Supplemental Income Program (OSIP) and the Oregon Supplemental Income Program Medical (OSIPM) due to disqualifying transfers of assets is being amended to provide a new divisor for those transfers where the initial month is on or after October 1, 2022. This change is made to reflect an increase in the average monthly cost to a private patient of nursing facility services in Oregon, as required by 42 U.S.C. §1396(p)(c)(1)(E). This amount is calculated by using the average monthly cost to a private patient of nursing facility services in Oregon.

CHANGES TO RULE:

461-140-0296
Length of Disqualification Due to an Asset Transfer; OSIP and OSIPM ¶

(1) This rule applies to individuals in the OSIP and OSIPM programs who live in a nonstandard living arrangement (see OAR 461-001-0000).¶
(2) A financial group (see OAR 461-110-0530) containing a member disqualified due to the transfer of an asset is disqualified from receiving benefits. The length of a disqualification period resulting from the transfer is the number of months equal to the uncompensated value (see OAR 461-140-0250) for the transfer divided by the following dollar amount:¶
(a) If the initial month (see OAR 461-001-0000) is prior to October 1, 1998-$2,595.¶
(b) If the initial month is on or after October 1, 1998 and prior to October 1, 2000-$3,320.¶
(c) If the initial month is on or after October 1, 2000 and prior to October 1, 2002-$3,750.¶
(d) If the initial month is on or after October 1, 2002 and prior to October 1, 2004-$4,300.¶
(e) If the initial month is on or after October 1, 2004 and prior to October 1, 2006-$4,700.¶
(f) If the initial month is on or after October 1, 2006 and prior to October 1, 2008-$5,360.¶
(g) If the initial month is on or after October 1, 2008 and prior to October 1, 2010-$6,494.¶
(h) If the initial month is on or after October 1, 2010 and prior to October 1, 2016-$7,663.¶
(i) If the initial month is on or after October 1, 2016 and prior to October 1, 2018--$8,425.¶
(j) If the initial month is on or after October 1, 2018 and prior to October 1, 2020 ---$8,784~~.~~.¶
(k) If the initial month is on or after October 1, 2020~~---$9,551~~ and prior to October 1, 2022---$9,551.¶
(l) If the initial month is on or after October 1, 2022--- $10,342.¶
(3) For transfers by an individual and the spouse of an individual that occurred before July 1, 2006:¶
(a) Add together the uncompensated value of all transfers made in one calendar month and treat this total as one transfer.¶
(b) If the uncompensated value of the transfer is less than the applicable dollar amount identified in subsections (2)(a) to (2)(~~k~~l) of this rule, there is no disqualification.¶
(c) If there are multiple transfers in amounts equal to or greater than the applicable dollar amount identified in subsections (2)(a) to (2)(~~k~~l) of this rule, each disqualification period is calculated separately.¶
(d) The number of months resulting from the calculation in section (2) of this rule is rounded down to the next whole number.¶
(e) Except as provided in subsection (3)(f) of this rule, the first month of the disqualification is the month the asset was transferred.¶
(f) If disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.¶
(g) If both spouses of a couple are in a nonstandard living arrangement, part of the disqualification is apportioned to each of them. If one member of the couple is serving a disqualification when the other member of the couple begins living in a nonstandard living arrangement, any remaining disqualification is apportioned equally to each member of the couple. If one spouse is unable to serve the resulting disqualification period for any reason, the remaining disqualification applicable to both spouses must be served by the remaining spouse.¶
(4) For transfers by an individual and the spouse of an individual that occurred on or after July 1, 2006 and for income cap trusts under OAR 461-145-0540(10)(c) that accumulate funds in excess of the applicable dollar amount identified in subsections (2)(a) to (2)(~~k~~l) of this rule:¶
(a) If there are multiple transfers by the individual and the spouse of the individual, including any transfer less than the applicable dollar amount identified in subsections (2)(a) to (2)(~~k~~l) of this rule, the value of all transfers are added together before dividing by the applicable dollar amount identified in subsections (2)(a) to (2)(~~k~~l) of this rule. For an income cap trust, the calculation in section (2) of this rule is performed as soon as, but not before, funds have accumulated to at least the applicable dollar amount identified in subsections (2)(a) to (2)(~~k~~l) of this

rule.¶
(b) The quotient resulting from the calculation in section (2) of this rule is not rounded. The whole number of the quotient is the number of full months the financial group is disqualified. This number might be zero full months. The remaining decimal or fraction of the quotient is used to calculate a partial month disqualification, which may be in addition to one or more full months. This remaining decimal or fraction is converted to a number of days by multiplying the decimal or fraction by the number of days in the month following the last full month of the disqualification period, if any. If this calculation results in a fraction of a day, the fraction of a day is rounded down.¶
(c) Notwithstanding when the Department learns of a disqualifying transfer, the first month of the disqualification is:¶
(A) For an individual who transfers an asset while he or she is already receiving Department-paid long-term care (see OAR 461-001-0000) or home and community-based care (see OAR 461-001-0030) in a nonstandard living arrangement, the month following the month the asset was transferred, except that if disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.¶
(B) For an applicant who transfers an asset prior to submitting an application and being determined eligible and for an individual who transfers an asset while he or she is already receiving benefits in a standard living arrangement (see OAR 461-001-0000), the date of request (see OAR 461-115-0030) for long-term care or home and community-based care as long as the applicant or individual would otherwise be eligible but for this disqualification period. If the applicant or individual is not otherwise eligible on the date of request, the disqualification begins the first date following the date of request that the applicant or individual would be otherwise eligible but for the disqualification period.¶
(d) If both spouses of a couple are in a nonstandard living arrangement, part of the disqualification is apportioned to each of them. If one member of the couple is serving a disqualification when the other member of the couple begins living in a nonstandard living arrangement, any remaining disqualification is apportioned equally to each member of the couple. If one spouse is unable to serve the resulting disqualification period for any reason, the remaining disqualification applicable to both spouses must be served by the remaining spouse.¶
(5) If an asset is owned by more than one person, by joint tenancy, tenancy in common, or similar arrangement, the share of the asset owned by the individual is considered transferred when any action is taken either by the individual or any other person that reduces or eliminates the individual's control or ownership in the individual's share of the asset.¶
(6) For an annuity that is a disqualifying transfer under section (11) of OAR 461-145-0022, the disqualification period is calculated based on the uncompensated value as calculated under OAR 461-140-0250, unless the only requirement that is not met is that the annuity pays beyond the actuarial life expectancy of the annuitant. If the annuity pays beyond the actuarial life expectancy of the annuitant, the disqualification is calculated according to section (7) of this rule.¶
(7) If an individual or the spouse of an individual purchases an annuity on or before December 31, 2005, and the only requirement that is not met is that the annuity pays benefits beyond the actuarial life expectancy of the annuitant, as determined by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration, a disqualification period is assessed for the value of the annuity beyond the actuarial life expectancy of the annuitant.
Statutory/Other Authority: ORS 413.085, 414.685, ORS 409.050, 411.060, 411.704, 411.706
Statutes/Other Implemented: 42 USC 1396p, ORS 409.010, 411.060, 411.704, 411.706

AMEND: 461-195-0310

RULE SUMMARY: OAR 461-195-0310 is being amended to change requirements when the attorney of an applicant or recipient of assistance, or an insurance adjuster notifies the Department that they have a personal injury claim or settlement. The current rule requires that the notice to the Personal Injury Liens (PIL) Unit, OPAR, must be sent by mail or fax. The change to the rule will require attorneys and insurance adjusters to submit the notice via PIL's online portal. The rule is also being amended to update statutes and other laws or regulations the rule is based upon.

CHANGES TO RULE:

461-195-0310
Notice of Claim or Action by Applicant or Recipient ¶

(1) ~~A~~If an applicant (see OAR 461-195-0301) for or recipient (see OAR 461-195-0301) of assistance (see OAR 461-195-0301) ~~who~~ has a claim (see OAR 461-195-0301) for a personal injury (see OAR 461-195-0301) or begins an action (see OAR 461-195-0301) to enforce such claim ~~, or the attorney,~~one of the following parties must notify the Department (see OAR 461-195-0301) and the CCO (see OAR 461-195-0301) of the recipient, if the recipient is receiving services from the CCO, within ten days of initiating that claim or action, or, if the action was initiated prior to the application for assistance at the time of application.¶
(a) The applicant or recipient; or¶
(b) If any of the following persons are pursuing the claim or action on behalf of the applicant or recipient, then such person must make the notification:¶
(A) A personal representative (see OAR 407-014-0000), ~~or~~¶
(B) An authorized representative (see OAR 410-200-0015 and 461-115-0090) ~~for the applicant or recipient must notify the Department (see OAR 461-195-0301) and the CCO (see OAR 461-195-0301) of the recipient, if the recipient is receiving services from the CCO, within ten days of initiating,~~¶
(C) A guardian or conservator for the applicant or recipient, as defined in ORS 125.005, or¶
(D) A personal representative as defined in ORS 111.005 or an affiant as defined in ORS 114.505 for the estate of the applicant or recipient, or¶
(c) If the applicant or recipient is under the age of 18 or is an incapacitated adult, then a parent, guardian, conservator, foster parent, caretaker relative (see OAR 461-001-0000), personal representative, or authorized representative must make the notification; or¶
(d) If any attorney is representing any of the above parties in relation to th~~a~~te claim or action, ~~unless the action was initiated prior to the application for assistance.~~¶
~~(a) If the~~then the attorney must make the notification.¶
(2) A party against whom a claim is made or an action ~~wa~~is initiated ~~prior to the application for assistance, the applicant must notify the Department at the time of applica~~, or if such party is represented by an attorney in relation to the claim or action then the attorney, or if the party is not represented by an attorney but is represented by an insurer then the insurer, must notify the Department (see OAR 461-195-0301) and the CCO (see OAR 461-195-0301) of the recipient, if the recipient is receiving services from the CCO, immediately upon entry of any judgment rendered in favor of a recipient or the execution of any settlement or compromise of a claim or action.¶
(~~b~~3) The notification must include:¶
(~~A~~a) The names and addresses of all parties against whom the action is brought or claim is made;¶
(~~B~~b) A copy of each claim demand; ~~and~~¶
(~~C~~c) If an action is brought, the case number and the county where the action is filed~~.~~; and¶
(~~c~~d) ~~A parent, guardian, foster parent, caretaker relative, attorney, personal representative, or authorized representative must make the notification on behalf of an individual under the age of 18 or an incompetent adult.~~For notices submitted through the injury reporting website (see sections 4 and 8 of this rule) the information may be required to include:¶
(A) Information regarding the recipient or applicant,¶
(B) Information regarding the attorney, and¶
(C) Information regarding the injury or accident related to the action or claim. ¶
(~~2~~4) Notification required under section (1) of this rule must be sent to the Personal Injury Liens Unit, Office of Payment Accuracy and Recovery, Department of Human Services~~, by mail or~~ as follows:¶
(a) When the party required to provide notice is represented by an attorney or insurer, notification must be sent through the secure injury reporting portal website (see section (6) of this rule).¶
(b) When the party required to provide notice is not represented by an attorney or insurer, by mail, facsimile (see sections (~~4~~6) and (~~5~~7) of this rule), or through the injury reporting portal website (see section (8) of this rule).¶

(~~3~~5) ~~N~~Other than notices submitted through the injury reporting website, notices required by ORS 416.530 to be sent to the Oregon Health Authority (Authority) may be consolidated with similar notices to the Department and sent to the Personal Injury Liens Unit. A consolidated notice is considered notice to the Authority if the Authority's interest or claim in the matter is identified in the notice consistent with requirements in the applicable statute. (See also OAR 943-001-0020(2)(e).)¶
(~~4~~6) The mailing address for the Personal Injury Liens Unit is: Personal Injury Liens Unit, PO Box 14512, Salem OR 97309-0416.¶
(~~5~~7) The facsimile number for the Personal Injury Liens Unit is (503) 378-2577 and the telephone number is (503) 378-4514.¶
(~~6~~8) ~~If an applicant for or recipient of assistance- or the attorney,~~The website for the Personal Injury Lien Unit's secure injury reporting portal is https://apps.oregon.gov/OPAR/PIL/¶
(9) If a person~~al re~~~~presentative, or authorized representative for the applicant or recipient -~~quired to provide notice under section (1) of this rule fails to give the notification as required by this rule, the Department or the CCO of the recipient, if the recipient is receiving services from the CCO, has a cause of action under ORS 416.610 against the recipient for amounts received by the recipient pursuant to a judgment (see OAR 461-195-0301), settlement (see OAR 461-195-0301), or compromise (see OAR 461-195-0301) to the extent that the Department or the CCO could have had a lien against such amounts had such notice been given. At least 30 days prior to commencing an action under ORS 416.610, the Personal Injury Liens Unit and the CCO, if any, must consult with each other.
Statutory/Other Authority: ORS 409.050, 410.070, 411.060, 411.070, 412.049, 413.033, 413.042, 413.085, 414.6~~85~~19, 416.570
Statutes/Other Implemented: 414.619, ORS 409.050, 410.070, 411.060, 411.070, 412.049, 413.033, 413.042, 413.085, 41~~4.685~~6.570, 416.510, 416.530, 416.610