

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE  
SECRETARY OF STATE

CHERYL MYERS  
DEPUTY SECRETARY OF STATE  
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK  
DIRECTOR

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

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

**SSP 40-2023**

CHAPTER 461  
DEPARTMENT OF HUMAN SERVICES  
SELF-SUFFICIENCY PROGRAMS

**FILED**

07/26/2023 4:11 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Expanding Continuous Eligibility in most OSIPM and QMB programs.

EFFECTIVE DATE: 07/26/2023 THROUGH 01/21/2024

AGENCY APPROVED DATE: 07/26/2023

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

2885 Chad Drive  
Eugene, OR 97408

Filed By:  
Meorah Solar  
Rules Coordinator

NEED FOR THE RULE(S):

OAR 461-135-0010 about Assumed, Continuous, and Protected Eligibility for Medical Programs needs to be amended to implement new policy. Oregon applied for and was granted a Medicaid Section 1115 Demonstration waiver to expand continuous eligibility previously restricted to pregnant individuals and children for 12 months to children until their 6th birthday, and individuals ages 6 and older to 24 months. This waiver authority took effect July 1, 2023; therefore, these rule changes are necessary to support implementation. The changes surrounding protected eligibility were added to align with terminology used by HSD medical programs for consistency. The removal of the language about long-term care services will help clarify that continuous eligibility does not apply to service benefits.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-135-0010 will result in serious prejudice to the public interest, the Department, and individuals newly eligible for continuous medical benefits. The Department needs to proceed by temporary rule because the length of time needed to establish a permanent rule will not comply with the Governor's office. The Governor's office has directed ODHS to implement Continuous Eligibility effective July 1, 2023. The Department also needs to proceed by temporary rule due to immediate nature of ongoing medical benefit eligibility determinations and the need for Department rules and policies to be in alignment. Failure to act immediately could result in confusion for administrative law judges, state employees, recipients of medical benefits, and the public. Failure to act immediately could also result in incorrect medical closures or invalid decision notices. Making these changes will result in alignment of rule with the Governor's directive, current process, system functionality, and valid decision notices.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

2022-2027 Medicaid 1115 Demonstration Waiver, available here:  
<https://www.oregon.gov/oha/hsd/medicaid-policy/pages/waiver-renewal.aspx#:~:text=The%202022%2D2027%20waiver%20also,2024%20for%20eligible%20OHP%20members.>

AMEND: 461-135-0010

RULE SUMMARY: OAR 461-135-0010 about assumed and continuous eligibility for medical programs is being amended to reflect the expansion of continuous eligibility for most OSIPM programs and QMB programs (QMB, SMB, SMF) for children up to age 6, and 24 months of continuous eligibility for individuals ages 6 and older. It also being amended to more clearly explain protected eligibility for pregnant individuals. A reference to the HSD medical rule is being added where the details of continuous and protected eligibility are outlined. This rule is also being amended to delete sections explaining that individuals who are assumed eligible for OSIPM are not assumed eligible for long-term care services.

CHANGES TO RULE:

461-135-0010

Assumed and, Continuous, and Protected Eligibility for Medical Programs ¶¶

(1) This rule sets out when an individual is assumed eligible for certain medical programs because the individual receives or is deemed to receive benefits of another program. This rule also sets out when the eligibility (see OAR 461-001-0000) of an individual shall continue or remain protected after they become ineligible. ¶¶

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

(3a) ~~A pregnant individual who was eligible for and receiving medical assistance under the OSIPM program and becomes ineligible while pregnant is continuously eligible for Medicaid and can continue to receive OSIPM benefits until the last day of the twelfth month following the month in which the last day of the pregnancy falls.~~ ¶¶

(4) ~~A child (see described in paragraphs (A) or (B) of this subsection who meet the residency requirements in OAR 461-001-0000) born to an individual eligible for and receiving OSIPM benefits is assumed eligible for medical benefits under this section until the end of the month the child turns one year of age.~~ ¶¶

(5) ~~The individuals described in subsection (a) and (b) of this section are assumed eligible for OSIPM (except OSIPM-EPD) unless subsection (c) or (d) of this section applies:~~ 120-0010, the requirements in section (1) of OAR 461-120-0345, and the medical assignment requirements in OAR 461-120-0315, are assumed eligible for OSIPM. ¶¶

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

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

(b) An individual who receives benefits under both Part A of Medicare and SSI is assumed eligible for the OSIPMQMB-BAS program. ¶¶

(c) ~~An unless the individual does described in subsection (a) or (b) of this section who is in a nonstandard living arrangement (see not meet the residency requirements in OAR 461-001-0000) is not eligible for long-term care (see OAR 461-001-0000) services if the individual would otherwise be ineligible for OSIPM due to a disqualifying transfer of assets (120-0010, the requirements in section (1) of OAR 461-120-0345, and the medical assignment requirements in OAR 461-1420-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client).~~ ¶¶

(d) ~~An individual described~~ 315. ¶¶

(3) Continuous eligibility. Effective July 1, 2023, the Department adopts the continuous eligibility provisions in subsection (a2) or (b) of the section who is in a nonstandard living arrangement is not assumed eligible for long-term care services if countable (see OAR 461-001-0000) resources exceed the limit after performing the calculation of OAR 410-200-0135 for the OSIPM and QMB programs, except for eligibility for the following individuals: ¶¶

(a) Those receiving or approved for OSIPM under OARs 461-160-05835-0745 or 461-135-0750. ¶¶

(6b) For ~~In~~ the purposes of this section the definition of a "child" means an unmarried individual under age 19 and

includes natural, step, and adoptive children. When eligibility for a child is redetermined and would result in a loss of eligibility for OSIPM prior to the end of the renewal month, the child remains continuously eligible for OSIPM through the end of the renewal month, unless the child:

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

(b) Moves out of state;

(c) Voluntarily ends benefits; or

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

(7) An individual who receives both benefits under Part A of Medicare and SSI benefits is assumed eligible for the QMB-BAS program unless the individual does not meet the requirements of OAR 461-120-0345 or the residency requirements (see OAR 461-120-0010) QMB programs, those who are no longer enrolled in Medicare Part A.

(4) Protected eligibility. The Department adopts the protected eligibility provisions in section (3) of OAR 410-200-0135 for the OSIPM program for a pregnant individual who receives OSIPM for any portion of their pregnancy.

Statutory/Other Authority: ORS 409.050, ORS 411.060, 411.070, 411.404, 413.085, 414.685, 42 CFR 435.926

Statutes/Other Implemented: ORS 409.070, 411.0670, 411.404, ORS 409.0710, 411.404, 42 CFR 435.926,

42 CFR 435.120, 42 CFR 435.123, 42 CFR 435.170, American Rescue Plan Act of 2021 (PL 117-2), Consolidated Appropriations Act, 2023 (H.R. 2617)