Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services - Children, Adults and Families	461
Agency and Division	Administrative Rules Chapter Number

Annette Tesch	Human Services Building, 500 Summer St. NE - E48, Salem, OR 97301-1066	(503) 945-6067
Rules Coordinator	Address	Telephone

RULE CAPTION

Changing OARs affecting public assistance, medical assistance or food stamp clients

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

November 22, 2006	10:00a.m.	Rm 255, 500 Summer St. NE, Salem, OR	Annette Tesch
Hearing Date	Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request

RULEMAKING ACTION

ADOPT: 461-145-0185, 461-145-0343

AMEND: 461-110-0630, 461-115-0010, 461-115-0050, 461-115-0651, 461-115-0705, 461-125-0370, 461-130-0310, 461-135-0010, 461-135-0075, 461-135-0708, 461-135-0780, 461-135-0950, 461-135-0960, 461-140-0210, 461-140-0220, 461-140-0242, 461-140-0270, 461-140-0296, 461-140-0300, 461-145-0020, 461-145-0022, 461-145-0130, 461-145-0140, 461-145-0175, 461-145-0220, 461-145-0280, 461-145-0310, 461-145-0330, 461-145-0470, 461-145-0580, 461-150-0055, 461-155-0225, 461-155-0250, 461-155-0270, 461-155-0300, 461-155-0660, 461-160-0010, 461-160-0580, 461-160-0610, 461-160-0620, 461-170-0130, 461-175-0010, 461-175-0250, 461-180-0085, 461-180-0090, 461-185-0050, 461-195-0301, 461-195-0305, 461-195-0310, 461-195-0325, 461-195-0611

REPEAL: 461-110-0610

Amend and Renumber: 461-115-0510 to 461-175-0222

ORS 409.050, 411.060, 411.070, 411.095, 411.700, 411.710, 411.816, 414.042, 416.510-416.610, 418.100

Stat. Auth.

7 CFR 273.2(f)(1)(ii), 273.2(f)(2)(ii), 273.7, 273.8, 273.12(e) , 273.14(b), 273.15(k) , 273.16; 20 CFR 404.1509, 416.905(a), 416.1103, 416.1205; 42 CFR 431.210, 431.211, 431.213, 435.135, 435.541(c), 435.601, 435.930; 45 CFR 264.1; 7 U.S.C 2014(d) and (g), (Farm Security and Rural Investment Act of 2002, section 4102 and 4107); 42 U.S.C. 608(a)(7); Section 6036 of the federal Deficit Reduction Act of 2005 (Pub. L. 109-171) amending section 1903 of the Social Security Act, 42 U.S.C. 1396a(a)(25), 42 U.S.C. 1396b; Section 1613(a)(1) of the Social Security Act; SSA Program Operations Manual section SI 01130.100; Section 1917 of the Social Security Act (42 U.S.C. 1396p(c)); Section 1917 of the Social Security Act (42 U.S.C. 1396p(c)) as amended by the Deficit Reduction Act of 2005 (DRA); Section 1924 of the Social Security Act (42 U.S.C. 1396r-5(d)) as amended by the Deficit Reduction Act of 2005 (DRA); Section 1935(a)(5)(E) of the Social Security Act; The Deficit Reduction Act of 2005 (DRA), Section 6065, amending Section 1902(a)(10)(A)(i)(II) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(II)); Section 503 of P.L. 94-566; Deficit Reduction Act of 2005 (DRA)

Other Authority

ORS 25.020, 25.080, 409.020, 411.060, 411.070, 411.095, 411.113, 411.117; 411.632, 411.700, 411.710, 411.816, 414.042, 414.047, 414.420, 414.422, 414.424, 416.510-416.610, 418.100, 418.131, 1999 Or. Laws ch. 859

Stats. Implemented

RULE SUMMARY

OAR 461-110-0610 is being repealed and OAR 461-110-0630 is being amended so that a single rule will be used to describe the concept of a need group, which is the individuals whose needs are used in determining eligibility and benefit level for food stamps, medical assistance, and public assistance programs. OAR 461-110-0630 is also being amended to change who is considered part of the need group in the QMB (Qualified Medical Beneficiaries) program and to add cross references to other rules.

OAR 461-115-0010 is being amended to clarify current policy regarding the application process for food stamps, public assistance, and medical assistance. The amendment indicates that while a client may apply for more than one program utilizing one application, the application process for different programs may vary. This rule is also being amended to update terms and use more precise language.

OAR 461-115-0050 is being amended to correct a rule cross-reference, clarify the rule and state when a new application is not required in the Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), and Oregon Health Plan (OHP) programs.

OAR 461-115-0510 is being amended and renumbered to OAR 461-175-0222 to outline the information that will be included in the notice that the Food Stamp certification period is ending. The certification period means the period for which a client is certified eligible for the Food Stamp program.

OAR 461-115-0651 is being amended to make permanent a temporary rule change adopted on September 1, 2006 that removed a requirement to verify citizenship for initial applicants to the Food Stamp program because routine verification is not required by the federal regulations.

OAR 461-115-0705 about required verification is being amended to add the citizenship verification requirements of the Deficit Reduction Act of 2005 into the verification requirements for Breast and Cervical Cancer Medical (BBCM), Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), and Substitute Adoptive Care (SAC) programs. OAR 461-135-0010 about assumed eligibility for medical programs is being amended to add the new citizenship verification requirements of OAR 461-115-0705 into the assumed eligibility requirements for the Medical Assistance Assumed (MAA) and the Substitute Adoptive Care (SAC) programs. These amendments make permanent temporary rules adopted on September 1, 2006. Additionally, OAR 461-115-0705 is being amended to remove a reference regarding the requirement to provide verification to support a request for waiver of a premium arrearage in the OHP program, as it is redundant (the information is already required to be verified in section (3) of the rule).

OAR 461-125-0370 is being amended to more accurately restate the requirements in 42 CFR 435.541 about the effect of a disability determination by the Social Security Administration (SSA) on the eligibility of clients in the OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon Supplemental Income Program – Medical) programs.

OAR 461-130-0310 about the participation classifications for Employment and Training programs is being amended to clarify when a person may be exempt from participating in the Oregon Food Stamp Employment Transition Program (OFSET) program due to taking care of a person with a disability that lives in a different

household and eliminate use of the "incapacitated" per ORS 182.109. This rule is also being amended add and updated cross-references to other rules and to use more precise language.

OAR 461-135-0075 is being amended to comply with federal requirements by replacing the current language, which is based on the Oregon Option waiver of 1996, with current language found in federal law at 42 U.S.C. 608(a)(7) and in regulation at 45 CFR 264.1. Under the federal law, families with an adult receiving TANF are not eligible, in most instances, for TANF benefits for more than 60 months in a lifetime. The amended rule also states exceptions to the 60-month limit and the priority system if the state exceeds its extension allotment under federal law.

OAR 461-135-0708 is being amended to correct a cross-reference to a rule that was renumbered.

OAR 461-135-0780 (eligibility for Pickle Amendment clients in the OSIPM program), 461-155-0250 (income and payment standard for OSIP and OSIPM), 461-155-0270 (payment standard for OSIP and OSIPM clients in nonstandard living arrangements), 461-155-0300 (shelter-in-kind standard for OSIP, OSIPM, QMB), 461-160-0580 (excluded resource - community spouse provision in the OSIP and OSIPM programs except OSIP-EPD and OSIPM-EPD), and 461-160-0620 (income deductions and client liability for Long Term Care Services and Waivered Services) are being amended to reflect the Federal Cost of Living Adjustments that happen every January. This keeps Oregon in line with current Federal Income standards for Department Medicaid programs. These rules are also being amended to add cross-references to other rule numbers and update cross-references to definitions that are being moved to other rule numbers.

OAR 461-135-0950 about the eligibility of inmates for public assistance, medical assistance, and food stamps is being amended to correct a rule cross reference.

OAR 461-135-0960 about eligibility for the OSIPM (Oregon Supplemental Income Program Medical) and SAC (Medical Coverage for Children in Substitute or Adoptive Care) programs for individuals in state psychiatric institutions and training centers is being amended to indicate the current facilities covered in this rule.

OAR 461-140-0210 and 461-140-0242 is being amended concerning the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs to no longer impose a disqualification for a transfer of assets for less than fair market value, for clients in *standard living arrangements* as defined in OAR 461-110-0110. Federal regulations allow states the option of imposing disqualifications for this group of clients. The Department is exercising its option to no longer impose a disqualification. OAR 461-140-0210 concerning Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Medical (REFM) and Substitute or Adoptive Care (SAC) programs is also being amended to restrict the imposition of a disqualification for a transfer of assets for less than fair market value to specific non-standard living arrangement situations. Federal regulations allow states the option of restricting the imposition of disqualifications for this group of clients.

OAR 461-140-0220 is being amended to remove the disqualification for a transfer of assets for less than fair market value for clients in standard living arrangements in the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs. This rule is also being amended to replace the reference regarding the life expectancy table from the table in the Centers for Medicare and Medicaid State Medicaid Manual, with a reference to the actuarial tables of the Office of the Chief Actuary of the Social Security Administration. This rule is also being amended to correct, update, and add cross-references to other rules.

OAR 461-140-0270 about disqualification due to a resource transfer is being amended to remove the reference to transfers of resource in the rule title and replacing it with a reference to transfers of assets. This rule is also being amended to include the Extended Medical (EXT) program as a program subject to the requirements of this rule. This rule change does not affect disqualification in the Refugee (REF) or Temporary Assistance to Needy Families (TANF) programs because these programs only impose disqualifications for invalid transfer of resources.

OAR 461-140-0296 concerning the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs is being amended to no longer impose a disqualification for a transfer of assets for less than fair market value for clients in standard living arrangements. The Department is exercising its option under federal regulations to no longer impose a disqualification for this group of clients. Also, the Department is opting to begin the disqualification period the month following the month of the transfer, for transfers of assets that occurred prior to July 1, 2006. The rule is also being amended to replace the reference regarding the life expectancy table from the table in the Centers for Medicare and Medicaid State Medicaid Manual with a reference to the actuarial tables of the Office of the Chief Actuary of the Social Security Administration. This rule is also being amended to clarify that although the DRA allows calculating partial month disqualifications, the Department will exercise its option to accumulate multiple fractional transfers and not impose a disqualification for a transfer of assets involving an income cap trust until a full month is involved. This rule is also being amended to update cross-references to definitions that are being added or moved to other rule numbers.

OAR 461-140-0300 is being amended to permit the waiver of a disqualification due to an asset transfer if certain hardship requirements are met by clients in the Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Medical (REFM) and Substitute and Adoptive Care (SAC) programs.

OAR 461-145-0020 and OAR 461-145-0022 which concern the treatment of annuities for eligibility purposes are being amended to replace the reference to the life expectancy table from the table in the Centers for Medicare and Medicaid State Medicaid Manual, with a reference to the actuarial tables of the Office of the Chief Actuary of the Social Security Administration, a change that affects clients of the OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) and QMB (Qualified Medicare Beneficiaries) programs. These rules are also being amended to be consistent with the simultaneous change to no longer disqualify clients in *standard living arrangements* for transfers of assets for less than fair market value in division 140. These rules are also being amended to clarify that for an annuity that meets the criteria of the rule, monthly annuity payments will be counted as unearned income to the annuitant, regardless of who may be designated as the payee. These rules are also being amended to update cross-references to definitions that are being added or moved to other rule numbers.

OAR 461-145-0130 is being amended to clarify current policy regarding the treatment of earned income in the eligibility process for public assistance, medical assistance, and food stamps.

OAR 461-145-0140 about the treatment of the earned income tax credit in the eligibility process for food stamps, public assistance, and medical programs is being amended to align food stamp policy with TANF. The Farm Security and Rural Investment Act of 2002, section 4102 allows the state to simplify the treatment of some income types by allowing it to align food stamp policies with TANF. This amendment will exclude earned income tax credit as both income and resources for food stamps. The current policy requires the income be counted as a resource if it is retained for 12 months.

OAR 461-145-0175 about the treatment of Family Abuse Prevention Act (FAPA) payments authorized by the courts to victims of domestic violence in the eligibility process for food stamps, public assistance, and medical assistance is being amended to align food stamp policy with TANF. The Farm Security and Rural Investment Act of 2002, section 4102 allows the state to simplify the treatment of some income types by aligning food stamp and TANF policies. This amendment will exclude the first $2,500 FAPA payments as income and count any amount over $2,500 as a resource for food stamps. The current policy requires the income be counted as unearned income for food stamps.

OAR 461-145-0185 and 461-145-0343 are being adopted so that there are separate rules that cover the treatment of the value of manufactured and mobile homes as well as floating homes and houseboats as part of the eligibility process for public assistance, medical assistance, and food stamps. These topics are currently covered in OAR 461-145-0220, 461-145-0250, and 461-145-0420.

OAR 461-145-0220 about the treatment of a home in the eligibility process is being amended for the OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs to change the definition of contiguous property that is considered part of the home of the filing group. This rule is also being amended to update cross-references to definitions that are being added or moved to other rule numbers.

OAR 461-145-0280 --- about the treatment of in-kind income in the eligibility process for medical assistance, public assistance, and food stamps --- is being amended to state that in-kind income does not include shelter-in-kind income for all programs, that in-kind income does not include child support in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Refugee Medical (REFM), Substitute Adoptive Care (SAC), and Temporary Assistance to Needy Families (TANF) programs, and that in-kind income does not include an expenditure by a business entity that benefits a principal in the OHP program. This rule is also being amended clarify that in the Extended Medical (EXT) program all in-kind income is excluded, and that in the REFM program, in-kind income (except child support) is excluded. This rule is also being amended to remove the definition of in-kind income and to add cross-references to other rules.

OAR 461-145-0310 about the treatment of life estates in the eligibility process for medical assistance, public assistance, and food stamps, is being amended to add and correct cross references to other rules and to move a definition to OAR 461-001-0000.

OAR 461-145-0330 concerning the treatment of loans and interest on loans is being amended to replace the reference regarding the life expectancy table from the table in the Centers for Medicare and Medicaid State Medicaid Manual, with the actuarial tables of the Office of the Chief Actuary of the Social Security Administration, a change which impacts client of the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs. This rule is also being amended to include the policy on the treatment of purported loans that fail to meet the requirements of the rule and to cross-reference rules that explain technical terms used.

OAR 461-145-0470 is being amended to clarify that in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Refugee (REF), Refugee Medical (REFM), Substitute Adoptive Care (SAC) and Temporary Assistance to Needy Families (TANF) programs child support payments made to a third party for shelter expenses are treated in accordance with OAR 461-145-0080. This rule is also being amended to add the Extended Medical (EXT) program the programs that exclude shelter-in-

kind income (except child support). This rule is also being amended to relocate a definition to a rule where definitions are more easily located and to add and correct cross-references to other rules.

OAR 461-145-0580 about the treatment of veterans benefits in the eligibility process for public assistance, medical assistance, and food stamps is being amended to change the treatment these payments for QMB clients (Qualified Medicare Beneficiaries) so that the rule is clear that Veteran's Aid and Attendance payments are excluded for all QMB clients. This rule is also being amended to clarify that in the OSIP and OSIPM programs, when aid and attendance payments are received, the Veterans benefit payment is made up of both a pension and aid-and-attendance, the entire amount is excluded in the eligibility determination and counted in the benefit or patient liability calculations. Other sections of the rule are being amended to add cross-references and use more precise language.

OAR 461-150-0055 is being amended to clarify that the Oregon Health Plan (OHP) budget month for clients losing eligibility for the Breast and Cervical Cancer Medical (BCCM) and the Extended Medical (EXT) programs is the last month of their EXT eligibility period. This rule is also being amended to add cross-references to other rules.

OAR 461-155-0225 about the income standard for the OHP (Oregon Health Plan) program is being amended to add and correct cross references to other rules.

OAR 461-155-0250 about income and payment standards in the OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon Supplemental Income Program Medical) programs is also being amended to clarify how to deal with SIP (supplemental income) payments for SSI spouses when waivered services are involved. The rule is being amended to indicate that if the Social Security Administration considers the spouses as a couple for payment, then there is no SIP payment unless the client is blind; if the client is blind, the payment is at the couple, not individual, standard. This rule is also being amended to clarify that the 250 percent federal poverty level (FPL) adjusted income standard for the OSIPM-EPD (Employed Persons with Disabilities) program is only for earned income, and unearned income is not involved in this calculation. This rule is being further amended to update cross-references to defined terms.

OAR 461-155-0660 is being amended to only allow an accommodation allowance for clients who have a documented cost associated with accommodations, or who have a live-in provider. The title of the rule is being changed to clarify that the rule is to be used to help clients who have a disability and who have increased costs due to an accommodation issue, or who need help maintaining their residence while confined for a short time to a medical or care facility. This rule is also being amended because there is no need to allow home adaptations in this rule since OAR 461-155-0551 allows home adaptations.

OAR 461-160-0010 about the use of resources for determining financial eligibility for public assistance, medical assistance, and food stamp programs is being amended to remove language that gives service clients with a liability the ability to have more than the allowed resources and still be eligible. This rule is also being amended to move definitions to OAR 461-001-0000, update and add cross-references to definitions in other rules, and clarify the rule.

OAR 461-160-0610, 461-160-0620, and 461-185-0050 are being amended to comply with the federal statute and regulation whereby those individuals who are identified as eligible for Medicaid under the "Pickle Amendment" may receive benefits for in-home services provided under a Home and Community Based Waiver are not required to contribute any of their income toward the cost of their Medicaid-funded services. OAR 461-160-0620 is also being amended to indicate that adult disabled children, disabled widows and widowers, and widows or widowers who qualify under OAR 461-135-0820 are required to contribute toward the cost of their Medicaid-funded services if they reside in a nursing facility, an intermediate care facility for the mentally retarded (ICF/MR), or a state psychiatric institution.

OAR 461-170-0130 is being amended to include the QMB (Qualified Medicare Beneficiaries, additional medical coverage for Medicare recipients) program in the list of Medicaid programs that are required --- when a client, who is required to report a change in circumstances, makes a timely report of change that could reduce or end medical benefits --- to review each individual in the filing group for eligibility for other medical programs prior to reducing or ending medical benefits. If additional information is needed to act on the reported change by the client, members of the benefit group remain eligible from the date the change was reported until the Department determines their eligibility in accordance with application processing time frames. This rule is also being amended to cross-reference rules that explain technical terms.

OAR 461-175-0010 and 461-175-0250 are being amended to make it easier to understand the requirements that apply to mass change notices and to state that some of the requirements and exceptions to other decision notice requirements in the current rules apply only in the Food Stamp program. While the current rules treat mass change notice as exempt from requirements that apply to other decision notices, the proposed amendment treats mass change notices as a subcategory of the other types of notices.

OAR 461-180-0085 is being amended to include the QMB (Qualified Medicare Beneficiaries, additional medical coverage for Medicare recipients) program in the list of Medicaid programs for which, when eligibility for the program ends, the Department must consider the eligibility criteria for all other Medicaid programs before closing the case. This rule is also being amended to cross-reference rules that explain technical terms.

OAR 461-180-0090 is being amended for the OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) programs to allow clients who are under the age of 21 assumed eligibility for Medicaid effective the month prior to the client's initial month of federal Supplemental Security Income (SSI) payment eligibility.

OAR 461-195-0301, 461-195-0305, 461-195-0310, and 461-195-0325 about personal injury claims and liens, are being amended as a consequence of a recent U.S. Supreme Court decision that changed how states may recover from the proceeds of insurance settlements for accident related public assistance. These rules are also being amended to clarify Department processes, update information, and further delineate the responsibilities of the Department, prepaid managed care organizations (MCO's), and recipients of public assistance. These rules implement state law allowing recovery of public assistance funds when a judgment, settlement or compromise includes amounts of public assistance paid on behalf of a recipient.

OAR 461-195-0611 about Intentional Program Violations (IPVs) is being amended to clarify the process if there is a determination that an IPV waiver was signed under duress.

In addition, the above rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.

Per ORS 183.335(2)(b)(G), 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.

December 4, 2006
Last Day for Public Comment
Last day to submit written comments to the Rules Coordinator

Signature

Stephen H. Elmore
Printed Name

Date

(If you plan to attend the hearing and need auxiliary aids and services such as assistive listening devices or interpreters for the hearing impaired, please contact the Rules Coordinator as soon as possible about the type of aid or service needed. The hearing site is accessible for individuals with mobility impairments.)

A copy of the draft rules can be accessed at the self-sufficiency policy website:
http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm
To request a hardcopy, please contact the Rules Coordinator listed at the top of this form.

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday. ARC 920-2005

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Human Services - Children, Adults and Families — OAR Chapter 461

Agency and Division — Administrative Rules Chapter Number

In the Matter of: Adopting, Amending, Repealing, and Amending and Repealing Rules

Rule Caption: Changing OARs affecting public assistance, medical assistance or food stamp clients

Statutory Authority: ORS 409.050, 411.060, 411.070, 411.095, 411.700, 411.710, 411.816, 414.042, 416.510-416.610, 418.100

Other Authority: 7 CFR 273.2(f)(1)(ii), 273.2(f)(2)(ii), 273.7, 273.8, 273.12(e) , 273.14(b), 273.15(k) , 273.16; 20 CFR 404.1509, 416.905(a), 416.1103, 416.1205; 42 CFR 431.210, 431.211, 431.213, 435.135, 435.541(c), 435.601, 435.930; 45 CFR 264.1; 7 U.S.C 2014(d) and (g), (Farm Security and Rural Investment Act of 2002, section 4102 and 4107); 42 U.S.C. 608(a)(7); Section 6036 of the federal Deficit Reduction Act of 2005 (Pub. L. 109-171) amending section 1903 of the Social Security Act, 42 U.S.C. 1396a(a)(25), 42 U.S.C. 1396b; Section 1613(a)(1) of the Social Security Act; SSA Program Operations Manual section SI 01130.100; Section 1917 of the Social Security Act (42 U.S.C. 1396p(c)); Section 1917 of the Social Security Act (42 U.S.C. 1396p(c)) as amended by the Deficit Reduction Act of 2005 (DRA); Section 1924 of the Social Security Act (42 U.S.C. 1396r-5(d)) as amended by the Deficit Reduction Act of 2005 (DRA); Section 1935(a)(5)(E) of the Social Security Act; The Deficit Reduction Act of 2005 (DRA), Section 6065, amending Section 1902(a)(10)(A)(i)(II) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(II)); Section 503 of P.L. 94-566; Deficit Reduction Act of 2005 (DRA)

Statutes Implemented: ORS 25.020, 25.080, 409.020, 411.060, 411.070, 411.095, 411.113, 411.117; 411.632, 411.700, 411.710, 411.816, 414.042, 414.047, 414.420, 414.422, 414.424, 416.510-416.610, 418.100, 418.131, 1999 Or. Laws ch. 859

Need for the Rule(s):

OAR 461-110-0610 needs to be repealed and OAR 461-110-0630 needs to be amended to make the concept of a need group easier to locate and understand in the administrative rules. These changes will leave a single rule to describe the concept of a need group, and this concept may be more easily cross-referenced in other rules. OAR 461-110-0630 also needs to be amended to change who is considered part of the need group in the QMB (Qualified Medical Beneficiaries) program and to add cross references to other rules so the rule is accurate and easier to understand.

OAR 461-115-0010 needs to be amended to indicate that the application process for different programs may vary. For example, an intake interview is a required part of the application process in the Temporary Assistance to Needy Families (TANF) program, but it is not required for medical only programs. This rule also needs to be amended to update terms and use more precise language.

OAR 461-115-0050 needs to be amended to correct a rule cross reference, clarify the rule, and state when a new application is not required in the EXT, MAA, MAF, and OHP programs. The reference to OAR 461-135-0950(7) in subsection (3)(e) of this rule will be changed to reference OAR 461-135-0950. This rule will also be amended to state that a new application is not required to redetermine eligibility for the same program or to change between programs if a client is currently receiving benefits from one of the programs and the Department has sufficient evidence to redetermine eligibility for the same program or determine eligibility for the new program without a new application or by amending the current application.

OAR 461-115-0510 needs to be amended and renumbered to OAR 461-175-0222 to outline the information that will be included in the notification clients that their FS certification period is ending and to move this rule in the same division of rules as other rules regarding notice situations.

OAR 461-115-0651 needs to be amended to make permanent a temporary rule change adopted on September 1, 2006 that removed verification requirements in the Food Stamp program that were added in error on January 1, 2006, exceed what is required by the federal regulations, and created confusion about their applicability. This amendment is needed to avoid hardship to the client and additional workload for the workers. OAR 461-115-0610 already permits the Food Stamp program to verify citizenship if questionable, consistent with 7 CFR 273.2(f)(2)(ii).

OAR 461-115-0705 and 461-135-0010 need to be amended to comply with federal requirements that became effective July 1, 2006 regarding verification of U.S. citizenship as a condition of eligibility for Medicaid. As amended, these rules will meet the federal requirements by adding the citizenship verification requirements of the Deficit Reduction Act of 2005 into the BCCM, EXT, MAA, MAF, OHP, and SAC programs. Additionally, OAR 461-115-0705 needs to be amended to remove redundancy related to required verification in the OHP program.

OAR 461-125-0370 needs to be amended because its current text regarding the effect of a disability determination by SSA on the eligibility of clients in the OSIP and OSIPM programs appears inconsistent with the federal requirements. This rule is being amended to accurately reflect the requirements set forth in 42 CFR 435.541(c).

OAR 461-130-0310 needs to be amended to clarify the rule and adopt wording required per ORS 182.109. Clarification is needed to distinguish between providing care for a person who has a disability who lives in one's own home versus a person living elsewhere. This rule also needs to be amended to add and updated cross-references to other rules and to use more precise language.

OAR 461-135-0075 needs to be amended because the current language of the rule is based on the Oregon Option waiver, which expired in 2003. Without the waiver, Oregon is required to be in compliance with federal TANF time limit provisions. The rule is being amended to comply with federal requirements, state exceptions to the 60-month limit, and describe the priority system if the state exceeds its extension allotment under federal law.

OAR 461-135-0708 needs to be amended to correct a rule cross reference.

OAR 461-135-0780, 461-155-0250, 461-155-0270, 461-155-0300, 461-160-0580 and 461-160-0620 need to be amended because the Department is required to adjust its income standards as a result of any Congressionally approved increase. These rules also need to be amended to add cross-references to other rule numbers and update cross-references to definitions that are being moved to other rule numbers.

OAR 461-135-0950 needs to be amended to correct a rule cross reference. The reference to OAR 461-135-0010(2) in subsection (5)(b) of this rule is incorrect and has been changed to reference OAR 461-135-0010.

OAR 461-135-0960 needs to be amended because some of the facilities have changed names, a new facility has been opened, and one of the facilities has closed since the last rule revision. The rule is being amended to indicate the current facilities covered by the rule.

OAR 461-140-0210 and 461-140-0242 need to be amended for ease of administration. Current rules in division 140 regarding disqualifications have different requirements, depending on whether the client resides in a

standard living arrangement or *non-standard living arrangement* (as defined in OAR 461-110-0110) for clients of the GA, GAM, OSIP, OSIPM, and QMB programs. The rules are complex and time-consuming to administer. This change will simplify the policy and ease the administrative burden. Additionally, OAR 461-140-0210 needs to be amended for program alignment concerning the EXT, MAA, MAF, REFM and SAC programs by restricting disqualifications to specific non-standard living arrangement situations.

OAR 461-140-0220 needs to be amended for ease of administration. Current rules in division 140 regarding disqualifications have different requirements, depending on whether the client resides in a standard or nonstandard living arrangement. The rules are complex and time-consuming to administer. This change will simplify the policy and ease the administrative burden. Federal regulations allow states the option of imposing disqualifications for this group of clients. The Department is exercising its option to no longer impose a disqualification. The reference to the life expectancy table needs to be amended in order to be in compliance with the Deficit Reduction Act. This rule is also needs to be amended to correct, update, and add cross-references to other rules.

OAR 461-140-0270 needs to be amended to comply with Social Security Administration requirements concerning disqualifications due to transfers of assets for Medicaid programs. Currently, the rule only covers transfers of resources and does not include the EXT program. This amendment will comply with these requirements by making clients in the EXT, MAA, MAF, REFM, and SAC programs subject to the requirements of this rule regarding disqualification for transfers of assets (including both income and resources).

OAR 461-140-0296 needs to be amended for ease of administration. Current rules in division 140 regarding disqualifications have different requirements, depending on whether the client resides in a standard living arrangement or non-standard living arrangement. The rules are complex and time-consuming to administer. This change will simplify the policy and ease the administrative burden. For transfers of assets that take place prior to July 1, 2006, the penalty period needs to be amended to be the month following the month of the transfer in order to allow time for required notices in some situations and for consistency throughout the rule. The reference to the life expectancy table needs to be amended in order to be in compliance with the DRA. The amendment clarifying that the Department will not impose a disqualification for a transfer of assets for cases involving an income cap trust is to make official policy that already exists. This rule also needs to be amended to update cross-references to definitions that are being added or moved to other rule numbers.

OAR 461-140-0300 needs to be amended to comply with Social Security Administration requirements concerning disqualifications due to transfers of assets for Medicaid programs. Currently, the disqualification waiver does not apply to clients in the EXT, MAA, MAF, REFM, and SAC programs, and this amendment will include these programs.

OAR 461-145-0020 and OAR 461-145-0022 need to be amended to correct the reference to the life expectancy table in order to be in compliance with the DRA. References to the table for policies prior to the DRA are also being amended to reference the new table in order to simplify and align the policies. These rules also need to be amended to be consistent with simultaneous changes in division 140 regarding no longer disqualifying clients in *standard living arrangements* who transfer assets for less than fair market value. These rules also need to be amended to clarify that the monthly annuity payments will be counted as unearned income to the annuitant regardless of who is designated as the payee in order to make official policy that already exists. These rules also need to be amended to update cross-references to definitions that are being added or moved to other rule numbers.

OAR 461-145-0130 needs to be amended to clarify to clarify current policy regarding the treatment of earned income in the eligibility process for public assistance, medical assistance, and food stamps. These amendments provide specific direction about the treatment of earned income in the EXT program and the treatment of earned

in-kind income when it is an expenditure by a business entity that benefits a principal in the OHP program. Terminology is updated and the rule is reorganized.

OAR 461-145-0140 needs to be amended to align the treatment of earned income tax credit income by the Food Stamp program with TANF. The Farm Security and Rural Investment Act of 2002 allows the state the option of aligning the treatment of income and resources by the Food Stamp program with TANF policies to simplify the policies for both workers and clients. Oregon has chosen to accept this option for the treatment of earned income tax credit. This amendment simplifies the food stamp policy for both clients and Department workers by excluding the tax credit income rather than treating the lump sum or advanced payments differently.

OAR 461-145-0175 needs to be amended to align the treatment of Family Abuse Prevention Act (FAPA) payments in the Food Stamp and TANF programs. The Farm Security and Rural Investment Act of 2002 allows the state the option of aligning the treatment of income and resources by the Food Stamp program with TANF policies to simplify the policies for both workers and clients. Oregon has chosen to accept this option for the treatment of FAPA. This amendment simplifies the food stamp policy for both clients and department workers by excluding the first $2,500 in FAPA income and counting the remainder as a resource.

OAR 461-145-0185 and 461-145-0343 need to be adopted because these topics are currently covered in OAR 461-145-0420 about real property, which might not be perceived by staff and clients as covering manufactured and mobile homes, floating homes, and houseboats which are often not real property. The adoption of these rules will make it easier for staff and clients to locate the policy through separate rules that cover the treatment of the value of manufactured and mobile homes, floating homes, and houseboats as part of the eligibility process for public assistance, medical assistance, and food stamps.

OAR 461-145-0220 needs to be amended for the OSIP, OSIPM and QMB programs because federal law provides that property that can be sold separately from the home is still considered part of the home, as long as the property is not separated by land owned by people outside the filing group, even if it is separated by a public right-of-way, such as a road. This rule is being amended to comply with the federal requirement. This rule also needs to be amended to update cross-references to definitions that are being added or moved to other rule numbers.

OAR 461-145-0280 needs to be amended to change the language about the treatment of in-kind income. It will be amended to state that in-kind income does not include shelter-in-kind income for all programs, that in-kind income does not include child support in the MAA, MAF, OHP, REFM, SAC, and TANF programs, that in-kind income does not include an expenditure by a business entity that benefits a principal in the OHP program, and to clarify the treatment of in-kind income in the EXT and REFM programs. This rule is also needs to be amended so the definition of in-kind income may be located with other definitions in OAR 461-001-0000 and to add cross-references to other rules that the rules are easier for clients and staff to understand.

OAR 461-145-0310 needs to be amended to add and correct cross references to other rules so the rule is accurate and easier to understand. A definition needs to be moved a part of other rule changes designed to make definitions in Chapter 461 easier to locate.

OAR 461-145-0330 needs to be amended by referencing the correct life expectancy tables in order to be in compliance with federal requirements in the Deficit Reduction Act. In addition, the rule needs to be amended to make it easier for client to understand the policy on the treatment by loans; this need is being addressed by including the policy on the treatment of purported loans that fail to meet the requirements of the rule and cross-referencing rules that explain technical terms used.

OAR 461-145-0470 needs to be amended to clarify current policy regarding the treatment of child support payments made to a third party for shelter expenses and the treatment of shelter-in-kind income in the EXT

program. This rule also needs to be amended to relocate a definition to a rule where definitions are more easily located and to add and correct cross-references to other rules.

OAR 461-145-0580 needs to be amended because its current text incorrectly implies that for Veteran's Aid and Attendance payments to be excluded for the QMB program the client must be a service client. While in most cases veterans with Aid and Attendance will be service clients by the nature of the payments, it is possible a client could only want the payment of Medicare Premiums. Amending of this rule removes a potential barrier to QMB eligibility in the event that Aid and Assistance payments were not excluded for some clients. This rule also needs to be amended for clarification regarding the OSIP and OSIPM programs because as currently written, it could be interpreted to exclude for eligibility and count for benefit and liability calculations only the aid-and-attendance portion of the Veterans benefit payment and not the pension portion, which would not be correct. The rule is being amended to state the current policy to exclude the entire payment for eligibility determinations and count the entire payment for benefit and liability calculations. In addition, this rule needs to be amended to make it easier to understand, and it is being amended to add cross-references and more precise language.

OAR 461-150-0055 needs to be amended to clarify current policy regarding the OHP budget month for clients losing eligibility for BCCM and EXT and to add cross-references to other rules.

OAR 461-155-0225 needs to be amended to add and correct cross references to other rules so the rule is accurate and easier to understand.

OAR 461-155-0250 also needs to be amended because there are two ambiguous parts that need clarification. Eligibility group rules (in OAR Division 461-110) describe waivered services with a household, filing, financial, need, and benefit group of one. For income standards, this amendment clarifies that the Department considers them as part for a couple for payment standards. This rule also needs to be amended because its discussion of the OSIP-EPD and OSIPM-EPD income standards fails to mention that it is only based on earned (not unearned) income. This rule needs to be further amended to update cross-references to defined terms.

OAR 461-155-0660 needs to be amended in order to clarify eligibility components of the rule. Seniors and People with Disabilities (SPD) conducted a statewide review of the existing rule and found numerous occasions where the rule had been applied in error. The revised rule clarifies those areas where the rule was being applied incorrectly and simplifies calculation of the allowance for clients who have the need for an extra bedroom for a live-in provider. This rule also needs to be amended to eliminate the duplication with OAR 461-155-0551.

OAR 461-160-0010 needs to be amended to follow federal law that does not allow clients over resources to be eligible for Medicaid. The language being removed is seldom, if ever used, and does not match the current description of income standards or take into account that the current payment standard for OSIP is usually $0. This rule also needs to be amended to make the rules easier to understand and the definitions in Chapter 461 easier for clients and staff to locate. This rule is being amended to move a definition to OAR 461-001-0000 where other definitions are located, update and add cross-references to definitions in other rules, and clarify the rule.

OAR 461-160-0610, 461-160-0620, and 461-185-0050 need to be amended to add individuals eligible under the Pickle amendment to the groups listed in the rule which do not contribute toward the cost of the Medicaid care paid on their behalf. Without this amendment the Department is out of compliance with federal regulations concerning this group. OAR 461-160-0620 is also needs to be amended to indicate that adult disabled children, disabled widows and widowers, and widows or widowers who qualify under OAR 461-135-0820 are required to contribute toward the cost of their Medicaid-funded services if they reside in a nursing facility, an intermediate care facility for the mentally retarded (ICF/MR), or a state psychiatric institution.

OAR 461-170-0130 needs to be amended to align QMB with other Medicaid programs and comply with federal regulations that require the Department to continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible. This rule also needs to be amended to cross-reference rules that explain technical terms.

OAR 461-175-0010 and 461-175-0250 need to be amended because these rules are confusing and because they apply some requirements and exceptions that are unique to the Food Stamp federal regulations to other programs. These rules are being amended to treat mass change notices as a subcategory of the other types of decision notices and to state that some requirements and exceptions to requirements apply only to the Food Stamp program.

OAR 461-180-0085 needs to be amended to align QMB with other Medicaid programs and federal requirements. QMB clients, like the other programs listed in this rule, receive a medical card from the Department, have a medical start date and a medical benefit package. As amended, the rule will require the Department to continue to furnish Medicaid to QMB clients until they are found to be ineligible for Medicaid. This rule also needs to be amended to cross-reference rules that explain technical terms.

OAR 461-180-0090 needs to be amended in order to be in compliance with the Deficit Reduction Act, Section 6065. This amendment complies with the act by allowing clients in the OSIP and OSIPM programs who are under the age of 21 assumed eligibility for Medicaid effective the month prior to the client's initial month of federal Supplemental Security Income (SSI) payment eligibility.

OAR 461-195-0301, 461-195-0305, 461-195-0310, and 461-195-0325 need to be amended to ensure that Department rules reflect the ruling of the U.S. Supreme Court in Arkansas Department of Health and Human Services et. al. v. Ahlborn (May 1, 2006) and Department practices and policies are fully compatible with federal and state laws and contractual obligations and to improve the ability of the Department and managed care organizations to utilize these recovery processes.

OAR 461-195-0611 needs to be amended because it does not currently describe what happens if there is a determination that an IPV waiver was signed under duress. This rule is being amended to state the process after such a determination.

Documents Relied Upon (and where they are available): USDA Food and Nutrition Service, "Medicaid's Required Documentation of Citizenship; Its Effect on the Food Stamp Program", May 12, 2006 http://www.fns.usda.gov/fsp/whats_new.htm; Attachment 4 of DOJ Interim Guidance, 62 Fed. Reg. 61362 to 61365 (1997); 42 CFR § 435.541 located at http://www.access.gpo.gov/nara/cfr/waisidx_05/42cfr435_05.html; State Medicaid Directors Letter 06-012, dated June 9, 2006, located at http://www.cms.hhs.gov/SMDL/SMD/itemdetail.asp?filterType=date&filterValue=30|d&filterByDID=-1&sortByDID=1&sortOrder=ascending&itemID=CMS064441; http://www.cms.hhs.gov/MedicaidEligibility/05_ProofofCitizenship.asp#TopOfPage; Citizenship Documentation Interim Regulation, located at http://www.cms.hhs.gov/MedicaidEligibility/05_ProofofCitizenship.asp#TopOfPage; Section 6036 of the federal Deficit Reduction Act of 2005 (Pub. L. 109-171) amending section 1903 of the Social Security Act, 42 U.S.C. 1396b http://www.cms.hhs.gov/MedicaidEligibility/05_ProofofCitizenship.asp#TopOfPage; "HHS Issues Final Regulations with Comment on Citizenship Guidelines for Medicaid Eligibility" Medicaid Fact Sheet. July 06, 2006; Section 408 of the Social Security Act at http://www.ssa.gov/OP_Home/ssact/title04/0408.htm; Actuarial tables of the Office of the Chief Actuary of the Social Security Administration at http://www.ssa.gov/OACT/STATS/table4c6.html; Actuarial tables of the Office of the Chief Actuary of the Social Security Administration at http://www.ssa.gov/OACT/STATS/table4c6.html; Farm Security and Rural Investment Act of 2002, sections 4102 and 4107; Letter from the Centers for Medicare and Medicaid Services dated June 12, 2002, detailing

which Medicaid groups are protected from using their income to cover waivered services furnished by the Department; Arkansas Department of Health and Human Services et. al. v. Ahlborn at www.supremecourtus.gov/opinions/05pdf/04-1506.pdf; Oregon Law Center e-mail of August 29, 2006 at CAF Administrative Law Unit, 500 Summer St NE 2nd Floor , Salem Oregon.

Fiscal and Economic Impact, including Statement of Cost of Compliance:

Repealing OAR 461-110-0610 will have no fiscal impact on state agencies, the public, clients, local government, and business, including small business. There is no cost of compliance for small business. Amending OAR 461-110-0630 will impact a few clients of the QMB program and the Department but the Department is unable to estimate this impact because it does not centrally track the data necessary to make an estimate. There are no other impacts on state agencies, clients, and the public. There is no impact on local government, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-115-0010 to clarify Department rules may save Attorney General expenses, which are currently billed to the Department at a rate of $111 per hour. Clarification may also save contested case expenses. The Office of Administrative Hearings charges the Department $45 per hour, averaging about $365 per contested case referral. No other fiscal impacts on state agencies are anticipated. There is no fiscal impact on clients, the public, local government, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-115-0050 to clarify Department rules may save Attorney General expenses, which are currently billed to the Department at a rate of $111 per hour. Clarification may also save contested case expenses. The Office of Administrative Hearings charges the Department $45 per hour, averaging about $365 per contested case referral. No other fiscal impacts on state agencies are anticipated. There is no fiscal impact on clients, the public, local government, and business, including small business. There is no cost of compliance for small business.

Amending and renumbering OAR 461-115-0510 to OAR 461-175-0222 has no estimated fiscal impact on clients, the general public, state agencies, local government, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-115-0651 will have no fiscal impact on state agencies, local government, clients, the public, and business, including small business. There is no cost of compliance for small business.

The fiscal impacts associated with amending OAR 461-115-0705 and OAR 461-135-0010 are attributable to federal legislation and not the rules change alone. The federal Centers for Medicare and Medicaid Services Citizenship Documentation Interim Final Rule estimates that changes related to the Deficit Reduction Act of 2005 are not economically significant to small entities (including businesses, nonprofit organizations, and small governmental jurisdictions), small rural hospitals, the private sector, and State, local, or Tribal governments. The estimate is made with the assumption that Medicaid enrollees who are citizens will eventually provide the required documentation, and the only savings will come from those non-citizens who should not be receiving these Medicaid benefits. The interim rule further estimates that it will require an additional five minutes per individual for eligibility staff to complete the citizenship verification process and that this should not over burden the eligibility process. At this time, it is too early for the Department to estimate the total fiscal impact related to the implementation of the citizenship documentation requirements of this rule. All costs of implementation will be absorbed within the existing Department budget. The Department estimates that between 24,000 and 38,000 current Medicaid recipients will require assistance in obtaining documentation of citizenship at an average cost of $13 per individual (the average cost of obtaining an out-of-state birth certificate), and that an additional 43,000 new applicants may also require assistance during the first year. The Department will assist clients with payment for obtaining documentation of citizenship through February 28,

2007. At this time the total cost for providing this is assistance is not known because the Department does not have an estimate of the total number of individuals who will require assistance through February 28, 2007. The Department will receive a 50% federal match for costs associated with obtaining citizenship documentation. The Department has hired six temporary staff at salary range 15 for six months to assist with the initial impact related to documenting citizenship and identity. The total estimated cost for these temporary staff is $150,000 ($75,000–state, $75,000–federal match). At this time, it is too early for the Department to have an accurate estimate of other administrative costs associated with the implementation of this rule. The Department estimates that a total of 1,800 to 2,900 individuals will not be able to obtain citizenship documentation at all, and therefore, be found ineligible for Medicaid. In addition to this, based on federal estimates, the Department believes that there are as many as 350 non-citizens currently receiving Medicaid benefits in Oregon who are not eligible, and will be determined ineligible for Medicaid as a result of this rule change. Medicaid monthly capitation rates for the programs covered under this rule range from an estimated $85 to $380 per month. Medicaid providers will receive reduced reimbursement consistent with these numbers. There is no other estimated fiscal impact on local government. There are no costs of compliance for small business. The fiscal impact on small business is not significantly adverse. The economic effect on business is not significant.

The Department does not anticipate that amending OAR 461-125-0370 will have a fiscal impact on clients, the general public, state agencies, local governments, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-130-0310 may have a fiscal impact on food stamp clients who are caring for a person with a disability who resides in a different residence. This amendment allows the food stamp client to be exempt from the OFSET requirements (being subject to disqualification, the need to do 8-weeks of work search once every 12 months) if the client is providing the needed care 30 hours or more a week. Currently, there are no stated exemption criteria for this situation. The Department is unable to estimate the extent of this impact because it has no data collected that indicate how often this situation occurs. There are an average of 20,000 persons each month who are mandatory to participate in the OFSET program. The average cost per food stamp case is estimated at $171.20 per month. This change does not represent a cost or savings in state funds because food stamp benefits are 100% federally funded. There is no other fiscal impact on clients and the general public. There is no fiscal impact on the state agencies, local government, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-135-0075 will impact families with adults receiving TANF for 60 months or more. The Department is unable to determine the exact number of families that will be affected by this rule change because 1) some of the provisions of the law mean that some months on assistance may be exempted from the time limit requirement, and the Department does not have data available to determine who those families are, and 2) some families are allowed to receive TANF in excess of 60 months (see 42 U.S.C. 608(a)(7)(C). The qualifying requirements for these families are not recorded in DHS computer systems, therefore the Department cannot accurately predict how many clients or families the new rule will affect. This amendment has a fiscal impact on the Department because a number of clients who, after July 2008, will no longer receive TANF benefits and will not be eligible for extensions under federal law (and this rule). This may increase the number of people seeking other types of assistance from other programs of the Department. No other state agencies are likely to have any measurable impact as a result of this rule change. There is a fiscal impact on local government. County agencies that help low income individuals and families will likely be impacted by this rule change. County health departments and clinics, WIC providers and other local social service agencies are likely to experience an increase in the number and types of requests for assistance from families who no longer receive TANF. There is no fiscal impact on business, including small business. There is no cost of compliance for small business.

Amending OAR 461-135-0708 has no fiscal impact on state agencies, local government, clients, the public, and business, including small business. There is no cost of compliance for small business.

Amending rules 461-135-0780, 461-155-0250, 461-155-0270, 461-155-0300, 461-160-0580 and 461-160-0620 will have no anticipated significant fiscal impact on state agencies, local government, members of the public other than clients, and business including small business. There is no cost of compliance for small business. It is possible that a few clients will lose eligibility as a result. Some clients may be required to make increased payments as a result. The Department does not have information available about the number of clients affected or the specific increases that would result because the 2007 cost of living increases will not be known until November.

Amending OAR 461-135-0950 for clarification may save Attorney General expenses, which are currently billed to the Department at a rate of $111 per hour. Clarification may also save contested case expenses. The Office of Administrative Hearings charges the Department $45 per hour, averaging about $365 per contested case referral. No other fiscal impacts on state agencies are anticipated. There is no fiscal impact on clients, the public, local government, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-135-0960 will have no fiscal impact on any state agencies, clients, providers, local government, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-140-0210 and 461-140-0242 is expected to have no fiscal impact on the Department or clients with respect to the GA, GAM, OSIP, OSIPM, and QMB program changes. Under the Deficit Reduction Act of 2005, the look-back period for disqualifying transfers of assets was extended to 5 years and the penalty for a disqualifying transfer is implemented when the client is found eligible (except for the transfer). Therefore, even though clients will no longer serve disqualifications when they are in standard living arrangements, if they apply for and are found eligible for benefits in a nonstandard living arrangement within 5 years of the transfer, the penalty will still be served. The Department does not track disqualifications so it does not know how many transfers of assets are completed by clients in standard living arrangements, but would expect that there are very few and of those few, the transfer would cause a penalty when the client applied for benefits in a nonstandard living arrangement within the following 5 years. For the EXT, MAA, MAF, REFM and SAC program changes, the Department is unable to estimate the fiscal impact because the Department does not track disqualifications due to invalid transfers of assets, and does not know how many clients will be impacted, or the impact on the Department budget, but any impact on clients and the Department is believed to be insignificant. This change may impact the Department and the Office of Administrative Hearings by saving contested case expenses. The Office of Administrative Hearings charges the Department $45 per hour, averaging about $365 per contested case referral. There are no other fiscal impacts on state agencies. There are no other fiscal impacts on the public, clients, and state agencies. There is no fiscal impact on local government or business, including small business. There is no cost of compliance for small business.

Amending OAR 461-140-0220 is expected to have no fiscal impact on clients. Even though clients will no longer serve disqualifications when they are in standard living arrangements, if they apply for and are found eligible for benefits in a non-standard living arrangement within 5 years of the transfer, the penalty will still be served. The Department does not track disqualifications so it does not know how many transfers of assets are completed by clients in standard living arrangements, but would expect that there are very few and of those few, the transfer would cause a penalty when the client applied for benefits in a non-standard living arrangement within the following 5 years. This change may impact the Department and the Office of Administrative Hearings by saving contested case expenses. The Office of Administrative Hearings charges the Department $45 per hour, averaging about $365 per contested case referral. There are no other fiscal impacts on state agencies. There are no fiscal impacts on the public, local government, or business, including small business. There is no cost of compliance for small business.

The Department is not able to estimate the fiscal impact of amending OAR 461-140-0270 on the Department and clients because the Department does not track disqualifications due to invalid transfers of assets and does not know how many clients will be impacted, or the impact on the Department budget, but any impact on clients and the Department is believed to be insignificant. Clarification of Department rules may save Attorney General expenses, which are currently billed to the Department at a rate of $111 per hour. Clarification may also save contested case expenses. The Office of Administrative Hearings charges the Department $45 per hour, averaging about $365 per contested case referral. The Department does not believe that this amendment will have any other identifiable fiscal impact on state agencies. There is no fiscal impact on local government, the public, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-140-0296 may impact the Department and the Office of Administrative Hearings by saving contested case expenses. The Office of Administrative Hearings charges the Department $45 per hour, averaging about $365 per contested case referral. There are no other fiscal impacts on state agencies. There are no fiscal impacts on the clients, the public, local government, or business, including small business. There is no cost of compliance for small business.

The Department is unable to estimate the fiscal impact of amending OAR 461-140-0300 because the Department does not track disqualifications due to invalid transfers of assets and does not know how many clients will be impacted, or the impact on the Department budget, but any impact on clients and the Department is believed to be insignificant. Clarification of Department rules may save Attorney General expenses, which are currently billed to the Department at a rate of $111 per hour. Clarification may also save contested case expenses. The Office of Administrative Hearings charges the Department $45 per hour, averaging about $365 per contested case referral. The Department does not believe that this amendment will have any other identifiable fiscal impact on state agencies. There is no fiscal impact on the public, local government, or business, including small business. There is no cost of compliance for small business.

Amending OAR 461-145-0020 and 461-145-0022 is expected to have no fiscal impact on the Department, its clients, state agencies, the public, local government, or business, including small business. There is no cost of compliance for small business.

Amending OAR 461-145-0130 may impact the Department and Department of Justice by saving Attorney General expenses, which are currently billed to the Department at a rate of $111 per hour. Clarification may also save contested case expenses. The Office of Administrative Hearings charges the Department $45 per hour, averaging about $365 per contested case referral. The Department does not believe that this amendment will have any other identifiable fiscal impact on state agencies. There is no fiscal impact on clients, the public, local government, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-145-0140 has no fiscal impact on the Department. Food stamp benefits are fully federal funded. Food Stamp clients benefit because income will be excluded instead of counted as a resource or tracked to determine if it is a countable resource twelve months later. Of the approximately 230,000 food stamp cases, approximately 1,000 households do not meet the criteria to be categorically eligible for food stamps. These are the households that will be impacted by this policy change. This income is not separately identified on the food stamp computer system. It is not possible to identify how many food stamp households are receiving either the lump sum or advanced earned income tax credit payments. In the Food Stamp program, the average cost per client is estimated at $171.20 per month. There are no other fiscal impacts on state government, clients and the public. There is no fiscal impact on local government and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-145-0175 has no fiscal impact on the Department. Food stamp benefits are fully federally funded. Clients in the Food Stamp program will benefit because the first $2,500 of FAPA income will be excluded instead of counted as unearned income. The Department is not able to estimate the fiscal impact on

clients because this income is not separately identified on the food stamp computer system. It is not possible to identify how many food stamp households are receiving FAPA income. In the Food Stamp program, the average cost per client is estimated at $171.20 per month. There are no other fiscal impacts on state government, clients, and the public. There is no fiscal impact on local government and business, including small business. There is no cost of compliance for small business.

Adopting OAR 461-145-0185 and 461-145-0343 will have no fiscal impact on state agencies, local government, clients, the general public, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-145-0220 is estimated to have a fiscal impact on clients and the Department. Clients will benefit because under the current rule language property that could be sold separately from the home or separated by a public right-of-way would have counted as an excess resource and caused some OSIP, OSIPM and QMB cases to be ineligible for Medicaid. For the Department, there is a negative fiscal impact because of the number of cases that will no longer be ineligible due to excess resources. The Department has no data available for determining how many cases this may affect, because data collected on case denials is not detailed enough to determine which cases were found ineligible for OSIP, OSIPM or QMB due to excess property fitting these circumstances. The Department estimates the fiscal impact to be very small, however, because there are probably a very small number of clients who own a home that includes separate contiguous lots that could be sold separately from the home or that are separated from the home by public rights-of-way. The average monthly cash cost per OSIP case is $7.51. All OSIP cash cases also receive OSIPM and the average monthly cost is $400 to $700 (depending on whether the basis of need is age or disability). The average monthly cost per OSIPM case when the client is receiving in-home long-term care services $1066. The average monthly cost per QMB case is $112.50. All of these Medicaid benefit costs are 60% federal and 40% state funded. There is no estimated fiscal impact on other state agencies, local government, the public, and business, including small business. There are no costs of compliance for small business.

Amending OAR 461-145-0280 to clarify Department rules may impact the Department and the Department of Justice by saving Attorney General expenses, which are currently billed to the Department at a rate of $111 per hour. Clarification may also impact the Department and the Office of Administrative Hearings (OAH) by saving contested case expenses for which OAH charges the Department $45 per hour, averaging about $365 per contested case referral. The Department does not believe that this amendment will have any other identifiable fiscal impact on state agencies. There is no fiscal impact on local government, clients, the public, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-145-0310 to clarify Department rules may impact the Department and the Department of Justice by saving Attorney General expenses, which are currently billed to the Department at a rate of $111 per hour. Clarification may also impact the Department and the Office of Administrative Hearings by saving contested case expenses. The Office of Administrative Hearings charges the Department $45 per hour, averaging about $365 per contested case referral. The Department does not believe that this amendment will have any other identifiable fiscal impact on state agencies. There is no fiscal impact on the public, clients, local government, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-145-0330 is expected to have no fiscal impact on the Department, clients, state agencies, the public, local government, or business, including small business. There is no cost of compliance for small business.

Amending OAR 461-145-0470 to clarify Department rules may impact the Department and the Department of Justice by saving Attorney General expenses, which are currently billed to the Department at a rate of $111 per hour. Clarification may also impact the Department and the Office of Administrative Hearings by saving contested case expenses. The Office of Administrative Hearings charges the Department $45 per hour,

averaging about $365 per contested case referral. The Department does not believe that this amendment will have any other identifiable fiscal impact on state agencies. There is no fiscal impact on the public, clients, local government, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-145-0580 may cause a few QMB clients who are non-service clients to become eligible as a result of having their Aid and Attendance payments excluded from eligibility income consideration but the Department is unable to estimate the fiscal impact because the current treatment of these payments is not centrally tracked. For each client of the QMB program who gains eligibility as a result of these changes, the client will not need to pay the $88.50 per month Medicare premium as well as their co-pays and deductibles for an average cost of $112.50 per month; about forty percent of these costs come from the state general fund. There is no expected fiscal impact for the changes concerning the OSIP and OSIPM programs. There is no other expected impact to state government, clients, and the public. There is no fiscal impact on local government or business, including small business. There is no cost of compliance for small business.

Amending OAR 461-150-0055 to clarify Department rules may impact the Department and the Department of Justice by saving Attorney General expenses, which are currently billed to the Department at a rate of $111 per hour. Clarification may also impact the Department and the Office of Administrative Hearings by saving contested case expenses. The Office of Administrative Hearings charges the Department $45 per hour, averaging about $365 per contested case referral. The Department does not believe that this amendment will have any other identifiable fiscal impact on state agencies. There is no fiscal impact on the public, clients, local government, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-155-0225 to clarify Department rules may impact the Department and the Department of Justice by saving Attorney General expenses, which are currently billed to the Department at a rate of $111 per hour. Clarification may also impact the Department and the Office of Administrative Hearings by saving contested case expenses. The Office of Administrative Hearings charges the Department $45 per hour, averaging about $365 per contested case referral. The Department does not believe that this amendment will have any other identifiable fiscal impact on state agencies. There is no fiscal impact on the public, clients, local government, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-155-0250 will impact some clients who may have incorrectly received the $1.70 monthly SIP check in error. This is expected to be a very small number of clients and a small amount of General Fund. The change to the OSIP-EPD and OSIPM-EPD standard should have no impact because OAR 461-160-0780 explains that unearned income is excluded from the calculation. There is no other fiscal impact on state agencies, local government, clients, and the public. There is no fiscal impact on business, including small business. There is no cost of compliance for small business.

Amending OAR 461-155-0660 will impact SSI and non-SSI clients of OSIP and OSIPM, who have been receiving a shelter exception. Clients who are currently receiving a shelter exception based on the need for an accommodation to their housing, will be negatively impacted as the exception will be removed, thus reducing their monthly income, or increasing the amount they must contribute towards their cost of services. These clients will have the allowance reviewed at their annual review, and will no longer be eligible for an ongoing allowance, unless they meet the new criteria. The impact per client is expected to average $280 per month with an estimated 25 clients affected. Clients who have a live-in provider and who are currently receiving the allowance may either have the amount increase or decrease depending upon their specific situation and their housing costs. The Department database does not aggregate information about clients with live-in providers so this impact cannot be estimated. This rule change may result in fiscal savings to the Department, as clients who no longer meet the criteria will have the allowance removed from their case. It is expected that there are currently about 25 shelter exception cases where the client is receiving a shelter exception that will be reduced or closed. If these shelter exceptions are removed, the Department will save about $7,000 per month. As stated above, the Department is unable to estimate the offsetting expense of the change that affects clients with live-in

providers. Because clients who no longer receive an exception may not be able to afford rent at their current residence and may have to move or have the rent reduced, current landlords of these clients may be impacted indirectly by needing to reduce rent or find new tenants. There is no other anticipated fiscal impact on state or local government, business (including small business), or members of the public. There are no costs of compliance for small business. The fiscal impact on small business is not significantly adverse. The economic effect on business is not significant.

Amending OAR 461-160-0010 will have a fiscal impact on a few clients who would be $600 over resources and have a service need. These clients can spend these resources on non-countable resources or become private pay for one month. For a client affected, the impact will be a one-time impact of $50 to $1,500. The Department is unable to estimate the number of affected clients because there is no specific coding for these types of cases. The number of clients affected is expected to be small as few workers use this policy as currently worded and few clients fall into exactly the parameters of the income considered. There will be no other fiscal impact on state agencies, the public, and clients. There is no fiscal impact on local government and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-160-0610, 461-160-0620, and 461-185-0050 has a positive impact on the Department clients who will no longer be required to contribute toward the cost of waivered in-home services provided by the Department. There is an impact to the Department of lost revenue these cases paid toward the cost of their care. A recent count identified 783 cases coded which reflect eligibility under this group; the amount varies from case to case which had been used to offset their care. The budgeted amount used to show the client's income to cover these costs is $45 per month, therefore the estimated impact on Department spending would $845,640 in total funds for a biennium; about 40 percent of this impact would be state funds, the remainder would be federal funds. The Department is unable to estimate the actual impact because the necessary data is currently unavailable. There is no other impact on the Department, its clients, or the public. There is also no impact on local governments, including Area Agencies on Aging. There is no fiscal impact on business, including small business. There is no cost of compliance for small business.

Amending OAR 461-170-0130 may impact the Department and some QMB clients by increasing the length of time that some clients remain eligible for QMB benefits. There are very limited circumstances where a reported change can affect eligibility, and it is not anticipated that there will be a significant identifiable impact because this change updates the rule text to match current practice. The Department is unable to estimate this impact because it does not have an estimate of the number of potential clients affected. The average monthly cost to the State for a client eligible for QMB benefits for the Medicare premium as well as co-pays and deductibles is about $45 per month. There are no other fiscal impacts anticipated on state agencies, local government, clients, the public, and businesses, including small business. There is no cost of compliance for small business.

Amending OAR 461-175-0010 and 461-175-0250 is not anticipated to have a fiscal impact on state agencies, local government, clients, the general public, and business, including small business. There is no cost of compliance for small business.

Amending OAR 461-180-0085 will conform the rule with current practice and there is therefore no noticeable fiscal impact on state agencies, local government, clients, and the general public. There is no fiscal impact on business, including small business. There is no cost of compliance for small business.

Amending OAR 461-180-0090 is estimated to have a fiscal impact on the Department and clients who receive SSI and are under the age of 21. Clients under the age of 21 will benefit because SSI recipients currently are assumed eligible for Medicaid effective the initial month of SSI payment eligibility. This rule change will potentially allow these clients to be Medicaid-eligible an extra month; the month prior to the initial month of SSI payment (if they request retroactive Medicaid benefits for that month). For the Department, there will be a negative fiscal impact due to the cost of this extra month of Medicaid eligibility. The Department estimates the

annual fiscal impact to be about $79,900. This estimate is based on the number of SSI recipients under the age of 21 that were newly approved for OSIP/OSIPM in a one-year period, however, the Department's data was not specific enough to show whether new cases had medical coverage in another program (such as Temporary Assistance to Needy Families or Oregon Health Plan Standard) before transitioning to OSIP/OSIPM, or if they opened under the OSIP/OSIPM program without needing retroactive medical coverage, so the total number of new cases in this estimate was reduced accordingly to provide for these situations. The average monthly cash cost per OSIP case is $7.51. The average monthly OSIPM cost is $400 to $700 (depending on extent of the disability). All of these Medicaid benefit costs are 60% federal and 40% state funded. There is no estimated fiscal impact on other state agencies, local government, the public, and business, including small business. There are no costs of compliance for small business.

Amending OAR 461-195-0301, 461-195-0305, 461-195-0310, and 461-195-0325 will have no fiscal impact on local government, unless the local government operates as a managed care organization (MCO) that can recover accident related assistance using this lien process. General members of the public should incur no fiscal impact as a consequence of these rule changes. Most clients will receive more funds from their claim and/or court action because the lien of the Department and MCO may now attach only to the medical services allocation in the settlement, not to the non-economic portion of a settlement i.e., pain and suffering or other similar category, but the Department does not have adequate data about this issue to predict the potential positive fiscal impact on those clients. State government will sustain a decrease in personal injury lien recoveries during the current biennium as a consequence of the U.S. Supreme Court decision and subsequent rule changes. Because of the recent court decision and the lack of historical information on what the fiscal impact may be as a consequence, it is difficult for the Department to predict with certainty what the amount of the recovery losses may be during the remaining biennial period. However, it is estimated that "cash" recoveries for the Department will decline by approximately 90 percent or $275,000, for the period May 2006 (when the Ahlborn decision was implemented) through June 2007, and medical recoveries may decline by 20 percent over the same period or approximately $550,000. The Department has instituted steps to try to ameliorate the amount of the medical recovery losses, but it is too soon to tell what the effect of those efforts will be. Also, overall recoveries will be impacted by the additional administrative costs associated with collection under Ahlborn, since the Department now must attend settlement conferences/court hearings to ensure that the Department lien is acknowledged and represented. It should also be noted that Department recoveries had already fallen somewhat over the previous biennium, even before the Ahlborn decision, because of a significant drop in the number of Oregon Health Plan (OHP) recipients. Businesses, including small businesses will generally be unaffected with the exception that prepaid MCO's will likely experience a decline in recovery opportunities because of the U.S. Supreme Court decision and these amendments, but the Department does not have sufficient data to delineate with any specificity the potential decline in these recoveries. Insurers and others responsible for paying the amount of the lien should not experience a fiscal impact, as these changes only affect the distribution of amounts subject to the lien rather than the total payment liability. Under these amendments, the distribution of the recovery of the managed care organizations will be subject to the same requirements that apply to the Department. Department clients who have brought personal injury claims are already subject to the lien process that allows the Department and MCO's to recover amounts of assistance paid in relation to a personal injury claim, and these rule amendments do not change these requirements. However, the Department and MCO's are now limited to recovering their accident related assistance from only that portion of the settlement proceeds that is allocated for medical services, as opposed to the entire net settlement proceeds that was in effect prior to the Ahlborn decision. The fiscal impact of the rule amendments on small business is not significantly adverse. The economic effect on business is not significant.

Amending OAR 461-195-0611 is not estimated to have any fiscal impact on state agencies, clients, the public, local government, or business, including small business. There is no cost of compliance for small business.

How were small businesses involved in the development of this rule?

Small businesses were not involved in the early development of these rules but will be included in the public review and comment period.

Administrative Rule Advisory Committee consulted?: No

If not, why? Client advocates receive a copy of the notice rule package. In addition, advocates also receive copies of proposed changes to the Family Services Manual, which provides directives (operational processes and procedures) to the field for implementation of rules. The Family Services Review Commission receives a copy of the notice rule package. Advocates for clients are involved in the process of changing rules through participation in meetings about all rule changes and discussion with executive staff and other staff about some rule changes. Because most rule changes are driven by federal and state mandates, it is more efficient to hear from advocates in the context of these meetings than to set up an additional committee to gain their input.

Authorized Signer

Stephen H. Elmore
Printed Name Date

461-110-0610
Need Group; Overview

THIS RULE IS REPEALED

~~The need group consists of the following people:~~

~~(1) The people whose basic and special needs are used in determining eligibility.~~

~~(2) In the ERDC, FS, GA, OHP, OSIP, QMB, REF, and TANF programs, the people whose basic and special needs are used in determining benefit level.~~

Stat. Auth.: ORS 411.060, 411.816
Stats. Implemented: ORS 411.060, 411.816

461-110-0630
Need Group

(1) The need group consists of the individuals whose needs are used in determining eligibility and benefit level.

(~~1~~**2**) In the EA, REF, and REFM programs, the need group consists of the ~~financial group~~ members **of the *financial group* (see OAR 461-110-0530)** who meet all nonfinancial eligibility requirements, except that members disqualified for an intentional program violation are not in the need group.

(~~2~~**3**) In the ERDC program, the need group consists of each member of the ~~financial group~~ ***financial group***.

(~~3~~**4**) In the EXT program, the need group consists of each member of the ~~financial group~~ ***financial group***.

(~~4~~**5**) In the FS program, the need group consists of the ~~financial group~~ members **of the *financial group*** who meet all nonfinancial eligibility requirements, except the following people are not in the need group:

(a) A member disqualified for an intentional program violation.

(b) A fleeing felon under OAR 461-135-0560.

(c) A person violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(~~5~~**6**) In the GA and GAM programs, the need group consists of each member of the ~~financial group~~ ***financial group*** except that the following people may not be in the need group:

(a) A fleeing felon under OAR 461-135-0560.

(b) A person in violation of a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(~~6~~**7**) In the MAA and TANF programs, the need group is formed as follows:

(a) Except as provided in subsection (b) of this section, the need group consists of the ~~financial group~~ members **of the *financial group*** who meet all nonfinancial eligibility requirements other than the citizenship and alien status requirements of OAR 461-120-0110.

(b) The need group cannot include:

(A) A parent who is in foster care and for whom foster care payments are being made.

(B) An unborn child.

(C) In the TANF program:

(i) A person who cannot be in the need group because of a disqualification penalty.

(ii) A fleeing felon under OAR 461-135-0560.

(iii) A person violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(~~7~~**8**) In the MAF program, the need group consists of the ~~financial group~~ members **of the *financial group*** who meet all nonfinancial eligibility requirements, except for the following people:

(a) A parent who is in foster care and for whom foster care payments are being made.

(b) The father of an unborn child who has no eligible dependent children.

(~~8~~**9**) In the OHP program, the need group consists of each member of the ~~financial group~~ ***financial group***. An unborn child of a pregnant female is included in the need group.

(~~9~~**10**) In the OSIP**,** ~~and~~ OSIPM**, QMB, and SAC** programs, the need group consists of each member of the ~~financial group~~ ***financial group***.

~~(10) In the QMB program, the need group consists of each member of the financial group, except for the following:~~

~~(a) A person who does not meet the citizenship or alien status requirements.~~

~~(b) A person disqualified from TANF for noncooperation in the JOBS program.~~

~~(c) A person disqualified for failure to meet the requirements of OAR 461-120-0345(2) or for not providing a social security number (SSN).~~

~~(11) In the SAC program, the need group consists of the person in the financial group.~~

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100

461-115-0010
Application Process; General

(1) ~~Clients~~ **A client** may apply for one or more programs using one application ~~and process~~, under the time frames and eligibility requirements that apply to each program for which the ~~clients are~~ **client is** applying. The ~~Division~~ **Department** redetermines eligibility at assigned intervals and whenever a client's eligibility becomes questionable.

(2) If the ~~Division cannot~~ **Department requires additional information to** determine eligibility ~~during the intake~~, the client is entitled to a written notice that includes a statement of the specific information needed to determine eligibility and the date by which the client must provide the required information.

(3) The ~~Division~~ **Department** ensures that an application form is readily available to anyone requesting one and assists clients who are unable to complete the application form or gather information necessary to verify eligibility.

(4) The ~~Division will~~ **Department must** screen ~~applicants~~ **each applicant** to determine whether ~~they have~~ **the applicant has** an emergent need, are eligible for expedited food stamp services, or are at risk of being a victim of *domestic violence*.

(5) A filing group is entitled to establish a filing date for the Food Stamp program on the date they request benefits.

(6) If a client files an application containing the client's name and address, the ~~Division will~~ **Department must** send the client a decision notice.

(7) A client may withdraw an application at any time.

Stat. Auth: ORS 411.060**, 411.816, 418.100**
Stats. Implemented: ORS 411.060**, 411.816, 418.100**

461-115-0050
When An Application Must Be Filed

A client must file an application, or may amend an application already complete, as a prerequisite to receiving benefits as follows:

(1) Except as provided in sections (3), (4), (5), and (6) of this rule, a client wishing to apply for program benefits must submit a complete application on a form approved by the Department.

(2) An application is complete if **all of** the following requirements are met:

(a) All information necessary to determine the client's eligibility and benefit amount is provided on the application for all people in the filing group.

(b) The applicant, even if homeless, provides a mailing address.

(c) The application is signed. A person required but unable to sign the application may sign with a mark, witnessed by another person.

(d) The application is received by the Department.

(3) A new application is not required in the following situations:

(a) In the Food Stamp program, when a single application can be used both to determine a client is ineligible in the month of application and to determine the client is eligible the next month. This can be done when—

(A) Anticipated changes make the filing group eligible the second month; or

(B) The filing group provides verification between 30 and 60 days following the filing date, in accordance with OAR 461-180-0080.

(b) In all programs except the Food Stamp program, when a single application can be used both to determine a client is ineligible on the date of request and to determine the client is eligible when anticipated changes make the filing group eligible within 45 days from the date of request.

(c) When the case is closed and reopened during the same calendar month.

(d) When benefits were suspended for one month because of the level of income, and the case is reopened the month following the month of suspension.

(e) When reinstating medical benefits for a pregnant woman covered by OAR 461-135-0950~~(7)~~.

(4) A new application is required to add a newborn child to a benefit group according to the following requirements:

(a) For the REF and TANF programs:

(A) A new application is not required if the child is listed on the application as "unborn" and there is sufficient information about the child to establish its eligibility.

(B) A new application is required if the child is not included on the application as "unborn."

(b) In the EXT, MAA, MAF, OHP, and REFM programs, no additional application is required to add the child to its mother's benefit group. The child may be added to a benefit group other than the benefit group of the child's mother if eligibility can be determined without submission of a new application.

(c) In the ERDC and FS programs, an application is not required to add the child to the benefit group.

(d) For all other programs, an application is required.

(5) A new application is required to add a person to a benefit group, other than a newborn child, according to the following requirements:

(a) In the ERDC and Food Stamp programs, a new application is not required.

(b) In the EXT, MAA, MAF, OHP, REFM, SAC, and TANF programs, a person may be added by amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.

(c) In all other programs, a new application is required.

(6) Clients whose TANF grant is closing may request ERDC orally or in writing.

(7) For all programs except EXT, FS, MAA, MAF, and OHP, clients may change between programs administered by the Department using the current application if the following conditions are met:

(a) The client makes a verbal or written request for the change.

(b) The Department has sufficient evidence to determine eligibility and benefit level for the new program without a new application.

(c) The program change can be effected while the client is eligible for the first program.

(8) ~~A client may change between EXT, MAA, MAF, and OHP using the client's most recent medical application.~~ **A new application is not required in the EXT, MAA, MAF, and OHP programs to redetermine eligibility for the same program or to change between these programs if the following conditions are met:**

(a) The client is currently receiving benefits from one of the programs; and

(b) The Department has sufficient evidence to redetermine eligibility for the same program or determine eligibility for the new program without a new application or by amending the current application.

Stat. Auth: ORS 409.050, 411.060, 411.816**, 418.100**
Stats. Implemented: ORS 411.060, 411.816**, 418.100**

461-115-0651
Required Verification and When to Verify; FS

(1) The Department must give households at least 10 days to provide required verification.

(2) All of the following information must be verified when a client initially applies for food stamp benefits:

(a) The identity of the applicant and any authorized representative or alternate payee.

(b) Residency.

(c) ~~Citizenship or alien~~ **Alien** status.

(d) Social Security Number (SSN) or application for an SSN.

(e) Countable income.

(f) Medical expenses, if they are used as a deduction.

(g) An order to pay child support and the amount actually paid.

(h) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(3) All of the following information must be verified when a client reapplies for food stamp benefits within 30 days of a previous certification:

(a) A change in source of income, or the amount of stable income has changed by more than $50.

(b) The amount of variable income from any source.

(c) Previously unreported medical expenses, and recurring medical expenses which have changed by more than $25.

(d) Any changes in the legal obligation to pay child support, the obligated amount, and the amount the client is paying for children that live in a different household group.

(e) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(4) For cases using the Change Reporting System (CRS) and the Monthly Reporting System (MRS), the following changes reported during the certification period must be verified:

(a) For CRS, a change in source of income, or the amount of stable income has changed by more than $50.

(b) For CRS, the amount of variable income from any source.

(c) Changes in reported medical expenses by more than $25, and previously unreported medical expenses.

(d) Any changes in the legal obligation to pay child support, the obligated amount, and the amount the client is paying for children that live in a different household group.

(e) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(5) For cases using the Simplified Reporting System (SRS), each of the following changes reported during the certification period must be verified in accordance with OAR 461-170-0103:

(a) Alien status and SSN or application for an SSN when a new member joins the benefit group.

(b) Countable income.

(c) Medical expenses, if used as a deduction.

(d) An order to pay child support and the amount actually paid, if used as a deduction.

(6) A claimed expense or cost may be used to determine the food stamp benefit only when the client provides the required or requested verification.

(7) In addition to the verification required by sections (2) to (5) of this rule, the income for a client must be verified:

(a) Each month for a client in MRS.

(b) Every six months for a client in SRS.

Stat. Auth.: ORS ~~411.060,~~ 411.816
Stats. Implemented: ORS ~~411.111,~~ 411.816

461-115-0705
Required Verification; **BCCM, MAA, MAF, EXT,** OHP**, SAC**

(1) This rule establishes verification requirements for the **BCCM, EXT, MAA, MAF,** OHP**, and SAC** ~~program~~ **programs** in addition to the requirements of OAR 461-115-0610.

(2) Except for clients who receive Medicare, clients who are assumed eligible in accordance with OAR 461-135-0010, OHP-CHP clients, and clients who are presumptively eligible for BCCM, each client declaring U.S. citizenship must provide *acceptable documentation* of citizenship and identity. For purposes of this rule, *acceptable documentation* consists of any of the documents permitted under section 6036 of the federal Deficit Reduction Act of 2005 (Pub. L. 109-171).

(a) A new applicant must provide *acceptable documentation* as a condition of eligibility.

(b) A current recipient who has not already provided *acceptable documentation* must provide documentation at the next redetermination of eligibility.

(c) A client who has already provided *acceptable documentation* of U.S. citizenship is not required to provide additional evidence during subsequent application for benefits or redeterminations of eligibility.

(~~1~~**3**) **In the OHP program:**

(a) At initial application and at any other time it affects the client, the following must be verified:

~~(a)~~ **(A)** The requirement in OAR 461-120-0210 to have or apply for a social security account number.

~~(b)~~ **(B)** Alien status for applicants who indicate they are not U.S. citizens.

~~(c)~~ **(C)** The premium exemption allowed because a client is —

~~(A)~~ **(i)** A member of a federally recognized Indian tribe, band**,** or group;

~~(B)~~ **(ii)** An Eskimo, Aleut**,** or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act; or

~~(C)~~ **(iii)** A person eligible for benefits through an Indian Health Program.

~~(d)~~ **(D)** Income from the past three months and income already received in the budget month. If income cannot be verified, the client's statement is accepted.

~~(2)~~ **(b)** At recertification, the following must be verified, except that if income cannot be verified, the client's statement is accepted:

~~(a)~~ **(A)** Unearned income if it has changed since the last certification.

~~(b)~~ **(B)** Earned income from the three months prior to the budget month.

~~(3)~~ **(c)** A client enrolled *full time* in *higher education* must provide verification, at application and recertification, that the client meets the requirements of OAR 461-135-1110.

~~(4)~~ **(d)** The following must be verified when it is first reported or changed:

~~(a)~~ **(A)** Pregnancy of the client, which must be verified by a medical practitioner, health department, clinic, or crisis pregnancy center or like facility.

~~(b)~~ **(B)** Amount of the premium for cost-effective employer-sponsored health insurance.

~~(5) A client must provide verification to support a request for waiver of a premium arrearage (*see* OAR 461-135-1130).~~

~~(6)~~ **(e)** A client must provide verification for any eligibility requirement questioned by the Department.

Stat. Auth.: ORS 409.050, 411.060, 414.042~~, 414.047~~
Stats. Implemented: ORS 411.060, 414.042, 414.047

461-125-0370
Disability as the Basis of Need; OSIP and OSIPM

(1) In the OSIP and OSIPM programs (except OSIP-EPD and OSIPM-EPD), a client meets the eligibility requirement to have a disability if **the requirements of one of the following subsections are met**:

(a) The client is receiving Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) based on disability. Eligibility continues as long as the client remains eligible for SSDI or SSI.

(b) The client was eligible for and received Aid to the Disabled benefits in Oregon in December 1973. These grandfathered cases continue to be eligible as long as they are continuously disabled as defined by Oregon requirements that were in effect in 1973.

(c) The Department has determined the client meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2 for SSI; or meets the definition of disability in 20 C.F.R. § 416.905.

(d) The Social Security Administration (SSA) has determined the client meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2 for SSI; or meets the definition of disability in 20 C.F.R. § 416.905.

(2) If the Department finds the client eligible for OSIPM ~~within 90 days following the date of request~~, the client remains eligible, provided that the client continues to meet the disability criteria for eligibility for OSIPM, until SSA denies the disability claim in a final administrative decision.

(3) For OSIP and OSIPM, a disability determination made by SSA is binding on the Department ~~except in each of the following situations~~ **unless the requirements of at least one of the following subsections are met** (*see* 42 C.F.R. § 435.541(c)(4)):

(a) The client alleges ~~at any time after SSA has denied disability,~~ a disabling condition ~~entirely~~ different from**,** ~~the allegations upon which SSA based its decision, or an additional impairment(s) upon which SSA has not made a~~ **or in addition to, that considered by SSA in making its** determination.

(b) More than 12 months ~~has elapsed since~~ **after** the ~~last~~ **most recent** SSA determination denying disability**,** ~~and~~ the client ~~either –~~

~~(A) Alleges~~ **alleges** that his or her ~~impairment is more severe than at the time of the original~~ **condition has changed or deteriorated since that SSA** determination, ~~or~~

~~(B) Alleges an entirely new disability,~~ and **the client** has not made application to SSA based on these allegations.

(c) ~~Paragraphs (A) and (B) of this subsection both apply:~~

~~(A)~~ The client alleges less than 12 months after the ~~last~~ **most recent** SSA determination ~~either that –~~

~~(i) The~~ **denying** disability **that the condition** which SSA evaluated has changed or deteriorated~~; or~~

~~(ii) The client has a new disability upon which SSA has not made a~~ **since that SSA** determination~~.~~**; and one**

~~(B) One~~ or both of the following apply:

~~(i)~~ **(A)** The client has requested reconsideration or reopening of the ~~last~~ **most recent** SSA determination denying disability and SSA has declined to consider the **new** allegations ~~concerning disability~~.

~~(ii)~~ **(B)** It is clear that the client no longer meets SSI eligibility requirements unrelated to disability status but may satisfy comparable Medicaid eligibility requirements.

(4) In the OSIP-EPD and OSIPM-EPD programs, a person is *disabled* or has a *disability* if the person has a physical or mental impairment, or a combination of these impairments, that meets the definition of disability used by SSA when determining eligibility for SSI or SSDI under 20 C.F.R. Part 404. The determination is made as follows:

(a) A determination by SSA that the individual is *disabled* or has a *disability* is accepted by the Department.

(b) If the client was determined to have a disability by SSA and lost their SSDI eligibility due to their own income, the SSA determination remains effective for one year from the date that the client loses eligibility for SSDI.

(c) If there is no currently effective SSA determination finding the individual has a *disability*, the case is referred to the Department's central office for a *disability determination* using the standards of 20 C.F.R. Parts 404 and 416 and considering all relevant medical and vocational information.

(d) For OSIPM-EPD, a person is engaging in *substantial gainful activity* (SGA) if their earnings are at or above the EPD Income Standard.

(e) For OSIPM-EPD, any work activity engaged in during the OSIPM-EPD application process or certification period is not evaluated as *past relevant work* (PRW).

Stat. Auth.: ORS 411.060, 411.070, 414.042
Stats. Implemented: ORS 411.060, 411.070, 414.042

461-130-0310
Participation Classifications: Exempt, Mandatory, and Volunteer

To administer the employment programs of the Food Stamp, Refugee**,** and TANF programs, the Department assigns clients to one or more participation classifications—*exempt*, *mandatory*, and *volunteer*.

(1) In the REF and TANF programs, ~~clients are~~ **a client is** *exempt* when ~~they are~~ **the client is** exempt from disqualification in the employment programs covered by chapter 461 of the administrative rules. The following REF and TANF clients are exempt from disqualification in the employment programs covered by chapter 461:

(a) ~~Clients~~ **A client** 20 years of age and older who ~~are~~ **is** in ~~their~~ **the** ninth month of pregnancy or experiencing medical complications due to pregnancy that prevent participation in employment or self-sufficiency *components* (*see* OAR ~~461-190-0110~~ **461-001-0020**) of an employment program.

(b) ~~Clients~~ **A client** during the first 90 days after giving birth.

(c) **A** VISTA ~~volunteers~~ **volunteer**.

(d) ~~Clients~~ **A client** who, in order to participate in an employment program, must travel an unreasonable distance from ~~their~~ **the** home **of the client** or remain away from ~~their~~ home overnight.

(e) **A** REF ~~clients~~ **client** 65 years of age and older ~~and TANF clients~~**.**

(f) A TANF client 60 years of age and older.

(~~f~~**g**) ~~Non-citizens~~ **A non-citizen** who ~~are~~ **is** not authorized to work in the United States.

(~~g~~**h**) ~~Recipients~~ **A recipient** of supplemental security income (SSI) from the Social Security Administration.

(~~h~~**i**) ~~Non-needy caretaker relatives~~ **A *caretaker relative* (defined at OAR 461-001-0000) who is non-needy**.

(2) In the Food Stamp Program, the following clients are *exempt*:

(a) A client with weekly *countable income* (~~*see* OAR 461-160-0020~~ **defined at OAR 461-001-0000**) from employment or self-employment at least equal to the federal minimum wage multiplied by 30 hours. This includes migrant and seasonal farm workers **(see OAR 461-001-0015)** who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days

(b) A client with a physical or mental condition that prevents performance of any work.

(c) A client who is responsible for the care of a dependent child **in the household** under 6 years of age or ~~an incapacitated person~~ **an individual in the household who has a disability that substantially reduces or eliminates the individual's ability to care for himself or herself**.

(d) A client who provides care for at least 30 hours a week for an individual in another household who has a disability that substantially reduces or eliminates the individual's ability to care for himself or herself.

(~~d~~**e**) A client enrolled at least half-time, as defined by the school, in any high school or equivalent program recognized by a school district or enrolled at least half-time in any school, training program, or institution of higher education. Clients remain *exempt* during normal periods of class attendance, vacation and recess but no longer qualify for the student exemption when a break in enrollment occurs due to graduation, suspension or expulsion or when the student drops out of school or does not intend to register for the next normal school term (excluding summer term).

(~~e~~**f**) ~~Clients~~ **A client** receiving REF or TANF benefits, while **a** *mandatory* ~~participants~~ **participant** in the JOBS program.

(~~f~~**g**) ~~Clients~~ **A client** who ~~are~~ **is** in receipt of unemployment insurance benefits or ~~have~~ **has** completed an application for unemployment insurance benefits and ~~are~~ **is** waiting for an initial decision on ~~their~~ **the** claim, if ~~they were~~ **the client was** required to register for work at an office of the Oregon Employment Department.

(~~g~~**h**) ~~Participants~~ **A participant** in a drug or alcohol treatment and rehabilitation program.

(~~h~~**i**) ~~Pregnant clients~~ **A pregnant client**.

(~~i~~**j**) ~~Clients~~ **A client** living in ~~areas~~ **an area** where the OFSET program is available to clients but who:

(A) ~~Lack~~ **Lacks** adequate dependent care;

(B) ~~Do~~ **Does** not have adequate transportation available ~~to them~~; or

(C) ~~Experience~~ **Experiences** a barrier to employment, such as being homeless or having a short-term physical or mental limitation or a serious family problem.

(3) In the REF and TANF programs, all clients are *mandatory*. A parent of a child who receives TANF is *mandatory* if the parent is in the same filing group with the child (even if the parent is not in the TANF benefit group), unless the parent is otherwise *exempt* under section (1) of this rule.

(4) In the Food Stamp ~~Program~~ **program**, a *mandatory* client is ~~a person~~ **an individual** in the ~~need group~~ ***need group*** **(see OAR 461-110-0630)**; who is 16 or 17 years of age and a *primary person* (~~*see* OAR 461-110-0110~~ **defined at OAR 461-001-0015**), or 18 years of age and older but not yet 60; and who is not *exempt* under section (2) of this rule.

(5) A client cannot be disqualified for conduct that occurred while a *volunteer*.

(a) In the REF and TANF programs, a *volunteer* is a client who is exempt from disqualification (~~*see* OAR 461-130-0310(2)~~ **see section (1) of this rule**) who chooses to participate in an employment program.

(b) In the Food Stamp Program, a *volunteer* is a client who is not a *mandatory* client who chooses to participate in an employment program.

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100

461-135-0010
Assumed Eligibility for Medical Programs

(1) This rule sets out when a client is *assumed eligible* for certain medical programs because the client receives or is deemed to receive benefits of another program.

(~~1~~**2**) Except for a client disqualified for failure to pursue cost-effective, employer-sponsored health insurance as required by OAR 461-120-0345**,** ~~and~~ a client who does not meet the citizenship and alien status requirements set forth in OAR 461-120-0125, **and a client who does not meet a citizenship verification requirement set forth in OAR 461-115-0705,** the following people are *assumed eligible* for MAA:

(a) A client receiving or eligible to receive TANF cash benefits.

(b) A client whose TANF cash benefits are being paid as wages through the JOBS Plus program.

(c) A client who receives no TANF cash benefits because of failure by the client to comply with the requirements for a recipient of the JOBS program, or a requirement for evaluation or treatment of substance abuse or mental health (OAR 461-135-0085).

(d) A client in the Assessment Program (*see* OAR 461-135-0475).

(e) A child in a benefit group whose grant is affected by a failure to comply with the requirements of OAR 461-120-0340 regarding paternity or child support.

(~~2~~**3**) A pregnant woman who is eligible for and receiving benefits the day the pregnancy ends is *assumed eligible* for EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM or SAC until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(~~3~~**4**) A pregnant woman who was eligible for and receiving benefits of the EXT, GAM, MAA, MAF, OHP-OPP, OSIPM, or SAC program but becomes ineligible during the pregnancy is *assumed eligible* for Medicaid.

(**45**) A child born to a mother eligible for and receiving EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM or SAC benefits is *assumed eligible* for medical benefits. A child who is continuously a member of the household group of his or her mother is eligible under this section until the end of the month the child turns one year of age.

(~~5~~**6**) **Except for a child who does not meet a citizenship verification requirement set forth in OAR 461-115-0705,** the following children are *assumed eligible* for SAC:

(a) A child who is the subject of an adoption assistance agreement with another state.

(b) A child in a state-subsidized, adoptive placement, if an adoption assistance agreement is in effect between a public agency of the state of Oregon and the adoptive parents that indicates the child is eligible for Medicaid.

(~~6~~**7**) The following persons are *assumed eligible* for OSIPM (except OSIP-EPD and OSIPM-EPD):

(a) A recipient of SSI benefits.

(b) A person 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.

(~~7~~**8**) A client who receives both benefits under Part A of Medicare and SSI benefits is *assumed eligible* for the QMB-BAS program.

(~~8~~**9**) A client is *assumed eligible* for REFM if ---

(a) The client is receiving cash assistance through the REF program; or

(b) The client is ineligible for cash assistance through the REF program only because of income or resources.

Stat. Auth.: ORS 411.060, 418.100
Stats. Implemented: ORS 411.060, 418.100, 1999 Or. Laws ch. 859

461-135-0075
~~Twenty-four Month~~ Limitation on Eligibility Period; TANF

~~(1) Clients may not receive benefits from the TANF program for more than a total of 24 months in any period of 84 consecutive months after June 30, 1996.~~

~~(2) The 24-month limitation described in section (1) of this rule does not apply to:~~

~~(a) Up to three months within a two-year period during which a member of the financial group is required to care for a family member who suffers a serious health condition as defined in ORS 659.470. The definition provides that a serious health condition is:~~

~~(A) An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;~~

~~(B) An illness, disease or condition that in the medical judgment of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care; or~~

~~(C) Any period of disability due to pregnancy or period of absence for prenatal care.~~

~~(b) Any month during which no member of the financial group is disqualified for failure to comply with the requirements of the JOBS program.~~

~~(c) Any month in which a dependent child resides with a person other than the child's natural or adoptive parent.~~

~~(d) A household with only one parent in which the basis of eligibility is the incapacity of that parent or, in a household with two parents, if both parents are incapacitated or one parent is incapacitated and the other parent is required in the home to care for the incapacitated parent.~~

~~(e) Any month in which a client is unable to meet the requirements of an *employment development plan* because of *domestic violence*.~~

~~(f) Any month in which a client is participating in an employment and training program in the JOBS program.~~

~~(3) For purposes of determining the 24-month limitation described in this rule, a month in which one parent of a family receiving benefits from the TANF program receives gross earnings in an amount equal to 173 times the hourly minimum wage as provided in ORS 653.025, but in an amount that does not exceed the eligibility requirements for the program, shall be counted as two-fifths (.40) of a month.~~

~~(4) A person who is eligible for TANF benefits, except for the time limit imposed by this rule, is eligible in excess of the 24-month limitation if the person is:~~

~~(a) A dependent child in a two-parent filing group and the principle wage earner dies;~~

~~(b) A dependent child and the child resides with a person other than the caretaker with whom the child lived at the time the child was receiving aid;~~

~~(c) A caretaker relative but was a dependent child during the 24-month period; or~~

~~(d) A parent of a dependent child receiving aid and who is making a diligent, good-faith effort to obtain permanent employment. During any month, the number of families receiving TANF beyond the 24-month limitation because of the exception provided by this subsection cannot exceed one percent of the total number of families receiving aid in that month or 400 families, whichever is greater.~~

(1) No *benefit group* (see OAR 461-110-0750) may receive a TANF grant if the group contains an adult or minor parent head of household who has received a TANF grant in excess of 60 months in Oregon except as noted in sections (2) and (3) below.

(2) The time limit will not include any month in which:

(a) An adult received an Oregon TANF grant prior to July 1, 2003;

(b) The family resided in Indian Country (as defined in 18 U.S.C. 1151) and 50% or more of the adult residents of that area were unemployed; or

(c) The individual who is now a parent or pregnant was in that month a minor child and neither the head of a household nor married to the head of a household.

(3) Except as provided in sections (4) to (7) of this rule, a *benefit group* may receive a TANF grant in excess of 60 months if the group contains an individual who meets any of the following requirements:

(a) Is a victim of domestic violence.

(b) Has a certified learning disability.

(c) Has a verified alcohol and drug or mental health condition that keeps the client from obtaining or keeping employment.

(d) Has a physical disability as defined by the Americans with Disabilities Act.

(e) Has a child with a disability, which prevents the parent from obtaining or keeping employment.

(f) Is currently battered or subject to extreme cruelty. For purposes of this rule, an individual is battered or subject to extreme cruelty if the individual has been subjected to one or more of the following:

(A) Physical acts that resulted in, or threatened to result in, physical injury to the individual.

(B) Sexual abuse.

(C) Sexual activity involving a dependent child.

(D) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.

(E) Threats of, or attempts at, physical or sexual abuse.

(F) Mental abuse.

(G) Neglect or deprivation of medical care.

(g) Is subject to the 60-month time limit prior to July 1, 2008 because of TANF grants received outside of Oregon. An extension based only on this subsection expires on June 30, 2008.

(4) An extension and each monthly continuation of an extension based on the conditions described in subsections (3)(b) to (3)(e) of this rule requires documentation not more than two years old from a licensed or certified professional qualified to make such a determination.

(5) A *benefit group* that is not cooperating with a case plan is not eligible for an extension under section (3) or (6) of this rule.

(6) Except as provided in sections (4) and (5) of this rule and in other requirements for TANF eligibility, an extension under this rule may be valid for a period of up to five years at a time. Each extension may be renewed upon expiration, subject to the other requirements of this rule, including section (7).

(7) The Department may deny an extension to a *benefit group* who qualifies under section (3) of this rule if granting the extension would cause the Department to exceed its statutory extension allotment under 42 U.S.C. 608(a)(7)(C)(ii). The following priority system will apply if extensions must be denied:

(a) First priority group: Clients who qualify under section (4) of this rule (which includes subsections (3)(b) to (3)(e) of this rule) and clients who qualify under subsection (3)(a) or (3)(f) based on an incident occurring within two years of the extension date.

(b) Second priority group: Clients who qualify under subsection (3)(a) or (3)(f) based on an incident occurring between two and five years of the extension date.

(c) Third priority group: Clients who qualify under subsection (3)(a) or (3)(f) based on an incident occurring between five and ten years of the extension date.

(d) Fourth priority group: Clients who qualify under subsection (3)(a) or (3)(f) based on an incident occurring more than ten years before the extension date.

Stat. Auth.: ORS 411.060**, 418.100**
Stats. Implemented: ORS 411.060, 411.117**, 418.100, 418.131**

461-135-0708
Criteria for Developing a Plan for Self-support; GA, GAM, OSIP, OSIPM and QMB

(1) A client and the Department may develop a plan for self-support in the GA, GAM, OSIP, OSIPM and QMB programs for a client who:

(a) Meets the applicable disability or impairment criteria; and

(b) Is not eligible for SSI.

(2) A plan for self-support allows a client to retain a portion of his or her nonexcluded assets for a specific period of time to meet a specific occupational goal. The plan may provide for specialized or advanced education or training for clients with a severe disability.

(3) To be approved, a plan for self-support must meet all of the following criteria:

(a) The plan must be in writing and approved by the Department.

(b) The plan must identify a realistic occupational goal, considering the client's physical limitations and capabilities.

(c) The goal of the plan must be to provide the client with income necessary to meet his or her needs, not just for improving potential earning capability or increasing self-sufficiency within the home.

(d) Resources designated to support the plan must be kept in a separate bank account with a specific savings or planned disbursement goal for using the resources. Previously commingled funds must be put in a separate bank account in order for them to be considered designated for the plan.

(e) The duration of the plan must be limited to the time necessary to complete the plan but cannot exceed thirty-six months plus an additional 12 months if necessary for completion of education or training.

(4) A client must do all of the following to comply with a plan for self-support:

(a) Report any changes in circumstances that require a change to the current plan.

(b) Follow through with the plan without any break in excess of the longer of ---

(A) Normal vacations from school or training.

(B) Three months, unless the reasons are beyond his or her control.

(5) If a client fails to comply with the requirements of section (4) of this rule, program eligibility is redetermined without the resource exclusions allowed by OAR ~~461-140-0420~~ **461-145-0405**.

(6) The client and the Department may revise a plan for self-support or may agree to a new plan. To be new, the plan must not have any relationship to the old plan. When a plan is revised or a new plan established:

(a) Resources designated to support the old plan may become a part of the revised or new plan.

(b) If changes are made in the amount of resources to support the plan, eligibility and the payment amount for program benefits are redetermined.

(c) If the duration of the revised plan in addition to the months the old plan was in effect exceeds the time limits in subsection (3)(e) of this rule, approval is limited to the remainder of the maximum period only.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060

461-135-0780
Eligibility for Pickle Amendment Clients; OSIPM

THIS RULE WILL BE AMENDED TO REFLECT THE 2007 COST-OF-LIVING INCREASE PUBLISHED BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

(1) A client is eligible for OSIPM under the so-called Pickle amendment (Pub. L. No. 94-566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, and:

(a) Is receiving SSB;

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the client was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the client when he or she became ineligible for SSI or OSIP is used as the client's countable income. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) Determine the month in which the person was entitled to Social Security and received SSI in the same month. Use the table in section (4) of this rule to find the percentage that applies to that month. Multiply the present amount of the person's and if applicable the spouse's Social Security benefits by the applicable percentage. This amount is the person's countable Social Security for purposes of the Pickle Amendment. Add that figure to any other countable income the person has, if the total is less than the OSIP income standard plus the $20 unearned income disregard the person is Pickle eligible. All other financial and non-financial eligibility criteria must be met.

(4) The following guide contains the calculations used to determine the SSB for prior years:

If SSI was Last Received During	Multiply Current SSB by
January 2005 - December 2005	.961
January 2004 - December 2004	.935
January 2003 - December 2003	.916
January 2002 - December 2002	.903
January 2001 - December 2001	.881

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.070

461-135-0950
Eligibility for Inmates

(1) This rule sets out additional restrictions on the eligibility of inmates for programs covered by chapter 461 of the Oregon Administrative Rules.

(2) Definition of an *inmate*.

(a) An *inmate* is a person living in a *public institution* who is:

(A) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including a person being held involuntarily in a detention center awaiting trial or a person 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; or

(D) Receiving care as an outpatient while residing involuntarily in a *public institution*.

(b) An individual is no longer an *inmate* when:

(A) The person is released on parole, probation, or post-prison supervision;

(B) The person is on home- or work-release, unless the person is required to report to a *public institution* for an overnight stay; or

(C) The person is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual.

(3) Definition of a *public institution.*

(a) A *public institution* is any of the following:

(A) A state hospital (as defined by ORS 162.135) such as the Oregon State Hospital, Eastern Oregon Psychiatric Center, Eastern Oregon Training Center, and any other hospital established by law for similar purposes, including the "SAIP" means Secure Adolescent Inpatient Program (SAIP), and the Secure Children's Inpatient Program (SCIP).

(B) A local correctional facility (as defined in ORS 169.005): a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds persons for more than 36 hours.

(C) A Department of Corrections institution (as defined in ORS 421.005): a facility used for the incarceration of persons sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.

(D) A youth correction facility (as defined in ORS 162.135):

(i) A facility used for the confinement of youth offenders and other persons 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

(ii) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth, or youth offenders pursuant to a judicial commitment or order.

(b) As used in this rule, the term *public institution* does not include:

(A) A medical institution as defined in 42 C.F.R. 435.1009;

(B) An intermediate care facility as defined in 42 C.F.R. 440.140 and 440.150;

(C) A publicly operated community residence that serves no more than 16 residents, as defined in 42 C.F.R. 435.1009; or

(D) A child-care institution as defined in 42 C.F.R. 435.1009 with respect to:

(i) Children for whom foster care maintenance payments are made under title IV-E of the Social Security Act; and

(ii) Children receiving TANF-related foster care under title IV-A of the Social Security Act.

(4) If this rule indicates that the medical benefits of a client are *suspended*, a client meeting the eligibility requirements of a program covered under chapter 461 of the Oregon Administrative Rules is not required to submit a new application for the benefits to be reinstated.

(5) For all programs covered under chapter 461 of the Oregon Administrative Rules:

(a) Except as provided in OAR 461-135-0750, an *inmate* of a *public institution* is not eligible for benefits.

(b) If a pregnant woman receiving medical assistance through the EXT, GAM, MAA, MAF, OHP, OSIPM, or SAC program is an *inmate* of a *public institution*, her medical benefits are *suspended*. When the Department is informed the woman is no longer an *inmate*, her medical benefits are reinstated—effective on the first day she is no longer an *inmate*—if she is still in her protected period of eligibility under OAR 461-135-0010~~(2)~~.

(c) In the OSIP and OSIPM programs, if a client who is receiving SSI becomes an *inmate* of a *public institution*, the medical benefits are *suspended*. Benefits may be suspended for up to twelve full calendar months. When the Department is informed the client is no longer an *inmate*, the medical benefits are reinstated--effective on the first day the client is no longer an *inmate*--if the client meets the eligibility requirements for the program, including being in suspense status with SSA and the client intends to remain in Oregon. The client has 30 days from the date of release to provide verification that SSI has been reinstated or the case will be closed.

(d) In the SAC program, medical benefits are *suspended* if a client who receives medical assistance because of a *serious mental illness* becomes an *inmate* of a *public institution*. When the Department is informed the client is no longer an *inmate*, the medical benefits will be reinstated, effective on the first day the client is no longer an *inmate*, and eligibility will be determined for all medical assistance programs. For purposes of this subsection, a client has a *serious mental illness* if the client has been diagnosed, prior to becoming an *inmate* of a *public institution*, by a psychiatrist, a licensed clinical psychologist or a certified non-medical examiner as suffering from 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 both--

(A) Caused primarily by substance abuse; and

(B) Likely to improve if the substance abuse discontinues or declines.

(6) In the Food Stamp and GA programs, in addition to the other provisions of this rule, an *inmate* released from a *public institution* on home arrest, and required to wear an electronic device to monitor his or her activity, is ineligible for benefits if the correctional agency provides room and board to the person.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.070, 411.113, 411.816, **414.420, 414.422, 414.424,** 418.100~~, 2005 Or. Laws ch. 494~~

461-135-0960
Eligibility for ~~People~~ **Individuals** in State Psychiatric Institutions and Training Centers; OSIPM, SAC

(1) ~~People~~ **Individuals** residing in state psychiatric institutions (~~Eastern Psychiatric~~ **Blue Mountain Recovery** Center**,** ~~or~~ Oregon State Hospital**, or the Portland Oregon State Hospital**) ~~are~~ **may be** eligible for OSIPM or SAC benefits if they are:

(a) Sixty-five years of age or older;

(b) Under 21 years of age; or

(c) Twenty-one years of age or older, if the basis of need is disability or blindness; eligibility was determined before the client reached 21 years of age; and the ~~client~~ **individual** entered the institution before reaching 21 years of age.

(2) There is no age limit for ~~people~~ **individuals** in **the** state training ~~centers~~ **center** (Eastern Oregon Training Center ~~or Fairview Training Center~~ **which is an intermediate care facility for the mentally retarded or ICF/MR**) to be eligible for OSIPM or SAC.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060

461-140-0210
Asset Transfer; General Information and Timelines

(1) OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of an asset on a client.

(2) If an asset is transferred during the periods of time listed in section (4) or (5) of this rule and if the transfer is made in whole or in part for the purpose of establishing or maintaining eligibility for benefits:

(a) ~~In the GA, GAM, OSIP, OSIPM, and QMB programs, the need group is disqualified if a member of the financial group or the spouse of a client transferred the asset.~~ **In the EXT, MAA, MAF, REFM, and SAC programs, the filing group is disqualified if ---**

(A) A member of the *financial group* (see OAR 461-110-0530) transferred the asset; and

(B) The client is an inpatient in a nursing facility, or is an inpatient in a medical institution in which payment for the client is based on a level of care provided in a nursing facility.

(b) In the FS, ~~MAA, MAF,~~ REF, ~~REFM, SAC,~~ and TANF programs, the filing group is disqualified if ---

(A) ~~the~~ **The** asset was a resource**;** and

(B) ~~a~~ **A** member of the ~~financial group~~ ***financial group*** transferred the resource.

(c) In the GA, GAM, OSIP, and OSIPM programs, the *need group* (see OAR 461-110-0630) of a client in a *nonstandard living arrangement* (see OAR 461-001-0000) is disqualified if a member of the *financial group* or the spouse of the client transferred the asset.

(3) In all programs except ERDC and OHP, clients in financial groups whose members transfer ~~a resource~~ **an asset covered under section (2) of this rule** within the time periods listed in section (4) ~~of this rule or an asset within the time periods listed in section~~ **or** (5) of this rule must report the transfer as soon as practicable and must provide information requested by the Department concerning the transfer.

(4) In the **EXT,** FS, MAA, MAF, REF, REFM, SAC, and TANF programs, a transfer of ~~resource~~ **an asset** may be disqualifying if the transfer occurs:

(a) **In the EXT, MAA, MAF, REFM, and SAC programs, during the three years preceding the *date of request* (see OAR 461-115-0030).**

(b) In the Food Stamp program, during the three months preceding the filing date or during a ~~certification period~~ ***certification period*** **(see OAR 461-001-0000) if the asset was a resource**.

(~~b~~**c**) In the ~~MAA, MAF,~~ REF~~, REFM, SAC,~~ and TANF programs, during the three years preceding the *date of request* (~~as defined in~~ **see** OAR 461-115-0030) **if the asset was a resource**.

(5) In the GA, GAM, OSIP, **and** OSIPM~~, and QMB~~ programs, **for a client in a *nonstandard living arrangement,*** a transfer of an asset may be disqualifying if the transfer occurs:

(a) On or before June 30, 2006 and as described in one of the following paragraphs:

(A) On or after the date that is 60 months prior to the *date of request*—for assets that are transferred without compensation equal to or greater than fair market value from a revocable trust (~~*see*~~ **see** OAR 461-145-0540(~~8~~**7**)(c)).

(B) On or after the date that is 60 months prior to the *date of request* —for assets that are transferred without compensation equal to or greater than fair market value to an irrevocable trust (~~*see*~~ **see** OAR 461-145-0540(~~9~~**8**)(a)).

(C) On or after the date that is 60 months prior to the *date of request* — when there is a change in circumstances that makes assets in an irrevocable trust unavailable to the client (~~*see*~~ **see** OAR 461-145-0540(~~9~~**8**)(d)).

(D) On or after the date that is 36 months prior to the *date of request* — for assets transferred without compensation equal to or greater than fair market value from an irrevocable trust (~~*see*~~ **see** OAR 461-145-0540(~~9~~**8**)(b) and (c)).

(E) On or after the date that is 36 months prior to the *date of request* — for other asset transfers made without compensation equal to or greater than fair market value.

(b) On or after---

(A) July 1, 2006; and

(B) The date that is 60 months prior to the *date of request*.

(6) The duration of the period of disqualification or ineligibility is set out in OAR 461-140-0260 to 461-140-0300.

Stat. Auth: ORS 411.060, 411.710, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.710, 411.816, 418.100

461-140-0220
Determining if a Transfer of an Asset is Disqualifying

A transfer of an asset is not ~~*disqualifying*~~ **disqualifying** if the requirements of one of the following sections are met:

(1) Except as otherwise provided in OAR 461-140-0242, the transferred item was either---

(a) An excluded asset other than a home or real property; or

(b) Personal property such as jewelry or furniture.

(2) The asset was sold or traded:

(a) In all programs except the Food Stamp program, for compensation equal to or greater than fair market value.

(b) In the Food Stamp program, for compensation near, equal to or greater than fair market value.

(3) The asset was transferred between members of the same financial group, including members who are ineligible aliens or disqualified people.

(4) The transfer settled a legally enforceable claim against the asset or client.

(5) Except in the OSIP, OSIPM**,** and QMB programs, a court ordered the transfer.

(6) In the OSIP, OSIPM, and QMB programs, a court ordered the transfer and:

(a) The transfer occurs more than 36 months or 60 months before the *date of request* (as defined in OAR 461-115-0030), whichever is applicable under OAR 461-140-0210(5); or

(b) There is an institutionalized spouse, and — after performing the calculations required in OAR 461-160-0580(2) — the amount of resources allocated to a community spouse does not exceed the largest of the four amounts set forth in OAR 461-160-0580(2)(f).

(7) The client was a victim of fraud, misrepresentation, or coercion, and legal steps have been taken to recover the asset.

(8) In the OSIP, OSIPM**,** and QMB programs, **for a client in a *nonstandard living arrangement* (see OAR 461-001-0000),** the asset is an annuity purchased on or before December 31, 2005, the client or the spouse of the client is the annuitant, and the entire amount of principal and earned interest is paid in equal installments during the actuarial life expectancy of the annuitant. For purposes of this section, the actuarial life expectancy

is established by the ~~life expectancy table~~ **actuarial tables** of the ~~federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(B)~~ **Office of the Chief Actuary of the Social Security Administration at http://www.ssa.gov/OACT/STATS/table4c6.html**.

(9) In the OSIP, OSIPM**,** and QMB programs, ~~for a~~ **the** client **is** in a *standard living arrangement* (~~as defined in~~ **see** OAR ~~461-110-0110~~ **461-001-0000**~~, the asset is an annuity purchased on or after January 1, 2006, and the client or the spouse of the client is the annuitant~~.

(10) In the OSIP, OSIPM**,** and QMB programs, for a client in a *nonstandard living arrangement* (~~as defined in~~ **see** OAR ~~461-110-0110~~ **461-001-0000**):

(a) The asset is an annuity purchased from January 1, 2006 through June 30, 2006, and the client or the spouse of the client is the annuitant.

(b) The asset is an annuity purchased on or after July 1, 2006, and the annuity meets the requirements of OAR 461-145-0022(~~11~~**10**).

Stat. Auth: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100

461-140-0242
Disqualifying Transfer of Assets Including Home; GA, GAM, OSIP, OSIPM~~, and QMB~~

For a client in a *nonstandard living arrangement* (see OAR 461-001-0000) in the GA, GAM, OSIP, and OSIPM programs:

(1) A transfer of an asset (including a home) by a client or the spouse of the client is a disqualifying transfer unless the requirements of at least one of the following subsections are met:

(a) The transfer was made exclusively for purposes other than establishing eligibility or maintaining benefits.

(b) The title to the asset was transferred to the person's spouse.

(c) The title to the asset was transferred to the person's child who is blind or has a disability under the criteria of the Social Security Administration.

(d) The title to the asset was transferred to another for the sole benefit of the spouse or a child who is blind or has a disability under the criteria of the Social Security Administration. This transfer must be arranged in such a way that no individual or entity except this spouse or child can benefit from the asset transferred in any way, whether at the time of transfer or any time in the future. A direct transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not the spouse or child who is blind or has a disability under the criteria of the Social Security Administration is not considered to be established for the benefit of one of those individuals. In order for a transfer or a trust to be considered for the sole benefit of one of these individuals, the instrument or document must provide for the spending of the funds involved for the benefit of the individual based on the life expectancy of the individual.

(e) The transfer was made to a trust described in OAR 461-145-0540(~~10~~**9**).

(f) The transfer is a transfer described in OAR 461-160-0580(2).

(g) The resource is transferred by the community spouse after the Department has determined the community spouse's resource allowance in accordance with OAR 461-160-0580 and the resource has not been attributed to the institutionalized spouse. Notwithstanding this subsection, a transfer of a resource by a community spouse who is receiving or applying for benefits remains subject to all rules regarding the transfer of an asset by a client.

(2) A transfer of a home by a client or the spouse of the client is a disqualifying transfer unless the title was transferred to the client's —

(a) Child under age 21;

(b) Sibling who has equity interest in the home and was residing in the home for at least one year immediately before the client's admission to long-term care; or

(c) Son or daughter who resided with the client for at least two years immediately prior to the client's admission to long-term care and provided care that permitted the client to reside at home rather than in an institution or long-term care facility. A son or daughter provides the care required by this subsection by doing at least five of the following for the client on a regular basis, without receiving payment from the Department:

(A) Prepares meals.

(B) Shops for food and clothing.

(C) Helps maintain the home.

(D) Assists with financial affairs.

(E) Runs errands.

(F) Provides transportation.

(G) Provides personal services.

(H) Arranges for medical appointments.

(I) Assists with medication.

(3) If a transfer described in subsection (1)(a) of this rule is made for less than fair market value, there is a rebuttable presumption that the asset was transferred for the purpose of establishing or maintaining eligibility.

(4) To rebut the presumption in section (3) of this rule, the client must present evidence other than his or her own statement and must provide to the Department the information it requests for the purpose of evaluating the purpose of the transfer. To meet the burden, it is sufficient for the client to show one of the following:

(a) The decision to make the transfer was not within the client's control;

(b) At the time of transfer, the client could not reasonably have anticipated applying for medical assistance;

(c) Unexpected loss of resources or income occurred between the time of transfer and the application for medical assistance;

(d) Because of other, similarly convincing, circumstances, it appears more likely than not that the transfer was not made, in whole or in part, for the purpose of establishing or maintaining eligibility for benefits.

(5) The fact that a recipient was already eligible for benefits is not sufficient to rebut the presumption in section (3) of this rule because the asset may not always be excluded and if the client had received full compensation for the asset, the compensation received would have been used to determine future eligibility.

Stat. Auth: ORS 411.060, 411.710
Stats. Implemented: ORS 411.060, 411.710

461-140-0270
Disqualification Due to ~~a Resource~~ **An Asset** Transfer; **EXT,** MAA, MAF, REF, REFM, SAC, TANF

In the EXT, MAA, MAF, REF, REFM, SAC, and TANF programs:

(1) ~~Financial groups in the MAA, MAF, REF, REFM, SAC and TANF programs,~~ **A *financial group* (see OAR 461-110-0530)** in which a member is disqualified due to the transfer of ~~a resource, are~~ **an asset is** disqualified for the number of months equal to the *uncompensated value* (see OAR 461-140-0250) divided by the TANF payment standard (see OAR 461-155-0030).

(2) The disqualification period starts the date the Department imposes the disqualification by terminating benefits for the period calculated above or, in the case of an applicant, by denying benefits for the same period of time measured from the date of application.

Stat. Auth: ORS 411.060, 418.100
Stats. Implemented: ORS 411.060, 411.632, 418.100

461-140-0296
Length of Disqualification Due to An Asset Transfer; GA, GAM, OSIP, OSIPM ~~or QMB~~

(1) ~~In~~ **This rule applies to clients in** the GA, GAM, OSIP, **and** OSIPM~~, and QMB~~ programs **who live in a *nonstandard living arrangement* (see OAR 461-001-0000)**.

(~~1~~**2**) A financial group 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*~~ **see** OAR 461-140-0250) for the transfer divided by the following dollar amount:

(a) If the *initial month* (~~defined in~~ **see** OAR ~~461-150-0010~~ **461-001-0000**) is on or after October 1, 1993 and 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—$5,360.

(~~2~~**3**) For transfers by a client and the spouse of a client 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 (~~1~~**2**)(a) to (~~1~~**2**)(e) 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 (~~1~~**2**)(a) to (~~1~~**2**)(e) of this rule, each disqualification period is calculated separately.

(d) The number of months resulting from the calculation in section (~~1~~**2**) of this rule is rounded down to the next whole number.

(e) Except as provided in subsection (~~2~~**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 section overlap, the periods are applied sequentially so that no two penalty periods overlap.

(~~3~~**4**) For transfers by a client and the spouse of a client that occurred on or after July 1, 2006 **and for income cap trusts under OAR 461-145-0540(9)(c) that accumulate funds in excess of the applicable dollar amount identified in subsections (2)(a) to (2)(e) of this rule**:

(a) If there are multiple transfers by the client and the spouse of the client, including any transfer less than the applicable dollar amount identified in subsections (~~1~~**2**)(a) to (~~1~~**2**)(e) of this rule, the value of all transfers are added together before dividing by the applicable dollar amount identified in subsections (~~1~~**2**)(a) to (~~1~~**2**)(e) 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)(e) of this rule.**

(b) The quotient resulting from the calculation in section (~~1~~**2**) of this rule is not rounded. The whole number of the quotient is the number of full months the financial group is disqualified. The remaining decimal or fraction of the quotient is used to calculate an additional partial month disqualification. This remaining decimal or fraction is converted to an additional 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 this calculation results in a fraction of a day, the fraction of a day is rounded down.

(c) ~~For a client in a *standard living arrangement* (defined in OAR 461-110-0110), the first month of the disqualification is the month following the month of the first asset transfer.~~

~~(d) If a client is in a *nonstandard living arrangement* (defined in OAR 461-110-0110), the~~ **The** first month of the disqualification is the later of ---

(A) The month following the month the asset was transferred.

(B) The *date of request* (as defined in OAR 461-115-0030) for medical benefits as long as the client submits an application, and would otherwise be eligible but for this disqualification period.

(~~4~~**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 client is considered transferred when any action is taken either by the client or any other person that reduces or eliminates the client's control or ownership in the client's share of the asset.

(~~5~~**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 (6) of this rule.

(~~6~~**7**) A disqualification period is assessed for the value of an annuity beyond the actuarial life expectancy of the annuitant if subsections (a) and (b) of this section both apply:

(a) Either --

(A) A client or the spouse of a client purchase an annuity on or before December 31, 2005; or

(B) An OSIPM client ~~who is in a *nonstandard living arrangement*~~ purchases an annuity on or after July 1, 2006.

(b) If the annuity pays benefits beyond the actuarial life expectancy of the annuitant, as determined by the ~~life expectancy table~~ **actuarial tables** of the ~~federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(B)~~ **Office of the Chief Actuary of the Social Security Administration at http://www.ssa.gov/OACT/STATS/table4c6.html**, a disqualification period is assessed for the value of the annuity beyond the actuarial life expectancy of the annuitant.

(~~7~~**8**) A single transfer of an asset may cause a disqualification for both a medical assistance program under this rule and the SSI cash grant. The period of the disqualification is likely to be longer for SSI than for the medical assistance program, so a person may be eligible again for the medical assistance program while still disqualified from receiving SSI. The provisions of this rule are applied without regard to the related disqualification for SSI.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060

461-140-0300
Adjustments to the Disqualification for Asset Transfer

(1) The disqualification imposed under OAR 461-140-0260 is not adjusted once applied in the Food Stamp program.

(2) In all other programs, the disqualification ends if the transfer that caused the disqualification is rescinded. The duration of the disqualification is recalculated if the terms of the transfer are modified.

(3) In the **EXT,** GA, GAM, **MAA, MAF,** OSIP, OSIPM**,** ~~and~~ QMB**, REFM, and SAC** programs, the Department may waive the disqualification if the disqualification would create an undue hardship on the client. For purposes of this section, the disqualification would create an undue hardship if the requirements of subsections (a) and (b) of this section are met:

(a) The client has no other means for meeting his or her needs. The client has the burden of proving that no other means exist by---

(A) Exploring and pursuing all reasonable means to recover the assets to the satisfaction of the Department, including legal remedies and consultation with an attorney; and

(B) Cooperating with the Department to take action to recover the assets.

(b) The disqualification would deprive the client of---

(A) Medical care such that the client's health or life would be endangered; or

(B) Food, clothing, shelter, or other necessities of life without which the health or life of the client would be endangered.

(4) As authorized by ORS 411.620, the Department retains the authority to bring a civil suit or action to set aside a transfer of assets for less than fair market value and may seek recovery of all costs associated with such an action.

(5) Notwithstanding the granting of an undue hardship waiver under section (3) of this rule, the Department is not precluded from recovering public assistance from any assets in which the client held an interest, or in which the client previously held an interest, at the time the undue hardship waiver was granted.

Stat. Auth: ORS 411.060
Stats. Implemented: ORS 411.060, 411.632

461-145-0020
Annuities; Not OSIPM

(1) For the purposes of this rule:

(a) An annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity, if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR 461-145-0380)

(b) The definition of "child" in OAR ~~461-110-0110~~ **461-001-0000** does not apply.

(c) "Child" means a biological or adoptive child who is:

(A) Under age 21; or

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

(d) "Commercial annuities" mean contracts or agreements (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.

(2) An annuity is counted as a resource if---

(a) The annuity does not make regular payments for a lifetime or specified number of years; or

(b) The annuity does not qualify for exclusion as a resource under subsection (4)(c) of this rule.

(3) If an annuity is a countable resource under this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular payments already received, minus any early withdrawals, and minus any surrender fees.

(4) *Commercial annuities* and payments from such annuities are counted as follows:

(a) In all programs except OSIP, OSIPM, and QMB, annuity payments are counted as unearned income **to the annuitant**.

(b) In the OSIP and QMB programs:

(A) ~~If~~ **For a client in a *nonstandard living arrangement* (defined at OAR 461-001-0000), if** a client or the spouse of a client purchases or transfers

an annuity prior to January 1, 2006, the transaction may be subject to the rules on asset transfers at OAR 461-140-0220 and following. For an annuity that is not disqualifying but meets the criteria of OAR 461-140-0220 **or for a client in a *standard living arrangement* (defined at OAR 461-001-0000)**, the annuity payments are counted as unearned income **to the annuitant**.

(B) If a client or the spouse of a client purchases an annuity on or after January 1, 2006, the annuity is counted as a resource unless it is excluded under paragraph (C) of this subsection.

(C) An annuity described in paragraph (B) of this subsection is excluded as a resource if the criteria in subparagraphs (i), (ii), and (iii) of this paragraph are met, except that if an unmarried client is the annuitant, the requirements of subparagraph (iv) of this paragraph must also be met and if a spouse of a client is the annuitant, the requirements of subparagraph (v) of this paragraph must also be met.

(i) The annuity is irrevocable.

(ii) The annuity pays principal and interest out in equal monthly installments within the actuarial life expectancy of the annuitant. For purposes of this subparagraph, the actuarial life expectancy is established by the ~~life expectancy~~ ~~table~~ **actuarial tables** of the ~~federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(B)~~ **Office of the Chief Actuary of the Social Security Administration at http://www.ssa.gov/OACT/STATS/table4c6.html**.

(iii) The annuity is issued by a business that is licensed and approved to issue *commercial annuities* by the state in which the annuity is purchased.

(iv) If an unmarried client is the annuitant, the annuity must specify that upon the death of the client, the first remainder beneficiary is either of the following:

(I) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(II) The child of the client, if the Department is the next remainder beneficiary (after this child), up to the amount of medical benefits provided on behalf of the client, in the event that the child does not survive the client.

(v) If a spouse of a client is the annuitant, the annuity must specify that, upon the death of the spouse of the client, the first remainder beneficiaries are either of the following:

(I) The client, in the event that the client survives the spouse; and the Department, in the event that the client does not survive the spouse, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(II) A child of the spouse; and the client in the event that this child does not survive the spouse.

(D) If an annuity is excluded under paragraph (C) of this subsection, annuity payments are counted as unearned income **to the annuitant**.

(c) For OSIPM, see OAR 461-145-0022.

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100

461-145-0022
Annuities; OSIPM

In the OSIPM program:

(1) For the purposes of this rule:

(a) An annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity, if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR 461-145-0380.)

(b) The definition of "child" in OAR ~~461-110-0110~~ **461-001-0000** does not apply.

(c) "Child" means a biological or adoptive child who is:

(A) Under age 21; or

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

(d) "Commercial annuity" means a contract or agreement (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.

(2) An annuity that does not make regular payments for a lifetime or specified number of years is a resource.

(3) When a client applies for medical benefits, both initially and at periodic redetermination (see OAR 461-115-0050 and 461-115-0430), the client must report any annuity owned by the client or a spouse of the client.

(4) By signing the application for assistance, a client and the spouse of a client agree that the Department, by virtue of providing medical assistance, becomes a remainder beneficiary as described in sections (8) and (10) of this rule, under any *commercial annuity* purchased on or after February 8, 2006, unless the annuity is included in the community spouse's resource allowance under OAR 461-160-0580(2)(c).

(5) If the Department is notified about a *commercial annuity*, the Department will notify the issuer of the annuity about the right of the Department as a preferred remainder beneficiary, as described in sections (8) and (10) of this rule, in the amount of medical assistance provided to the client.

(6) ~~If~~ **For a client in a *nonstandard living arrangement* (defined at OAR 461-001-0000), if** a client or the spouse of a client purchases or transfers a *commercial annuity* prior to

January 1, 2006, the transaction may be subject to the rules on asset transfers at OAR 461-140-0220 and following. For an annuity that is not disqualifying but meets the requirements in OAR 461-140-0220, the annuity payments are counted as unearned income **to the annuitant**.

(7) Sections 8 and 9 of this rule apply to a *commercial annuity* if---

(a) The client is in a *nonstandard living arrangement* ~~(defined in OAR 461-110-0110~~), and the client or the spouse of the client purchases an annuity from January 1, 2006 through June 30, 2006; or

(b) The client is in a *standard living arrangement* (defined in OAR ~~461-110-0110~~ **461-001-0000**), and the client or the spouse of a client purchase an annuity on or after January 1, 2006.

(8) A *commercial annuity* covered by section (7) of this rule is counted as a resource unless the annuity is excluded by meeting the following requirements:

(a) If an unmarried client is an annuitant, the annuity must meet the requirements of subsection (8)(c) of this rule, and the annuity must specify that upon the death of the client, the first remainder beneficiary is either of the following:

(A) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(B) The child of the client, if the Department is the next remainder beneficiary (after this child), up to the amount of medical benefits provided on behalf of the client, in the event that the child does not survive the client.

(b) If a spouse of a client is the annuitant, the annuity must meet the requirements of subsection (8)(c) of this rule, and the annuity must specify that, upon the death of the spouse of the client, the first remainder beneficiaries are either of the following:

(A) The client, in the event that the client survives the spouse; and the Department, in the event that the client does not survive the spouse, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(B) A child of the spouse; and the client in the event that this child does not survive the spouse.

(c) An annuity covered by section (7) of this rule may not be excluded unless the annuity meets all of the following requirements:

(A) The annuity is irrevocable.

(B) The annuity pays principal and interest out in equal monthly installments within the actuarial life expectancy of the annuitant. For purposes of this paragraph, the actuarial life expectancy is established by the ~~life expectancy table~~ **actuarial tables** of the ~~federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(B)~~ **Office of the Chief Actuary of the Social Security Administration at http://www.ssa.gov/OACT/STATS/table4c6.html**.

(C) The annuity is issued by a business that is licensed and approved to issue a *commercial annuity* by the state in which the annuity is purchased.

(9) If an annuity is excluded as a resource under section (8) of this rule, the annuity payments are counted as unearned income **to the annuitant**. If an annuity is a countable resource under section (8) of this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

(10) This section lists the requirements for a *commercial annuity* purchased by the client or the spouse of the client on or after July 1, 2006, when a client is in a *nonstandard living arrangement*, and the annuity names the client or the community spouse as the annuitant. Annuities that meet all of the requirements of this section are counted as unearned income **to the annuitant**. The treatment of annuities that do not meet all requirements of this section is covered in sections (11) and (12) of this rule.

(a) The annuity must comply with one of the following paragraphs:

(A) The first remainder beneficiary is the spouse of the client, and in the event that the spouse transfers any of the remainder of the annuity for less than *fair market value* (as defined at OAR ~~461-145-0250(2)(a)(B)~~ **461-001-0000**), the Department is the second remainder beneficiary for up to the total amount of medical benefits paid on behalf of the client.

(B) The first remainder beneficiary is the annuitant's child, and in the event that the child or a representative on behalf of the child transfers any of the remainder of the annuity for less than *fair market value*, the Department is the second remainder beneficiary for up to the total amount of medical benefits paid on behalf of the client.

(C) The first remainder beneficiary is the Department for up to the total amount of medical benefits paid on behalf of the client.

(b) The annuity must be irrevocable and nonassignable.

(c) The annuity pays principal and interest out in equal monthly installments within the actuarial life expectancy of the annuitant. For purposes of this subsection, the actuarial life expectancy is established by the ~~life expectancy table~~ **actuarial tables** of the ~~federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(B)~~ **Office of the Chief Actuary of the Social Security Administration at http://www.ssa.gov/OACT/STATS/table4c6.html**.

(d) The annuity is issued by a business that is licensed and approved to issue a *commercial annuity* by the state in which the annuity is purchased.

(11) If the client is the annuitant and a *commercial annuity* does not meet all of the requirements of section (10) of this rule, or the spouse of the client is the annuitant and a *commercial annuity* does not meet the requirements of subsection (10)(a) of this rule, there is a disqualifying transfer of assets under OAR 461-140-0210 and following. See OAR 461-140-0296(~~5~~**6**) and (~~6~~**7**) for calculation of the disqualification period.

(12) Regardless of whether a *commercial annuity* is a disqualifying transfer of assets, if the annuity does not meet all of the requirements of section (10) of this rule, the annuity is counted as a resource with cash value equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060

461-145-0130
Earned Income; Treatment

(1) ~~Generally, earned~~ **Earned** income is countable in determining eligibility for programs, subject to ~~the following specific provisions~~ **sections (2) to (8) of this rule**.

(2) A flexible benefit used to pay for child care or health insurance costs is excluded ~~if~~ **unless** it is ~~not~~ reimbursed by the Department or allowed as an earned income deduction.

(3) JOBS Plus income is earned income and is treated as follows:

(a) In the TANF program:

(A) JOBS Plus income earned by an NCP-PLS client is counted in determining initial TANF eligibility.

(B) When determining the need for a TANF supplement for a TANF-PLS client, the income is treated as follows:

(i) It is excluded in determining the countable income limit and in calculating the benefit equivalency standards.

(ii) It is counted in calculating the wage supplement.

(C) JOBS Plus wages received after the client's last month of work under a JOBS Plus agreement are counted.

(b) In the FS program:

(A) JOBS Plus income earned by ~~an NCP-PLS~~ **a TANF-PLS** client:

(i) Is counted in determining initial FS eligibility.

(ii) Is excluded in determining ongoing eligibility.

(B) JOBS Plus wages received after the client's last month of work under ~~an NCP-PLS or~~ **a** TANF-PLS JOBS Plus agreement are counted.

(c) For programs other than FS and TANF, NCP-PLS and TANF-PLS income is counted.

(d) For all programs, client wages received under the Oregon Employment Department UI JOBS Plus or the Tribal TANF JOBS programs are counted as earned income.

(4) Welfare-to-Work work experience income is treated as follows:

(a) In the EXT, MAA, MAF, and TANF programs, the income is earned income, and the first $260 is excluded each month.

(b) In the FS and OHP programs, the income is earned income.

(5) In the ERDC and OHP programs, earned income of a child is excluded.

(~~3~~**6**) In the **EXT,** MAA, MAF, SAC**,** and TANF programs:

(a) Earned income of the following children is excluded:

(A) Dependent children under the age of 19 years, and minor parents under the age of 18 years, who are full-time students in grade 12 or below (or the equivalent level of vocational training, in GED courses), or in home schooling approved by the local school district.

(B) Dependent children under the age of 18 years who are attending school part-time (as defined by the institution) and are not employed full-time.

(C) Dependent children too young to be in school.

(b) Income remaining after the month of receipt is a resource.

(c) In-kind earned income is excluded (see OAR 461 145-0280 and 461-145-0470).

~~(4) In the ERDC and OHP programs, earned income of a child is excluded.~~

(~~5~~**7**) In the FS program, the following types of income are excluded:

(a) The earned income of an individual under the age of 18 years who is under the parental control of another member of the household and is:

(A) Attending elementary or high school;

(B) Attending GED classes recognized by the local school district;

(C) Completing home-school elementary or high school classes recognized by the local school district; or

(D) Too young to attend elementary school.

(b) In-kind earned income.

(c) Deductions from base pay for future educational costs under Pub. L. No. 99-576, 100 Stat. 3248 (1986), for clients on active military duty.

(d) Income remaining after the month of receipt is a resource.

~~(6) In the MAA, MAF, OHP, SAC and TANF programs, earned in-kind income is excluded (*see* OAR 461-145-0280).~~

~~(7) Welfare-to-Work work experience income is treated as follows:~~

~~(a) In the MAA, MAF and TANF programs, the income is earned income, and the first $260 is excluded each month.~~

~~(b) In the FS and OHP programs, the income is earned income.~~

(8) In the OHP program, earned in-kind income (see OAR 461-145-0280) is excluded unless it is an expenditure by a business entity that benefits a *principal* (see OAR 461-145-0088).

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

461-145-0140
Earned Income Tax Credit (EITC)

(1) There are federal and state earned income tax credit (EITC) programs for low-income families. An EITC may be received in one of two ways:

(a) As an advance in the employee's paycheck.

(b) As one annual payment received at the time of the normal income tax returns.

(2) ~~In all programs except FS, GA, GAM, OSIP, OSIPM and QMB, all EITC payments are excluded.~~

~~(3) In the FS program, the EITC is treated as follows:~~

~~(a) The credit is excluded from income in the month it is received. A lump-sum credit is an excluded resource in the month following receipt.~~

~~(b) The advance credit is an excluded resource for up to 12 months from receipt if the credit is received while the client is receiving food stamp benefits and the client continuously receives the benefits.~~

~~(4)~~ In the GA, GAM, OSIP, OSIPM**,** and QMB programs, the ~~credit~~ **EITC** is counted as follows:

(a) An advance payment is considered earned income.

(b) An annual payment is considered a resource.

(3) In all programs except GA, GAM, OSIP, OSIPM, and QMB, the EITC is excluded.

Stat. Auth.: ORS 411.060, 411.700, 411.816**, 418.100**
Stats. Implemented: ORS 411.060, 411.700, 411.816**, 418.100**

461-145-0175
Family Abuse Prevention Act (FAPA) Payments

(1) Family Abuse Prevention Act (FAPA) payments are court-ordered payments to victims of domestic violence made under authority of ORS 107.718(1)(h). A payment is considered available when actually received by the victim of abuse.

(2) ~~FAPA payments are counted as follows:~~

~~(a)~~ For all programs ~~except Food Stamps~~ **covered by this chapter of rules**, the first $2,500 is excluded. The excess above $2,500 is counted as a resource.

~~(b) For the Food Stamp program, all payments are counted as unearned income.~~

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100

461-145-0185
Floating Homes and Houseboats

THIS IS A NEW RULE

(1) Floating homes and houseboats are treated in the same manner as real property under OAR 461-145-0420.

(2) Floating homes and houseboats are subject to OAR 461-145-0220 and 461-145-0250 if applicable.

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100

461-145-0220
Home

(1) Home defined: A home is the place where the filing group 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 FS, **GA, GAM, OSIP, OSIPM, and QMB,** 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.

(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 ~~Food Stamp program~~ **FS, GA, GAM, OSIP, OSIPM, and QMB 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 a client who has an *initial month* (defined in OAR ~~461-150-0010~~ **461-001-0000**) of long-term care or waivered services on or after January 1, 2006:

(A) For purposes of this subsection:

(i) The definition of "child" in OAR ~~461-110-0110~~ **461-001-0000** does not apply.

(ii) "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 value of a home is excluded if the client or the spouse of the client occupies the home and the equity in the home is $500,000 or less.

(C) The home is countable as a resource if the client has equity in the home of more than $500,000, unless one of the following requirements is met:

(i) The spouse of the client occupies the home.

(ii) The child of the client occupies the home.

(iii) The client is legally unable to convert the equity value in the home to cash.

(iv) The home equity is excluded under OAR 461-145-0250.

(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 Food Stamp program only, 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: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:

(a) In all programs except the GA, GAM, OSIP, OSIPM, and QMB 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.

(b) In the Food Stamp program, when the financial group is absent because of employment or training for future employment.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, when the client is absent to receive care in a medical institution, if one of the following is true:

(A) The absent client is a single adult who has provided evidence that he or she will return to the home. The evidence must reflect the subjective intent of the client, regardless of the client's medical condition. A written statement from a competent client is sufficient to prove the intent.

(B) The home remains occupied by the client's spouse, child, or a relative dependent on the client 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.

(d) In the MAA, MAF, REF, REFM, SAC, 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.

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100

461-145-0280
In-Kind Income

(1) ~~In-kind income is compensation in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).~~ **This rule does not apply to shelter-in-kind income (see OAR 461-145-0470).**

(2) In all programs except **EXT,** MAA, MAF, OHP, **REFM,** SAC, and TANF, ~~earned in-kind income~~ ***in-kind income*** **(defined at OAR 461-001-0000) that is earned** is treated according to the administrative rules on earned income **(such as OAR 461-145-0130)**.

(3) In all programs except **EXT,** MAA, MAF, OHP, **REFM,** SAC, and TANF, ~~unearned in-kind income~~ ***in-kind income*** **that is unearned** (except third-party payments) is treated as follows:

(a) Income from court-ordered community service work or bartering is excluded. Bartering is the exchange of goods of equal value.

(b) Items such as cars and furniture are treated according to the administrative rule for the specific type of asset.

(4) In the **EXT,** MAA, MAF, **REFM,** SAC, and TANF programs, ~~in-kind income~~ ***in-kind income*** **(except unearned third-party payments)** is excluded.

(5) **In the OHP program, except for child support (see OAR 461-145-0080) and an expenditure by a business entity that benefits a principal (see OAR 461-145-0088),** ***in-kind income*** **is excluded.**

(6) Unearned third-party payments are treated as follows:

(a) Payments made to a third party that should legally be paid directly to a member of the ~~financial group~~ ***financial group*** **(see OAR 461-110-0530)** are counted as unearned income.

(b) Payments made to a third party that the payee is not legally obligated to pay directly to a member of the ~~financial group~~ ***financial group*** and that the ~~financial group~~ ***financial group*** does not have the option of taking as cash, and payments made by the noncustodial parent to a third party, that are court-ordered but not designated as child support, are treated as follows:

(A) In the ERDC~~, MAA, MAF, SAC, and TANF~~ ~~programs~~ **program**, these third-party payments are excluded.

(B) In the FS program, these third-party payments are excluded unless they are transitional housing payments for the homeless.

(C) **In the MAA, MAF, REFM, SAC, and TANF programs, except for child support (see OAR 461-145-0080), these third-party payments are excluded.**

(D) In all other programs **except OHP**, these third-party payments are excluded~~, except those made for the financial group's shelter costs. Third-party shelter payments are treated according to the administrative rule for shelter in-kind~~.

~~(6) In the OHP program, in-kind income is excluded except as provided in OAR 461-145-0120 and 461-145-0470.~~

Stat. Auth.: ORS 409.050, 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100

461-145-0310
Life Estate

(1) ~~A *life estate* is the right to property limited to the lifetime of the person holding it or the lifetime of some other person. In general, a *life estate* enables the owner of the life estate to possess, use and obtain profits from property during the lifetime of a designated person while actual ownership of the property is held by another individual. A *life estate* is created when an individual owns property and then transfers their ownership to another while retaining, for the rest of their life, certain rights to that property. In addition, a life estate is established when a member of the financial group purchases a life estate interest in the home of another individual.~~

~~(2)~~ For all programs except OSIP, OSIPM**,** and QMB, if a ~~financial group~~ ***financial group*** **(see OAR 461-110-0530)** is living in ~~real property~~ ***real property*** **(defined at OAR 461-001-0000)** while a member holds a *life estate* **(defined at OAR 461-001-0000)** in this property, the property is treated as a home (see OAR 461-145-0220). In all other situations, a *life estate* is treated as ~~real property~~ ***real property*** (see OAR 461-145-0420).

(~~3~~**2**) In the OSIP, OSIPM**,** and QMB programs:

(a) A transfer for less than ~~fair market value (see OAR 461-140-0050)~~ ***fair market value*** **(defined at OAR 461-001-0000)** in which a member of the financial group retains a *life estate* is a disqualifying transfer. A transfer is considered for less than ~~fair market value~~ ***fair market value*** if the ~~fair market value~~ ***fair market value*** of the transferred resource on the day prior to the transfer is greater than the sum of the value of the rights conferred by the life estate plus the compensation received for the transfer. For purposes of this subsection, the value of the rights conferred by the *life estate* is established by the Life Estate and Remainder Interest Table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(A).

(b) If a member of the ~~financial group~~ ***financial group*** purchases a *life estate* interest in the home of another individual on or after July 1, 2006, the purchase is considered a transfer of resources unless the client resides in this home for at least 12 consecutive months after the date of the purchase. The value of the transfer for a client who does not reside in the home for at least 12 consecutive months is calculated by using the purchase price of the *life estate*.

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

461-145-0330
Loans and Interest on Loans

(1) This rule covers proceeds of loans, loan repayments, and interest earned by a lender. If the proceeds of a loan are used to purchase an asset, the asset is evaluated under the other rules in this division of rules.

(2) For purposes of this rule, "reverse-annuity mortgage" means an arrangement in which a homeowner borrows against the equity in the home and receives regular monthly tax-free payments from the lender. A "reverse-annuity mortgage" is sometimes referred to in the private sector as a reverse mortgage or a home equity conversion mortgage.

(3) The proceeds of a home equity loan or *reverse-annuity mortgage* are considered loans under this rule.

(4) For payments that a member of the ~~financial group~~ ***financial group*** **(see OAR 461-110-0530)** receives as a borrower to be treated as a loan:

(a) In the FS, GA, GAM, OHP, OSIP, OSIPM, and QMB programs, there must be an oral or written loan agreement, and this agreement must state when repayment of the loan is due to the lender.

(b) In all other programs, there must be a written loan agreement, and this agreement must be signed by the borrower and lender, dated before the borrower receives the proceeds of the loan, and state when repayment of the loan is due to the lender.

(5) **Payments for a purported loan that do not meet the requirements of section (4) of this rule are treated as unearned income.**

(6) When a member of a ~~financial group~~ ***financial group*** receives cash proceeds from a loan:

(a) In all programs, educational loans are treated according to OAR 461-145-0150.

(b) In the ERDC, EXT, FS, MAA, MAF, OHP, REF, REFM, SAC and TANF programs, the loan is excluded. If retained after the month of receipt, the loan is treated in accordance with OAR 461-140-0070.

(c) In the GA, GAM, OSIP, OSIPM and QMB programs, a loan is excluded as income. The loan is a resource if retained in the month following the month of receipt (notwithstanding OAR 461-140-0070).

(~~6~~**7**) Except as provided in section (~~7~~**8**) of this rule, if a member of a ~~financial group~~ ***financial group*** has made a loan and is receiving return payments as a result:

(a) The interest payment is unearned income.

(b) The payment of principal is excluded.

(~~7~~**8**) In the GA, GAM, OSIP, OSIPM**,** and QMB programs, if a client or a spouse of a client uses funds to purchase a promissory note, loan, or mortgage in a transaction occurring on or after July 1, 2006, the balance of the payments owing to the client or spouse of the client is a transfer of assets for less than fair market value, unless all of the following requirements are met:

(a) The total value of the transaction is being repaid to the client or spouse of the client within that person's actuarial life expectancy as established by the ~~life expectancy table~~ **actuarial tables** of the ~~federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9B~~ **Office of the Chief Actuary of the Social Security Administration at http://www.ssa.gov/OACT/STATS/table4c6.html**.

(b) Payments are made in equal amounts over the term of the transaction without any deferrals or balloon payments.

(c) The contract is not cancelled upon the death of the client or the spouse of the client (who made the transaction).

Stat. Auth: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100

461-145-0343
Manufactured and Mobile Homes

THIS IS A NEW RULE

(1) Manufactured and mobile homes are treated in the same manner as real property under OAR 461-145-0420.

(2) Manufactured and mobile homes are subject to OAR 461-145-0220 and OAR 461-145-0250 if applicable.

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100

461-145-0470
Shelter-in-Kind Income

(1) ~~Shelter-in-kind is when an agency or person outside the household group provides the financial group's shelter, or makes a payment to a third party for some or all of the financial group's shelter costs. Shelter costs are housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges.~~

~~(a) For all programs except OSIP, OSIPM and QMB, shelter-in-kind does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities.~~

~~(b) For OSIP, OSIPM and QMB, shelter-in-kind also includes situations where the client has no shelter costs.~~

~~(2)~~ In the ERDC, GA, **and** GAM~~, MAA, MAF, REF, REFM and TANF~~ programs, ~~shelter-in-kind~~ ***shelter-in-kind*** **(see OAR 461-001-0000)** payments are excluded, except earned ~~shelter-in-kind~~ ***shelter-in-kind*** is not excluded in the ERDC program.

(2) In the EXT, MAA, MAF, REF, REFM, SAC, and TANF programs, except for child support (see OAR 461-145-0080), *shelter-in-kind* payments are excluded.

(3) ~~For~~ **In the** FS **program**, ~~exclude shelter-in-kind~~ ***shelter-in-kind*** housing and utility payments **are excluded**.

(4) ~~For~~ **In the** OSIP, OSIPM**,** and QMB **programs**, ~~exclude shelter-in-kind~~ ***shelter-in-kind*** payments from HUD **are excluded**. ~~Treat other shelter-in-kind~~ **Other *shelter-in-kind*** income **is treated** as follows:

(a) If all ~~shelter costs~~ ***shelter costs*** **(see OAR 461-001-0000)** are covered by a payment, ~~count~~ the Shelter-in-Kind Standard for total shelter **is counted** as unearned income.

(b) If only rent or mortgage costs are covered by a payment, ~~count~~ the Shelter-in-Kind Standard for housing costs **is counted** as unearned income.

(c) If the client has no ~~shelter costs~~ ***shelter costs***, ~~count~~ the Shelter-in-Kind Standard for total shelter **is counted** as unearned income.

(5) In the OHP program, ~~shelter-in-kind~~ ***shelter-in-kind*** payments are excluded except ~~that~~ --

(a) ~~an~~ **An** expenditure by a business entity for ~~a shelter cost~~ ***shelter costs*** of a ~~principal~~ ***principal*** **(see OAR 461-145-0088)** is considered income. ~~*Principal* is defined in OAR 461-140-0040.~~

(b) Child support is treated in accordance with OAR 461-145-0080.

Stat. Auth.: ORS 409.050, 411.060**, 411.816, 418,100**
Stats. Implemented: ORS **411.060,** 411.700**, 411.816, 418,100**

461-145-0580
Veterans' Benefits

(1) Veterans' benefits, other than the aid-and-attendance, educational, and training and rehabilitation program benefits, are treated as follows:

(a) ~~Monthly~~ **Except as specified in section (2) of this rule, monthly** payments are counted as unearned income.

(b) Other payments are counted as periodic or lump-sum income **(see OAR 461-140-0110 and 461-140-0120)**.

(2) Veterans' **benefits that include** aid-and-attendance payments are treated as follows:

(a) In the FS**,** ~~and~~ OHP**, and QMB** programs, the **aid-and-attendance** payments are excluded.

(b) For OSIP~~,~~ **and** OSIPM~~, and QMB~~ clients receiving long-term care or Title XIX waivered services, the payments are treated as follows:

(A) When determining eligibility, the **entire** payment is excluded.

(B) When calculating monthly benefits or patient liability, the **entire** payment is counted as unearned income.

(C) Payments for services not covered by the Department's programs are excluded.

(D) If the client receives a payment covering a previous period of eligibility, the client is required to turn over to the Department the full amount of the payment up to the cost of institutional and home- or community-based waivered care provided to the client during the months covered by the payment. Any excess is counted as lump-sum or periodic income.

(c) In all other programs, aid-and-attendance payments are treated as follows:

(A) Payments for services not covered by the Department's programs are excluded.

(B) Reimbursements paid to the client for costs and services already paid for by the Department are third-party resources and may be recovered from the client. Any unrecovered third-party resource or payment above the actual cost is counted as lump-sum or periodic income **(see OAR 461-140-0110 and 461-140-0120)**.

(3) Educational benefits from the United States Veterans Administration are treated in accordance with OAR 461-145-0150.

(4) ~~In the Food Stamp program, a~~ **A** subsistence allowance from a training and rehabilitation program of the United States Veterans Administration is treated ~~—~~

(a) **In the Food Stamp program,** as earned income **(see OAR 461-145-0130)**.

(b) In all other programs, ~~it is~~ **as** unearned income.

(5) Payments under Public Law 104-204, § 421(b)(1), 110 Stat. 2923 (1996), to children of Vietnam veterans who are born with spina bifida are excluded (~~*see*~~ **see** 38 U.S.C. 1805(d)).

Stat. Auth: ORS 411.060, ~~411.700,~~ 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

461-150-0055
Eligibility and Budgeting; OHP

In the OHP program:

(1) The budget month is:

(a) For applicants, the month of application.

(b) For clients reapplying in the last month of their OHP certification period, and for clients moving from **BCCM, EXT,** GAM, MAA, MAF, OSIPM, REFM, or SAC to OHP, the last month of their current eligibility period.

(c) When a person is added to the filing group, the month the person is added.

(d) For late reapplications, the month the application is received.

(e) For applicants who are not eligible using the budget month described in subsections (1)(a) to (1)(d) of this rule, any month falling within 45 days after the date of request.

(2) Countable income is determined as follows:

(a) Income is considered available during a month in accordance with OAR 461-140-0040.

(b) Income is not annualized, converted, or prorated.

(c) For self-employed clients, countable self-employment income is determined in accordance with OAR 461-145-0920 and 461-145-0930.

(3) The ~~financial group's~~ average countable income **of the *financial group* (see OAR 461-110-0530)** is calculated as follows:

(a) The financial group's income from the three months preceding the budget month is added.

(b) The total is divided by three, and the result is the financial group's average countable income assigned to the budget month.

(c) The financial group's average countable income is used to determine eligibility for OHP in accordance with OAR 461-160-0700.

(4) A change in income or resources during a ~~certification period~~ ***certification period*** **(see OAR 461-001-0000)** does not affect the eligibility of the ~~benefit group~~ ***benefit group*** **(see OAR 461-110-0750)** for that ~~certification period~~ ***certification period***.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS **411.060,** 411.700

461-155-0225
Income Standard; OHP

(1) If a ~~financial group~~ ***financial group*** **(see OAR 461-110-0530)** contains a person with significant authority in a business entity—a "principal" as defined in OAR ~~461-140-0040~~ **461-145-0088**—the group is ineligible for the OHP program if the gross income of the business entity exceeds $10,000. If the ~~need group~~ ***need group*** **(see OAR 461-110-0630)** is not ineligible under this section, its eligibility is evaluated under section (2) of this rule.

(2) The countable income standards for OHP are as follows:

(a) The countable income standard for OHP-OPC and OHP-OPU is 100 percent of the federal poverty level, as listed in OAR 461-155-0180(2), based on the size of the ~~need group~~ ***need group***.

(b) The countable income standard for OHP-OP6 is 133 percent of the federal poverty level, as listed in OAR 461-155-0180(3), based on the size of the ~~need group~~ ***need group***.

(c) The countable income standard for OHP-OPP and OHP-CHP is 185 percent of the federal poverty level, as listed in OAR 461-155-0180(5), based on the size of the ~~need group~~ ***need group***.

Stat. Auth.: ORS 409.050, 411.060
Stats. Implemented: ORS 411.060, 411.070

461-155-0250
Income and Payment Standard; OSIP, OSIPM

THIS RULE WILL ALSO BE AMENDED TO REFLECT THE 2007 COST-OF-LIVING INCREASE PUBLISHED BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

(1) For an OSIP (except OSIP-EPD) or OSIPM (except OSIPM-EPD) client in long-term care or in a waivered *nonstandard living arrangement* (defined in OAR ~~461-110-0110~~ **461-001-0000**), the countable income limit standard is 300 percent of the full SSI standard for a single individual. Other OSIP and OSIPM clients do not have a countable income limit.

(2) The non-SSI OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, clothing, personal incidentals, and household supplies. The standard is itemized as follows:

Non-SSI/OSIP and OSIPM Standards Items of Need				
	One Person in Need Group		Two People in Need Group	
Adjusted No. in Household	One	Two or More	Two	Three or More
Shelter	377.00	175.00	460.00	169.00
Food	148.30	147.60	280.00	269.34
Clothing	37.00	37.00	74.00	74.00
Personal incidentals	27.40	27.40	58.00	58.00
Household supplies	15.00	15.00	33.00	33.00

(3) The standard in this section is used as the adjusted income limit for non-SSI OSIP and OSIPM clients. The OSIP-AB and OSIPM-AB adjusted income standard includes a transportation allowance. The total standard is:

Non-SSI/OSIP and OSIPM Adjusted Income Standards				
	One Person in Need Group		Two People in Need Group	
Adjusted No. in Household	One	Two or More	Two	Three or More
AD/OAA	604.70	402.00	904.00	603.34
AB	629.70	427.00	929.00	628.34

(4) To be eligible for OSIP (except OSIP-EPD or OSIP-IC), a person must be receiving SSI or be eligible for an ongoing special need. The payment standard for SSI/OSIP clients living in the community is the SIP (supplemental income payment) amount. The SIP is a need amount added to any other special or service needs to determine the actual payment. In some cases, the need amount is zero.

(a) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is less than $20:

SSI/OSIP and OSIPM Payment Standard (Unearned Income Less Than $20)		
No. in Need Group	AD/OAA	AB
	SIP (need)	SIP (need)
1	1.70	26.70
2	0.00	25.60

(b) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is $20 or more:

SSI/OSIP and OSIPM Payment Standard (Unearned Income $20 or More)		
No. in Need Group	AD/OAA	AB
	SIP (need)	SIP (need)
1	0.00	18.70
2	0.00	17.60

(c) The SSI/OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, $20 is added to the SIP amount.

(d) For spouses who each receive SSI and live in an AFC, ALF or RCF, an amount is added to each person's SIP payment that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one-person need group.

(e) For spouses who receive SSI as a couple and are not included in subsection (d) of this section, the two-person need group is used to determine their SIP amount. This amount is used even if one (or both) of the clients is receiving services and has a need group of one according to OAR 461-110-0630.

(5) For OSIP and OSIPM clients in long-term care, the following amounts are allowed for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unusual medical expenses (UME), $90 is allowed.

(b) For all other clients, $30 is allowed.

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted **earned** income limit is 250 percent of the 2006 federal poverty level for a family of one. This 250 percent limit equals $2,042 per month or $24,500 per year.

(7) In the OSIP-EPD and OSIPM-EPD programs, $970 in earnings is needed to meet the requirement in OAR ~~461-110-0115~~ **461-001-0035** for "sufficient earnings" in the definition of "attached to the workforce."

Stat. Auth.: ORS 411.060, 411.070
Stats. Implemented: ORS 411.060, 411.070

461-155-0270
Payment Standard for NSLA; OSIP, OSIPM

THIS RULE WILL ALSO BE AMENDED TO REFLECT THE 2007 COST-OF-LIVING INCREASE PUBLISHED BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

For all OSIP and OSIPM cases in ~~nonstandard living arrangements~~ **a *nonstandard living arrangement* (defined at OAR 461-001-0000)**, the OSIP/OSIPM Payment Standard is allocated as follows:

Non-SSI/SSB Combination Cases

	SPD		MHDD	
Program	Room and Board	Personal Allowance	Room and Board	Personal Allowance
AD	$468.70	$136.00	$468.70	$136.00
OAA	$468.70	$136.00	$468.70	$136.00
AB	$468.70	$161.00	$468.70	$161.00

For SSI/SSB combination cases:

AD	$468.70	$154.30	$468.70	$154.30
OAA	$468.70	$154.30	$468.70	$154.30
AB	$468.70	$173.00	$468.70	$173.00

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060, 411.070

461-155-0300
Shelter-in-Kind Standard

THIS RULE WILL BE AMENDED TO REFLECT THE 2007 COST-OF-LIVING INCREASE PUBLISHED BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

For OSIP, OSIPM, and QMB, the Shelter-in-Kind Standard is:

(1) For a single person:

(a) Living alone, $377 for total shelter or $226 for housing costs only.

(b) Living with others, $175 for total shelter or $105 for housing costs only.

(2) For a couple:

(a) Living alone, $460 for total shelter or $276 for housing costs only.

(b) Living with others, $169 for total shelter or $101 for housing costs only.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060, 411.070

461-155-0660
Special Need; Shelter Exceptions

THIS RULE IS REVISED IN ITS ENTIRETY

~~(1) OSIP and OSIPM clients living in long-term care facilities, and GA and GAM clients, are not eligible for the standard shelter allowances. However, for OSIP and OSIPM clients who are receiving SSI or waivered services, allow a special shelter allowance in addition to the payment for care if all the following are true:~~

~~(a) The client enters a hospital, state psychiatric institution, nursing home, AFC, ALF, RCF or SLF.~~

~~(b) There is no other way for the client to maintain their rental property or home while they receive medical care.~~

~~(c) The agency-approved medical authority believes the client can be cared for in their home within six months.~~

~~(d) The Division service worker finds the client's property fits the needs for the client's home care.~~

~~(e) Arrangements for suitable home care are within agency standards.~~

~~(2) If an exception is authorized for a client meeting the criteria in section (1) of this rule, allow actual costs for utilities and rent or mortgage costs.~~

~~(3) Clients living in the community and receiving SSI or waivered services are eligible for a special payment above the standard shelter allowance based on the following criteria:~~

~~(a) Clients must provide evidence that the cost of their shelter, above the OSIP standard, is based on costs associated with accessibility by individuals with a disability.~~

~~(b) All clients, with the exception of clients with mortgage or home contract payments, must apply for HUD subsidized housing.~~

~~(c) Once a client has met the criteria in sections (3)(a) and (b) of this rule, they will receive a shelter exception based on the difference between the OSIP shelter standard and the HUD standard or actual costs, whichever is less, specific to the client's living situation. This special need will be authorized only for the period of time prior to gaining HUD housing.~~

~~(d) Clients who refuse HUD housing will no longer be eligible for a shelter exception, unless the housing that is offered is not suitable related to accessibility~~

~~by individuals with a disability. Clients must also take all the necessary actions to be maintained as active on the HUD lists.~~

~~(e) Clients with mortgages or home contracts must meet the criteria of section (3)(a) of this rule. They will receive a shelter exception based on the difference between the OSIP shelter standard and one-and-one-half times the HUD standard or actual costs, whichever is less, specific to the client's living situation.~~

~~(f) Clients who are residing with their spouse, including clients receiving services through the Spousal Pay program, excluding minor dependent children, must meet the criteria in sections (3)(a) and (b) of this rule and must have their shelter exception based on half of the total monthly cost of the home.~~

~~(g) Clients requiring live-in attendants may be eligible for a shelter exception if the cost of their shelter is higher because of the need for the live-in attendant.~~

~~(4) Costs associated with utilities may be added to the cost of rent or mortgage. Clients may use actual utility costs or they may use the OSIP utility standard in the calculation.~~

(1) OSIP and OSIPM clients living in a nursing facility are not eligible for an accommodation allowance. OSIP and OSIPM clients living in a *nonstandard living arrangement* (defined at OAR 461-001-0000) are not eligible for an accommodation allowance unless they are receiving in-home services. OSIP and OSIPM clients who are receiving SSI (except those in a nursing facility) or in-home services are allowed an accommodation allowance if the client meets the criteria in section (2) or (3) of this rule.

(2) Temporary absence of client from home.

(a) A temporary accommodation allowance may be authorized, where permitted under section (1) of this rule, if a client meets the following criteria:

(A) The client leaves his or her home or rental property and enters a hospital, state psychiatric institution, nursing facility, adult foster care facility, assisted living facility, residential care facility, group care home, or specialized living facility;

(B) The client cannot afford to keep the home without the allowance;

(C) The client will be able to return home within six months of leaving, according to a written statement from a primary practitioner, RN, or PAS (pre-admission screening) RN; and

(D) The home will accommodate the service plan of the client when the client returns.

(b) The allowance may be authorized for six months. If, after six months, the client continues to meet the criteria in subsection (a) of this section, an extension may be approved in writing by a supervisor.

(c) The accommodation allowance equals the total of the client's housing cost, including taxes and insurance, plus the limited utility allowance for the Food Stamp program provided in OAR 461-160-0420.

(3) Additional cost for accommodation. A client receiving SSI benefits or in-home waivered services may receive an accommodation allowance if the client's shelter cost exceeds the shelter standard in OAR 461-155-0250(2) and the requirements of one of the following subsections are met:

(a) There is a documented accommodation cost associated with access by a person with a disability.

(b) The client has been assessed to need a live-in provider, has accepted the services of a live-in provider, and requires an additional bedroom for the live-in provider.

(4) The accommodation allowance is determined as follows:

(a) For clients who receive an accommodation allowance based on increased costs associated with access by a person with a disability, only the additional increase in cost for the accommodation is allowed.

(b) For clients who rent and receive an accommodation allowance based on the need for an additional bedroom for a live-in provider, the allowance is determined as follows:

(A) For clients who rent an apartment, the accommodation allowance is the difference in rent between a one-bedroom and a two-bedroom unit, plus the limited standard utility allowance for the Food Stamp program provided in OAR 461-160-0420.

(B) For clients who rent a house, the amount of the accommodation allowance is one-third of the rental cost, plus the limited standard utility allowance for the Food Stamp program provided in OAR 461-160-0420.

(C) For homeowners who receive an accommodation allowance based on the need for a live-in provider, the accommodation allowance is the limited standard utility allowance for the Food Stamp program provided in OAR 461-160-0420.

(5) Special requirements.

(a) **A client who rents and qualifies for an allowance under section (3) of this rule must take the steps necessary to obtain subsidized housing under any federal or state housing program. A client who fails, at any time, to take the steps necessary to obtain subsidized housing reasonably available is ineligible for the allowance. A client, who has been denied or revoked from participation in any rent subsidy program based on the client's own actions is ineligible for benefits under this rule.**

(b) **A client who rents housing and refuses subsidized housing will no longer be eligible for an accommodation allowance, except that if the housing that is offered is not suitable, related to accommodations, and the client continues to have increased costs related to accommodations in the client's current living situation, the accommodation allowance may continue until such time as appropriate subsidized housing is found.**

Stat. Auth.: ORS 411.060, 411.070, 414.042
Stats. Implemented: ORS 411.060, 411.070, 414.042

461-160-0010
Use of Resources in Determining Financial Eligibility

~~A countable resource is the available resource (*see* OAR 461-140-0020) remaining after allowing exclusions. Countable resources~~ ***Countable*** **(see OAR 461-001-0000) resources** are used to determine eligibility as follows:

(1) **In the EA program, the *countable* resources of a *financial group* (see OAR 461-110-0530) are used to reduce benefits.**

(2) In **the** FS, GA, GAM, MAA, MAF, **OSIP, OSIPM,** QMB, REF, REFM, SAC, and TANF **programs**, a ~~need group~~ ***need group*** **(see OAR 461-110-0630)** is not eligible for benefits if the ~~financial group~~ ***financial group*** has ~~countable resources~~ ***countable*** **resources** above the ~~need group~~ ***need group*** resource limit.

~~(2) In EA, if a financial group has **the** countable resources, they are used to reduce benefits.~~

(3) In **the** OHP **program**:

(a) ~~Need group~~ ***Need group*** members who are Health Plan New/Noncategorical (HPN) or OHP-CHP (~~*see*~~ **see** OAR 461-135-1100) are not eligible if the ~~financial group's countable resources~~ ***countable*** **resources of the *financial group*** are above the limit.

(b) If an HPN or OHP-CHP client is determined eligible, changes in resources do not affect eligibility during the ~~certification period~~ ***certification period*** **(see OAR 461-001-0000)** or until their eligibility otherwise ends.

(4) ~~For OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD), if a financial group has countable resources above the resource limit, treat the resources above the limit as follows:~~

~~(a) If the excess resources plus other countable income are above one month's Payment Standard for the need group, the benefit group is not eligible for benefits.~~

~~(b) If the excess resources plus other countable income do not exceed one month's Payment Standard, use them to reduce benefits. This only applies to waivered cases and will cause an increase in their liability.~~

~~(5) For~~ **In the** OSIP-EPD and OSIPM-EPD **programs**:

(a) Any money in an *approved account* **(see OAR 461-001-0035)** is excluded during the determination of eligibility.

(b) Assets purchased from moneys in an *approved account* are excluded, provided they meet the requirements of OAR 461-145-0025.

(c) Assets purchased as *employment and independence expenses* **(see OAR 461-001-0035)** are excluded, provided they meet the requirements of OAR 461-145-0025.

Stat. Auth.: ORS 411.060, **411.816,** 418.100
Stats. Implemented: ORS 411.060, 411.117, **411.816,** 418.100

461-160-0580
Excluded Resource; Community Spouse Provision (OSIP and OSIPM except OSIP-EPD and OSIPM-EPD)

THIS RULE WILL ALSO BE AMENDED TO REFLECT THE 2007 COST-OF-LIVING INCREASE PUBLISHED BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

(1) In the OSIP and OSIPM programs, this rule applies to an institutionalized spouse who has applied for benefits because he or she is in or will be in a *continuous period of care* (defined in OAR ~~461-160-0560~~ **461-001-0030**).

(2) Whether a couple lives together or not, the determination of whether the value of the couple's resources exceed the eligibility limit for the institutionalized spouse for OSIPM program is made as follows:

(a) The first step is the determination of what the couple's combined countable 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 461-160 rules applicable to OSIP describe which of the couple's resources are countable resources. Division 461-160 rules applicable to OSIP clients are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIP clients.

(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 $99,540.

(B) $19,908 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this rule (OAR 461-160-0580(2)(c)(C) and (2)(f)(C)), 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 client became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the client'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 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 (D) 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 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(~~1~~**5**)(~~d~~**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 OSIP resource standard for one person (under OAR 461-160-0015(6)(a)). 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 $99,540) plus the OSIP resource standard for one person.

(B) $19,908 (the state community-spouse resource allowance), plus the OSIP resource standard for one person.

(C) A court-ordered community spouse resource allowance plus the OSIP 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 OSIP 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. 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(~~1~~**5**)(~~d~~**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 his or her 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.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060, 411.700

461-160-0610
Client Liability for Clients in Long-term Care or Receiving Waivered Services; OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD)

(1) The IC service payment of clients in the OSIP-IC and OSIPM-IC programs is reduced by the amount of their liability. Other clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who live in or enter a long-term care setting or who receive Title XIX waivered services must, in order to remain eligible, make the payment required by this rule as follows:

(a) Clients who do not receive SSI, but who meet the income requirements, may be eligible for OSIP and OSIPM. These clients must apply their adjusted income to the cost of their care or service. This amount is their client liability. If their adjusted income exceeds their cost of care or service, they must pay the full cost of care but have no additional liability.

(b) Clients who receive SSI, or are deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)), are eligible for OSIP and OSIPM without having to make a payment.

(2) The following clients are exempt from payments required by this rule if they receive *waivered services* (as defined in OAR ~~461-145-0560~~ **461-001-0030**):

(a) A disabled adult child under OAR 461-135-0830.

(b) A disabled widow or widower under OAR 461-135-0811.

(c) A widow or widower under OAR 461-135-0820.

(d) A Pickle amendment client under OAR 461-135-0780.

Stat. Auth.: ORS 411.060, 411.070, 414.042
Stats. Implemented: ORS 411.060, 411.070, 414.042

461-160-0620
Income Deductions and Client Liability; Long-Term Care Services or Waivered Services

THIS RULE WILL ALSO BE AMENDED TO REFLECT THE 2007 COST-OF-LIVING INCREASE PUBLISHED BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

(1) Deductions from income in the OSIP and OSIPM programs are made for a client specified in ~~subsection (a)~~ **section (5)** of this ~~section~~ **rule** as explained in subsections **(5)**(a) through **(5)**(~~i~~**h**) of this ~~section~~ **rule**. ~~The~~

(2) Except as provided otherwise in section (3) of this rule, the liability of the client is determined according to subsection **(5)**(~~j~~**i**) **of this rule**.

(3) Except as provided in section (4) and paragraph (5)(i)(B) of this rule, there is no client liability for the following clients:

(a) Any client who receives SSI or is deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)).

(b) The following OSIPM clients who receive waivered or non-waivered services do not have a liability:

(A) A client in OSIPM-IC.

(B) An adult disabled child as described at OAR 461-135-0830.

(C) A disabled widow or widower under OAR 461-135-0811.

(D) A widow or widower under OAR 461-135-0820.

(E) A Pickle amendment client under OAR 461-135-0780

(4) A client covered under subsection (3)(b) of this rule who is in an *institutionalized setting* may have a liability (see paragraph (5)(i)(B) of this rule). For purposes of this rule, an *institutionalized setting* means each of the following:

(a) A nursing facility.

(b) An intermediate care facility for the mentally retarded (ICF/MR).

(c) A psychiatric institution.

(d) A non-waivered Mental Health Facility.

~~(a)~~ **(5)** Deductions are made in the order below for a client who resides in or is entering a long-term care facility or receives Title XIX waivered services~~, except that there is no client liability for ---~~

~~(A) A client who receives SSI or is deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)).~~

~~(B) A client in one of the following categories who receives only waivered services:~~

~~(i) A client in OSIPM-IC.~~

~~(ii) An adult disabled child as described at OAR 461-135-0830.~~

~~(iii) A disabled widow or widower under OAR 461-135-0811.~~

~~(iv) A widow or widower under OAR 461-135-0820~~.

(~~b~~**a**) One standard earned income deduction of $65 is made from the earned income in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs. The deduction is $85 in the OSIP-AB and OSIPM-AB programs.

(~~c~~**b**) In the OSIP and OSIPM programs, the deductions under the plan for self-support is made as allowed by OAR 461-145-0405.

(~~d~~**c**) One of the following need standards is deducted:

(A) A $30 personal needs allowance for a client receiving long-term care services.

(B) A $90 personal needs allowance for a client receiving long-term care services who is eligible for VA benefits based on unusual medical expenses. The $90 allowance is allowed only when the VA benefit has been reduced to $90.

(C) The OSIP maintenance standard for a client who receives waivered services.

(~~e~~**d**) A community spouse monthly income allowance is deducted from the income of the institutionalized spouse if the income is made available to (or for the benefit of) the community spouse. If neither spouse is eligible for SSI and both receive waivered services through the home- and community-based services program in the same residence or facility, and if the countable income of either spouse is less than the one-person OSIPM payment standard, an allowance is calculated separately using calculation methods 1 and 2 below. The result that is better for

the couple is the allowance. For all other couples, the amount calculated using method 2 is the allowance.

(A) Calculation method 1: The allowance is the difference between the one-person payment standard of the OSIPM program (*see* OAR 461-155-0250) and the countable income of the spouse with the lesser countable income.

(B) Calculation method 2:

(i) Step 1—Determine the maintenance needs allowance. $1,650 is added to the amount over $495 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or $2,488.50, 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 Food Stamp program (*see* OAR 461-160-0420).

(ii) Step 2—Compare maintenance needs allowance with community spouse's gross income. The gross 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.

(iii) 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.

(~~f~~**e**) A dependent income allowance is deducted for each eligible dependent 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 $1,650. To determine the income allowance of the eligible dependent:

(i) The monthly income of the eligible dependent is deducted from $1,650.

(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 for the client and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(~~g~~**f**) Costs for maintaining a home are deducted if the client meets the criteria in OAR 461-160-0630.

(~~h~~**g**) In the OSIPM program, medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(~~i~~**h**) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(~~j~~**i**) The client liability is determined as follows:

(A) For a client receiving waivered services (except a client identified in ~~subsection (1)(a)~~ **section (3)** of this rule), the liability is the actual cost of the waivered service or the adjusted income of the client, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for waivered services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For a client who resides in a nursing facility, ~~an acute hospital,~~ a state **psychiatric** hospital, an Intermediate Care Facility for the Mentally Retarded, or a non-waivered mental health facility, there is a liability as described at OAR 461-160-0610.

(~~2~~**6**) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or waivered services is as follows:

(a) One standard earned income deduction of $65 is made from the earned income for a client who is not blind; or

(b) One standard earned income deduction of $85 is made from the earned income for a client who is blind.

Stat. Auth.: ORS 411.060, 411.070
Stats. Implemented: ORS 411.060, 411.070

461-170-0130
Acting on Reported Changes; EXT, GAM, MAA, MAF, OHP, OSIPM, **QMB,** SAC

(1) When an EXT, GAM, MAA, MAF, OHP, OSIPM, **QMB,** or SAC client, who is required by this division of rules to report a change in circumstances, makes a timely report of a change that could reduce or end medical benefits, the Department must review each individual in the filing group for other medical program eligibility prior to reducing or ending medical benefits.

(2) If the Department needs additional information to act on the timely reported change, members of the ~~benefit group~~ ***benefit group*** **(see OAR 461-110-0750)** remain eligible from the date the change was reported until the Department determines their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050, 411.060
Stats. Implemented: ORS 409.050, 411.060

461-175-0010
What a Decision Notice Must Include

(1) ~~A *decision notice* is a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.~~

~~(2)~~ A ~~decision notice, other than a mass change notice described in OAR 461-175-0250~~ ***decision notice*** **(see OAR 461-001-0000) must include the following information**:

(a) Specifies the ~~action the Department intends to take, the effective date of the action, and the~~ date the notice is mailed.

(b) **Except as provided in section (2) of this rule, specifies the action the Department intends to take and the effective date of the action**

(c) Specifies the reasons for the action.

(~~c~~**d**) In the Food Stamp program only, provides the name and phone number of the Department staff person or identifies the office to contact for additional information.

(~~d~~**e**) Informs the client of the extent to which the client has a right to a hearing before an impartial person.

(~~e~~**f**) Specifies the method and deadline for requesting a hearing.

(~~f~~**g**) Informs the client of the right to representation, including legal counsel, and the right to have witnesses testify on his or her behalf.

(~~g~~**h**) Provides information about the availability of free legal help.

(~~h~~**i**) Cites the rules that support the action.

(2) If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or other mass change under a program operated by a federal agency or to reflect a mass change to payments in another program operated by the Department:

(a) The requirements in subsection (1)(b) of this rule are optional. The *decision notice* may instead state all of the following:

(A) The general nature of the change.

(B) Examples of how the change affects a client's benefits.

(C) The month in which the change will take place.

(b) In the Food Stamp program, the *decision notice* must also state:

(A) The client's right to continue benefits, under what circumstances benefits will be continued pending a hearing, and the liability the client's household will incur for any overissued benefits if the hearing decision is adverse to the client.

(B) General information on whom to contact for additional information.

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100

461-175-0222
Notice ~~of Expiration for Redeterminations~~ **Situations – Expiration of Certification Period**; FS

AMENDED AND RENUMBERED FROM OAR 461-115-0510

~~(1) Prior to the end of a certification period, the Division will provide a notice to FS benefit groups not receiving TANF informing the members they need to reapply for benefits. The notice is provided in time for the clients to meet the deadlines in OAR 461-115-0450(4). The notice informs the benefit group of the date the current certification period ends, the requirement to reapply to continue receiving benefits without interruption, how to file an application and complete an interview, and the right to a hearing.~~

~~(2) If a reported change in the benefit group's circumstances indicates a change in the benefit group's eligibility or benefit level in the last month of the certification period, the Division will send the group a notice informing them that their certification period will end the month after they receive the notice, that they must reapply to continue receiving benefits without interruption, and that they have a right to a hearing.~~

In the Food Stamp program:

(1) The Department must provide households certified for one month or certified in the second month of a two-month certification period a notice of expiration at the time of certification.

(2) All households other than those covered under section (1) of this rule must receive a notice of expiration before the first day of the last month of the certification period (established per OAR 461-115-0450), but not before the first day of the next-to-the-last month.

(3) Notice of expiration under this rule is provided to the *filing group* (see OAR 461-110-0370) and must contain all of the following:

(a) The date the certification period expires.

(b) The date by which a household must submit an application for recertification in order to receive uninterrupted benefits.

(c) The consequences of failure to apply for recertification in a timely manner.

(d) The right to receive an application form upon request and to have it accepted as long as it contains a signature and a legible name and address.

(e) Information on alternative submission methods available to households which cannot come into the certification office or do not have an authorized representative and how to exercise these options.

(f) **The address of the office where the application must be filed.**

(g) **The household's right to request a contested case if the recertification is denied or if the household objects to the benefit issuance.**

(h) **A statement that any household consisting only of Supplemental Security Income (SSI) applicants or recipients is entitled to apply for food stamp recertification at an office of the Social Security Administration.**

(i) **A statement that failure to attend an interview may result in delay or denial of benefits.**

(j) **A statement that the household is responsible for rescheduling a missed interview and for providing required verification information.**

(k) **A statement that the client has no rights to continuation of benefits after the FS certification period expires; and that to receive benefits, the client must reapply and be found eligible for a new benefit amount after the end of the certification period, including a client who is receiving continuation of benefits when their FS certification period ends.**

Stat. Auth: ORS ~~411.060~~ **411.816**
Stats. Implemented: ORS 411.816

461-175-0250
Notice Situation; Mass Changes

(1) ~~A mass-change notice is a basic decision notice that informs the client of:~~

~~(a) The general nature of a change described in OAR 461-175-0250(2).~~

~~(b) Examples of how the change affects the client's benefits.~~

~~(c) The month in which the change will take place.~~

~~(d) The client's right to a hearing.~~

~~(e) The client's right to continue benefits and under what circumstances benefits will be continued pending a hearing.~~

~~(f) General information on whom to contact for additional information.~~

~~(g) The liability the client's household will incur for any overissued benefits if the hearing decision is adverse to the client.~~

~~(2) A mass-change notice may be used for the following purposes:~~

(a) ~~To notify clients whose~~ **If** benefits are reduced or closed to reflect cost-of-living adjustments in benefits or other mass change under a program operated by a federal agency~~.~~

(b) ~~To notify clients whose benefits are reduced or closed~~ **or** to reflect a **mass** change to payments in another program operated by the Department**:**

(a) Except as provided in subsection (b) of this section, the type of *decision notice* (defined at OAR 461-001-0000) used is the same as otherwise applies to the reduction or closure of benefits under the rules of this division.

(b) In the Food Stamp program, a *continuing benefits decision notice* (defined at OAR 461-001-0000) may be used if the rules in this division of rules would otherwise require a *timely continuing benefits decision notice* (defined at OAR 461-001-0000).

(c) OAR 461-175-0010(2) modifies content requirements for the *decision notice* that apply to other decision notices under OAR 461-175-0010(1)(b).

(3**2**) ~~No decision notice~~ **In the Food Stamp program, no *decision notice*** is required when the Department makes the following mass changes:

(a) ~~In the Food Stamp program, an~~ **An** annual adjustment to income limits, the shelter deduction, or the standard deduction.

(b) An annual adjustment to a standard utility allowance ~~in the Food Stamp program~~.

Stat. Auth.: ORS 411.060, 411.816**, 418.100**
Stats. Implemented: ORS 411.060, 411.816**, 418.100**

461-180-0085
Effective Dates; Redeterminations of EXT, GAM, MAA, MAF, OHP, OSIPM, **QMB,** SAC

In the EXT, GAM, MAA, MAF, OHP, OSIPM, **QMB,** and SAC programs, when the Department initiates a redetermination of eligibility, the Department must review each individual in the filing group for other medical program eligibility prior to reducing or ending medical benefits. If additional information is needed to redetermine eligibility, members of the ~~benefit group~~ ***benefit group*** **(see OAR 461-110-0750)** remain eligible from the date the review is initiated until the Department determines their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050, 411.060
Stats. Implemented: ORS 409.050, 411.060

461-180-0090
Effective Dates; Initial Month Medical Benefits

The effective date for starting medical benefits for an eligible client is as follows:

(1) **In the EXT program, it is the first of the month following the month that MAA or MAF program benefits end.**

(2) In the GAM, MAA, MAF, OHP, OSIPM, QMB-DW, REFM, and SAC programs:

(a) Except as provided for in sub-section (b) of this section:

(A) If the client meets all eligibility requirements on the ~~date of request~~ ***date of request*** **(see OAR 461-115-0030)**, it is the *date of request*. **An OSIPM client who is *assumed eligible* under OAR 451-135-0010(7) meets "all eligibility requirements" for the purposes of this section as follows:**

(i) Effective the first day of the month of the initial SSI payment if the client is age 21 or older.

(ii) Effective the first day of the month prior to the month of the initial SSI payment if the client is under the age of 21.

(B) If the client does not meet all eligibility requirements on the *date of request*, it is the first day following ~~that date~~ **the *date of request*** that all eligibility requirements are met.

(b) If the client does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new *date of request*.

~~(2) In the EXT program, it is the first of the month following the month that MAA or MAF program benefits end.~~

(3) In the QMB-BAS program, it is the first of the month after the benefit group has been determined to meet all QMB-BAS eligibility criteria and the Department receives the required verification.

(4) In the QMB-SMB program, it is the first of the month in which the benefit group meets all QMB-SMB eligibility criteria and the Department receives the required verification.

(5) Retroactive eligibility is authorized under certain circumstances in some medical programs~~,~~ (~~*see*~~ **see paragraph (2)(a)(A) of this rule,** OAR 461-135-0875**,** and 461-180-0140).

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060

461-185-0050
Client Pay-In System

(1) Except as provided in sections (2) and (3) of this rule, a client who receives waivered in-home services and has countable income above the payment standard for the benefit group must pay to the Department the lesser of the following amounts as a condition of being eligible for waivered in-home services:

(a) The difference between their adjusted income and the payment standard for the number in the benefit group.

(b) The actual cost of the waivered service.

(2) The service liability of clients in the OSIP-IC and OSIPM-IC programs is calculated in accordance with section (1) of this rule. Clients in the OSIP-IC and OSIPM-IC programs do not pay the Department directly. The IC service payment of these clients will be reduced by the amount of their liability.

(3) The following clients are exempt from the payment required by this rule:

(a) Adult disabled children as described at OAR 461-135-0830.

(b) Disabled widows and widowers under OAR 461-135-0811.

(c) Widows and widowers under OAR 461-135-0820.

(d) A Pickle amendment client under OAR 461-135-0780.

(4) Each month, the Department will send the client an invoice requesting payment based on the calculation in section (1) of this rule.

(5) Payments must be received by the Department in the month of service.

Stat. Auth.: ORS 411.060, 411.070, 414.042
Stats. Implemented: ORS 411.060, 411.070, 414.042

461-195-0301
Definitions

For purposes of OAR 461-195-0301 to 461-195-0350, the following definitions shall apply:

(1) "Action" means an action, suit**,** or proceeding.

(2) "Applicant" means an applicant for *assistance*.

(3) "Assistance" means moneys for a *recipient's* needs and for the needs of other individuals living with the *recipient* whom the *recipient* has an obligation to support which are paid by the Department or by a *prepaid managed care health services organization* for services provided under contract pursuant to ORS 414.725 either directly to the *recipient* or to others for the benefit of the *recipient*. *Assistance* includes both cash and medical assistance. The medical **and cash** assistance must be directly related to the *personal injury*. *Assistance* does not include Food Stamp benefits. *Assistance* is received by the *recipient* on the date of issuance of a check for cash assistance and the date of service for medical assistance, regardless of the actual payment date by the Department or the *prepaid managed care health services organization*.

(4) "Claim" means a legal action or a demand by, or on behalf of, a *recipient* for damages for or arising out of a *personal injury* which is against any person**,** ~~or~~ public body, agency**,** or commission other than the State Accident Insurance Fund Corporation or Workers' Compensation Board.

(5) "Compromise" means a compromise between a *recipient* and any person or public body, agency or commission against whom the *recipient* has a *claim*.

(6) "Judgment" means a judgment in any *action* or proceeding brought by a *recipient* to enforce the *claim* of the *recipient*.

(7) "Net settlement" means the amount of the *judgment*, *settlement*, or *compromise* to which the lien attaches, as follows: the amount of the *judgment*, *settlement*, or *compromise*, minus the attorney fees and costs in OAR 461-195-0305(3), and minus personally incurred medical costs (in OAR 461-195-0305(4)) and personal injury protection (PIP - see ORS 742.520). Net settlement is the amount that is available for release or compromise of lien pursuant to OAR 461-195-0325.

(8) "Personal injury" means a physical or emotional injury to an individual including but not limited to assault, battery, or medical malpractice arising from such physical or emotional injury.

(9) "Prepaid managed care health services organization" means a managed health, dental or mental health care organization that contracts with the Department on a prepaid basis under the Oregon Health Plan pursuant to ORS 414.725. Prepaid managed care health organizations may be dental care organizations, fully capitated health plans, mental

health organizations, physician care organizations, or chemical dependency organizations.

(10) "Recipient" means an individual who receives *assistance* or whose needs are included in a public assistance grant.

(11) "Settlement" means a settlement between a *recipient* and any person or public body, agency or commission against whom the *recipient* has a *claim*.

Stat. Auth.: ORS 409.050, 411.060, 416.510-416.610
Stats. Implemented: ORS 25.020, 25.080, 409.020, 411.060, 416.510-416.610

461-195-0305
Lien of the Department

(1) Whenever a *recipient* has a *claim* for damages for a *personal injury*, the Department shall have a lien upon the amount of any *judgment* in favor of a *recipient* or amount payable to the *recipient* under a *settlement* or *compromise* as a result of that *claim* for all *assistance* received from the date of the injury to---

(a) The date of satisfaction of the *judgment* favorable to the *recipient*; or

(b) The date of the payment under the *settlement* or *compromise*.

(2) The person or public body, agency or commission bound by the *judgment*, *settlement*, or *compromise* shall be responsible for immediately informing the Department's Personal Injury Liens Unit when a *judgment* has been issued or a *settlement* or *compromise* has been reached so that the exact amount of the Department's lien may be determined. For the purposes of this rule, immediately means within ten calendar days. If the Department is not timely notified, the 180 day limitation in ORS 416.580(1) does not begin to run until the Department's Personal Injury Liens Unit has actual notice of a *settlement*, *compromise*, or *judgment*.

(3) The lien will not attach to the amount of any *judgment*, *settlement*, or *compromise* to the extent of the attorney fees, costs and expenses which the *Recipient* incurred in order to obtain that *judgment, settlement*, or *compromise*.

(4) The lien will not attach to the amount of any *judgment*, *settlement*, or *compromise* to the extent of medical, surgical and hospital expenses personally incurred by such *recipient* on account of the *personal injury* giving rise to the *claim*, for which *assistance* was not provided or paid. For purposes of OAR 461-195-0301 to 461-195-0350, personally incurred expenses are limited to those expenses not covered by the Department, and for which the client is personally liable at the time of judgment, settlement, or compromise.

(5) The Department's lien must be satisfied or specific approval must be given by the Department's Personal Injury Liens Unit's staff before any portion of the *claim judgment*, *settlement*, or *compromise* is released to the *recipient*. **There is a rebuttable presumption that the entire proceeds from any judgment, settlement, or compromise, are, unless otherwise identified, in payment for medical services.** The Department shall have a cause of action against any person**,** ~~or~~ public body, agency**,** or commission bound by the *judgment*, *settlement*, or *compromise* who releases any portion of the *claim judgment*, *settlement*, or *compromise* to the *recipient* before meeting this obligation.

Stat. Auth.: ORS 409.050, 411.060, 416.510-416.610
Stats. Implemented: ORS 25.020, 25.080, 409.020, 411.060, 416.510-416.610

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

(1) An *applicant* for or *recipient* of *assistance* who has a *claim* for a *personal injury* or begins an *action* to enforce such *claim*, or the attorney or *authorized representative* (as defined at OAR 461-115-0090) for the *applicant* or *recipient*, is required to notify the Department and the *prepaid managed care health services organization* of the *recipient*, if the *recipient* is receiving services from the organization, within ten days of initiating that *claim* or *action*, unless the *action* was initiated prior to the application for *assistance*.

(a) If the *action* was initiated prior to the application for public assistance, the *applicant* must notify the Department at the time of application.

(b) The notification must include ---

(A) ~~the~~ **The** names and addresses of all parties against whom the *action* is brought or *claim* is made**;**

(B) A copy of each *claim* demand; and

(C) If an *action* is brought, identification of the case number and the county where the *action* is filed.

(c) A parent, guardian, foster parent or caretaker relative must make the notification on behalf of an injured minor or incompetent adult.

(2) The reporting requirements in section (1) of this rule are mandatory reporting requirements.

(~~2~~**3**) Notification by an attorney or *authorized representative* for an *applicant* or *recipient* or other person required to provide notification must be sent to the Personal Injury Liens Unit, Office of Payment Accuracy and Recovery, Department of Human Services, either by mail or fax.

(~~3~~**4**) The mailing address for the Personal Injury Liens Unit is: Personal Injury Liens Unit, PO Box 14512, Salem OR 97309-0416.

(~~4~~**5**) The Personal Injury Liens Unit's fax number is (503) 378-2577 and telephone number is (503) ~~947-9970~~ **378-4514**.

(~~5~~**6**) If an *applicant* for or *recipient* of *assistance* fails to give the notification as required by this rule, the Department or the *prepaid managed care health services organization* of the *recipient*, if the *recipient* is receiving services from the organization, will have a cause of action under ORS 416.610 against the *recipient* for amounts received by the *recipient* pursuant to a *judgment*, *settlement*, or *compromise* to the extent that the Department or the *prepaid managed care health services organization* 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 *prepaid managed care health services organization*, if any, must consult with each other.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.620, 416.510-416.610

461-195-0325
Release or Compromise of Lien

(1) If the Department has not assigned a lien to a *prepaid managed care health services organization* (*organization*) or if the *organization* failed to perfect its assigned lien, the Department may release or compromise its lien --- **for the amount of the settlement, compromise, or judgment that is subject to the lien** --- and distribute collections under its lien as follows:

(a) To the Department, an amount equal to the State share of Department's ~~medical assistance~~ ***assistance*** expenditures for the ~~*recipient*~~. ~~The State share means the~~ amount of ~~state funds provided in relation to Title XIX or Title XXI payments~~ **the settlement, compromise, or judgment that is subject to the lien**.

(b) To the federal government, the federal share of the ~~State medical assistance~~ **Department's *assistance*** expenditures~~. The federal share means the amount of federal financial assistance claimed by the State in relation to Title XIX or Title XXI payments that the State must repay to the federal government~~ **for the amount of the settlement, compromise, or judgment that is subject to the lien,** pursuant to applicable law.

(c) To the *recipient*, any remaining amount after distributions provided for in subsections (a) and (b) of this section~~; except that if the lien amount is more than 75 percent of the *net settlement*, the Department may distribute to the *recipient* 25 percent of the *net settlement*~~. The amount distributed to the *recipient* must be treated as income or resources consistent with applicable law.

(2) If the Department has assigned a lien to a *prepaid managed care health services organization* (*organization*) and the *organization* properly perfected its lien, the Department and the *organization* may release or compromise and distribute collections under the liens **for the amount of the settlement, compromise, or judgment that is subject to the lien, consistent with OAR 461-195-0305(5),** as follows:

(a) To the Department, an amount equal to the State share of ~~medical and cash Assistance~~ ***assistance*** and the federal share of medical ~~assistance~~ ***assistance*** expenditures for the ~~*recipient*~~ **amount of the settlement, compromise, or judgment that is subject to the lien**.

(b) The Department will reimburse to the federal government, the federal share of the State ~~medical assistance~~ ***assistance*** expenditures **for the amount of the settlement, compromise, or judgment that is subject to the lien** for which federal match was claimed by the Department.

(c) To the ~~*recipient*, the amount remaining after the distributions provided for in subsections (a) and (b) of this rule; except that if the lien amount is more than 75 percent of the *net settlement*, the Department may distribute to the *recipient* 25~~

~~percent of the *net settlement*. The amount distributed to the *recipient* must be treated as income or resources consistent with applicable law~~ ***organization*, the *assistance* expenditures subject to the lien by the *organization* except as otherwise provided in subsections (a) and (b) of this section**.

(d) To the ~~organization, the expenditures subject to the lien by the organization except as otherwise provided in subsection (c) of this section. If the lien amount is more than 75 percent of the *net settlement*, the Department may distribute to the *recipient* 25 percent of *net settlement* before making a distribution to the *organization*. If the *organization* holds the only lien through assignment, and if the lien amount is more than 75 percent of the *net settlement*, the *organization* must distribute to the *recipient* 25 percent of the *net settlement*~~ ***recipient*, the amount remaining after the distributions provided for in subsections (a), (b), and (c) of this section. The amount distributed to the *recipient* must be treated as income or resources consistent with applicable law**.

(e) As between the Department and the *organization* after the distributions provided for in subsections (a), (b), (c) and (d) of this rule, ORS 416.540(6) requires that the Department's lien must be satisfied first.

Stat. Auth.: ORS 409.050, 411.060, 416.510-416.610
Stats. Implemented: ORS 25.020, 25.080, 409.020, 411.060, 416.510-416.610

461-195-0611
Intentional Program Violations; Establishment and Appeal

(1) In the ERDC, Food Stamp, and TANF programs, an IPV is established by a state or federal court, by an administrative agency in a contested case, or by a person signing the designated form ~~for~~ acknowledging the IPV and waiving the right to an administrative hearing. If the IPV will be established in a contested case, the Department initiates the IPV hearing.

(2) ~~There~~ **Except as provided in section (3) of this rule, there** is no administrative appeal after a person waives the right to an IPV hearing~~,~~ and the penalty ~~cannot~~ **may not** be changed by subsequent administrative action.

(3) ~~However, the~~ **A** person ~~is entitled to~~ **who waives the right to an IPV hearing may** seek relief in court or ~~to~~ request a **contested case** hearing on the sole issue of whether the waiver was signed under duress (*see* OAR 461-025-0310). **If there is a determination that the waiver was signed under duress, the initial IPV penalty is void, and:**

(a) If a court determines that a waiver was signed under duress, the court may determine whether an IPV occurred and the amount of the penalty.

(b) If an administrative law judge determines that a waiver was signed under duress, the Department may initiate an IPV hearing to determine whether an IPV occurred and the amount of the penalty.

Stat. Auth.: ORS 411.060, 411.095, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.095, 411.816, 418.100