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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 461  
DEPARTMENT OF HUMAN SERVICES  
SELF-SUFFICIENCY PROGRAMS

**FILED**

07/31/2024 2:24 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Changes to SSP and APD Program Eligibility, Verification, and Interview Requirements

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/23/2024 5:30 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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Filed By:  
Lay Jennifer  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 08/22/2024

TIME: 10:00 AM - 11:00 AM

OFFICER: Jennifer Lay

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 669-254-5252

CONFERENCE ID: 1602648041

SPECIAL INSTRUCTIONS:

Passcode: 571016

Everyone has a right to know about and use ODHS programs and services. ODHS provides free help. Some examples of the free help ODHS can provide include sign language and spoken language interpreters, written materials in other languages, braille, large print, audio and other formats. If you need help or have questions, please contact the Chapter 461 rules team at [RulesHearings.Ch461@odhs.oregon.gov](mailto:RulesHearings.Ch461@odhs.oregon.gov) or call 541-844-6136 at least 5 business days before the hearing.

NEED FOR THE RULE(S)

OAR 461-001-0030 about OSIPM Nursing Facility Services or Home and Community-Based Care needs to be amended to correct an error in the rule text. Currently Section (3) is specific to allowing a dependent deduction when there is no community spouse, which by definition means there is also no institutionalized spouse. Rule changes correct this error but does not affect current practices.

OAR 461-115-0230 about Interviews needs to be amended to align with federal regulations. The Center for Medicare and Medicaid Services (CMS) published a final rule on 9/21/23 which took effect 11/17/23 requiring states to automatically enroll Supplemental Security Income (SSI) recipients who are enrolled in Medicare Part A into the Qualified Medicare Beneficiary (QMB) program. Oregon generally complies with this requirement except that an interview is required upon initial evaluation for QMB and if the individual does not complete the interview, QMB benefits are denied. CMS has clarified that the final rule precludes Oregon from requiring interviews for SSI recipients to enroll in QMB and that doing so violates the requirement for enrollment to be automatic. This rule change aligns the rule with federal policy.

OAR 461-115-0700 about Required Verification; GA, OSIPM, and QMB needs to be amended to align Oregon with federal regulations. The Center for Medicare and Medicaid Services (CMS) published a final rule on 4/2/24 (which took effect 6/3/24) requiring states to apply a reasonable compatibility standard when determining whether further verification is needed for certain resource types. Because this final rule represents a clarification of policy that CMS feels was already in force, the expected compliance date was the effective date of 6/3/24. Another provision in the final rule indicates states cannot require separate verification of identity when citizenship is verified by Oregon's vital statistics records or SAVE because these sources are considered reliable documentation of personal identity. States have until 6/3/26 to implement this provision; however, Oregon is choosing to implement at an earlier date since there are little to no system modifications necessary. These rule changes align the rule with federal policy.

OAR 461-120-0125 about Noncitizen Status Requirements needs to be amended to align with federal law. Changes to the rule reflect federal eligibility guidance for multiple programs in OAR Chapter 461 for individuals with a qualifying U.S. Citizenship and Immigration Services (USCIS) status.

OAR 461-135-0835 about Limits on Estate Claims needs to be amended so that the Estate Administration Unit (EAU) can appropriately make post death claims for incorrectly paid assistance. This is not a change in how EAU carries out enforcement of these laws, but places provisions about post death claims within EAU's rules instead of Aging and People with Disabilities' rules. The Office of Payment Accuracy and Recovery, through the interagency agreement with Oregon Health Authority (OHA), is authorized to seek recovery of incorrectly paid benefits to which individuals are not entitled. These claims are recoverable in circumstances where a conventional claim would not be permitted under 42 US 1396p(b)(4)(A). In the past, EAU relied on OAR 461-140-0296 and other rules to calculate these post death overpayment claims, meaning that the post death claim for recovery would be calculated based on the disqualification period beginning on the date of the transfer. These rules have recently changed such that the disqualification period begins only after a notice to the individual. EAU is only pursuing these claims after an individual has died and the transfer or existence of an asset has not been discovered during the individual's lifetime. Therefore, it would be impossible for EAU to pursue such a claim because the notice was never sent. The rule change is necessary for EAU to pursue the proper enforcement of ORS 416.350(1), ORS 411.620, ORS 411.630, and ORS 411.640.

OAR 461-140-0040 about Determining Availability of Income needs to be amended to clarify the criteria for when income is considered unavailable in the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries (QMB) programs for individuals who are incapacitated and that the Department is able to make the decision. Rule amendments do not change current Department practice.

OAR 461-140-0296 about Length of Disqualification Due to an Asset Transfer; Nursing Facility Services or Home and Community-Based Care needs to be amended because the average monthly cost of a semi-private room in a nursing facility in Oregon was recently updated due to COLA changes. This permanent amendment keeps Oregon aligned with current federal guidance as described in federal statute 42 USC Chapter 7 Subchapter XIX Sec 1396p(c)(E)(i)(II).

OAR 461-145-0330 about Loans and Interest on Loans needs to be amended to clarify that section (6) applies only to individuals in nonstandard living arrangements and section (7) applies to those in standard living arrangements. The current version of this rule forces readers to assume or infer that section (6) only applies when individuals are applying for or receiving services and that section (7) is the opposite. This amendment makes a clear distinction and provides clarity.

OAR 461-145-0380 about Pension and Retirement Plans needs to be amended to align with federal guidance. As the rule currently reads, it could be misinterpreted that penalties for withdrawal are counted as part of the equity value of an annuitized retirement plan that allows an individual to withdraw funds. The rule amendment clarifies that penalties for withdrawal are excluded.

OAR 461-155-0630 about Special Need; Community-Based Care; OSIPM needs to be amended to clarify the eligibility criteria for room and board payment, that the department is able to make the eligibility decision, and to describe how the payment is calculated, which is currently missing. Amendments to the rule do not change current practice.

OAR 461-155-0700 about Special Need; Personal Incidentals and Room and Board Allowances; OSIPM needs to be amended to clarify the criteria for an individual to receive a special need payment under this rule. The amendment clarifies that an individual must request reinstatement from their income source if they are leaving a nursing facility.

OAR 461-160-0540 about Determining Income Eligibility; QMB and OSIPM (except OSIPM-EPD) Living in the Community or Residing in a 24-Hour Mental Health Residential Care Setting needs to be amended to correct an error and to clarify that income eligibility for Qualified Medicare Beneficiary (QMB) programs is not affected by the individual's living arrangement. A 2018 amendment to this rule inadvertently changed the applicability for the QMB programs to those not receiving services in a community-based or nursing facility, when this rule actually applies to all individuals seeking or receiving benefits under the QMB programs. Amendments to the rule correct this error.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

For 461-115-0230:

<https://www.govinfo.gov/content/pkg/FR-2023-09-21/pdf/2023-20382.pdf>

Electronic mail from The Center for Medicare and Medicaid Services (CMS) is available upon request from the Aging and People with Disabilities Medical Policy Unit.

For OAR 461-115-0700:

<https://www.federalregister.gov/documents/2024/04/02/2024-06566/medicaid-program-streamlining-the-medicaid-childrens-health-insurance-program-and-basic-health>

For OAR 461-120-0125:

<https://www.congress.gov/118/bills/hr4366/BILLS-118hr4366enr.pdf>

<https://www.acf.hhs.gov/sites/default/files/documents/ofa/ACF-OFA-PI-24-02.pdf>

<https://www.congress.gov/bill/118th-congress/house-bill/815/text>

[https://www.acf.hhs.gov/orr/policy/policy-letters/22-13#\\_ftn4](https://www.acf.hhs.gov/orr/policy/policy-letters/22-13#_ftn4)

<https://www.fns.usda.gov/snap/additional-ukraine-supplemental-appropriations-act-2022>

<https://www.congress.gov/118/bills/hr8035/BILLS-118hr8035ih.pdf>

<https://www.fns.usda.gov/snap/consolidated-appropriations-act-cofa-memo>

<https://www.acf.hhs.gov/ofa/policy-guidance/acf-ofa-pi-24-03>

For OAR 461-140-0296:

<https://www.genworth.com/aging-and-you/finances/cost-of-care>

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

The Department estimates amendments to OAR 461-120-0125 will have a positive impact to racial equity in Oregon because citizens of countries that are part of the Compacts of Free Association (COFA) legally residing in the United States may now be eligible for additional public benefit programs governed in OAR Chapter 461. Additionally, certain Ukrainian Humanitarian Parolees and individuals with specific relationships to them may continue to be eligible for benefits.

The Department estimates no impact to racial equity in Oregon for any other rule changes in this filing.

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#### FISCAL AND ECONOMIC IMPACT:

The Department anticipates a mixed fiscal impact for changes to OAR 461-120-0125. The Department is unable to determine the exact fiscal impact but changes to this rule will likely have a positive fiscal impact to Ukrainian humanitarian parolees entering the United States from October 1, 2023, through September 30, 2024, applying for or receiving benefits, as changes to the rule extend the period of parole under which these individuals may be eligible. The Department is unable to determine the fiscal impact for citizens of countries that are part of the Compacts of Free Association (COFA) who lawfully reside in the United States due to insufficient data. Although there will likely be a positive impact for those newly applying, some individuals could potentially see their benefits reduce as earned income from COFA citizens will fully count against benefit allotments. The Department is likely to experience a negative fiscal impact as more individuals will be eligible for benefits, although some of the benefits are federally funded. The Department estimates no impact to other state agencies, local government, and business including small business. There is no cost of compliance for small business.

The Department estimates that amendments to 461-001-0030, 461-115-0230, 461-115-0700, 461-135-0835, 461-140-0040, 461-140-0296, 461-145-0330, 461-145-0380, 461-155-0630, 461-155-0700, and 461-160-0540 will have no fiscal impact on those applying for or receiving benefits or services, the Department, other state agencies, local government, and business including small business. There is no cost of compliance for small business.

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#### COST OF COMPLIANCE:

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

See fiscal impact.

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

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

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

461-001-0030, 461-115-0230, 461-115-0700, 461-120-0125, 461-135-0835, 461-140-0040, 461-140-0296, 461-145-0330, 461-145-0380, 461-155-0630, 461-155-0700, 461-160-0540

AMEND: 461-001-0030

RULE SUMMARY: OAR 461-001-0030 is being amended to replace "institutionalized spouse" in subsection (3)(b) with "individual." This change corrects an error in the rule text and does not impact current practices.

CHANGES TO RULE:

461-001-0030

Definitions; OSIPM Nursing Facility Services or Home and Community-Based Care ¶¶

These terms apply to rules in Chapter 461 about Oregon Supplemental Income Program Medical (OSIPM) nursing facility services and home and community-based care:¶¶

(1) Community spouse: An individual who is legally married (see OAR 461-001-0000) to an institutionalized spouse (see section (5) of this rule) and meets all of the following requirements:¶¶

(a) The individual is not residing in the Oregon State Hospital, or its equivalent if residing in another state.¶¶

(b) The individual is not residing in an acute care hospital or nursing facility for a continuous period of care (see section (2) of this rule).¶¶

(2) Continuous period of care: Reside for a period of at least 30 consecutive days or until death in a nursing facility, home and community-based care (see section (4) of this rule) setting, or an acute care hospital. There must be sufficient evidence to show there is a reasonable expectation that the client will remain in care for at least 30 consecutive days. For the purposes of this policy, an interruption in care (for example, leaving and then returning to a nursing home, or switching from one type of care to another) that lasts less than 30 days is not considered a break in the 30 consecutive days of care. A new period of care begins if care is interrupted for 30 or more days.¶¶

(3) Eligible dependent:¶¶

(a) For cases with a community spouse (see section (1) of this rule):¶¶

(A) An "eligible dependent" is one of the following:¶¶

(i) A child of the institutionalized spouse or community spouse who resides with the community spouse, and who must also be either a minor (under the age of 21) or 21 or older but still a tax dependent of either spouse.¶¶

(ii) A parent or sibling of the institutionalized spouse or community spouse who resides with the community spouse and is claimed as a tax dependent by either spouse.¶¶

(B) A grandchild of the institutionalized spouse or community spouse is not considered an "eligible dependent".¶¶

(b) For cases without a community spouse, an "eligible dependent" resides with the ~~institutionalized spouse~~individual and is either a minor child (under the age of 21) of the ~~institutionalized spouse~~individual, or a child 21 or older but still a tax dependent of the ~~institutionalized spouse~~individual.¶¶

(4) Home and community-based care: Title XIX services needed to keep an individual out of a nursing facility or an intermediate care facility for individuals with intellectual disabilities (ICF-ID), not including 1915(i) Home and community-based services (see division 173 of OAR chapter 410). These services are:¶¶

(a) In-home services except for state plan personal care services.¶¶

(b) Residential care facility services.¶¶

(c) Assisted living facility services.¶¶

(d) Adult foster care services.¶¶

(e) Specialized living facility services.¶¶

(f) Adult day care services.¶¶

(5) Institutionalized spouse: An individual who is married to a community spouse, not residing in the Oregon State Hospital, or its equivalent if in another state, and meets one of the following requirements: ¶¶

(a) The individual is residing in an acute care hospital or nursing facility for a continuous period of care.¶¶

(b) The individual is applying for or receiving services in a nursing facility or home and community-based services.

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

Statutes/Other Implemented: 411.060, 411.700, ORS 409.010, 411.083, 411.404, 42 USC 1396r, 42 CFR 435.726

AMEND: 461-115-0230

RULE SUMMARY: OAR 461-115-0230 is being amended to eliminate the interview requirement at initial application or initial evaluation for the Qualified Medicare Beneficiary (QMB) program for Supplemental Security Income (SSI) recipients who are enrolled in Medicare Part A.

CHANGES TO RULE:

461-115-0230

Interviews ¶¶

(1) In the Refugee Assistance (REF), Refugee Assistance Medical (REFM), and Temporary Assistance for Needy Families (TANF) programs, ¶¶

(a) An interview with an adult in the filing group (see OAR 461-110-0350~~30~~ and OAR 461-110-0430) or the authorized representative (OAR 461-115-0090) of the filing group is required at initial application and renewal of benefits. ¶¶

(b) An interview may be conducted via phone, office visit or offsite location. ¶¶

(c) A face-to-face interview must be granted at the applicant's request. ¶¶

(2) For the purposes of this rule, "hardship" includes, but is not limited to: ¶¶

(a) Care of a household member; ¶¶

(b) An individual's age, disability (see OAR 461-001-0000), or illness; ¶¶

(c) A commute of more than two hours from the individual's residence to the nearest branch office (see OAR 461-001-0000); ¶¶

(d) A conflict between the individual's work or training schedule and the business hours of the branch office; and ¶¶

(e) Transportation difficulties due to prolonged severe weather or financial hardship. ¶¶

(3) In the ~~SNAP program~~ Supplemental Nutrition Assistance Program (SNAP): ¶¶

(a) An interview must be scheduled so that the filing group (see OAR 461-110-0370) has at least ten days to provide any needed verification before the deadline under OAR 461-115-0210. ¶¶

(b) A face-to-face interview must be granted at the applicant's request. ¶¶

(c) When an applicant misses the first scheduled interview appointment, the Department must inform the applicant by notice of the missed interview. ¶¶

(d) An applicant who fails to attend a scheduled interview must contact the Department no later than 30 days following the filing date (OAR 461-115-0040) to be eligible for benefits. ¶¶

(e) An adult (see OAR 461-001-0015) or primary person (see OAR 461-001-0015) in the filing group, an adult or primary person excluded from the filing group under OAR 461-110-0370(8)(b), or the authorized representative (see OAR 461-001-0000, 461-115-0090, and 461-135-0510) of the filing group is interviewed once every 12 months. ¶¶

(4) In the ~~OSIPM~~ Oregon Supplemental Income Program Medical (OSIPM) program, the Department must complete an interview with at least one individual authorized to sign the application under OAR 461-115-0071(3), except as follows: ¶¶

(a) Individuals in a standard living arrangement (see OAR 461-001-0000) who are receiving Supplemental Security Income (SSI) or are in 1619(b) status are not required to complete an interview at initial application. ¶¶

(b) Individuals who are receiving SSI or are in 1619(b) status are not required to complete an interview at annual redetermination. ¶¶

(c) The interview requirement shall be waived at annual redetermination if the individual is unable to complete the interview due to incapacity and an authorized representative has not been designated. ¶¶

(5) In the ~~QMB programs~~: ¶¶

~~(a) Qualified Medicare Beneficiaries (QMB) programs:~~ ¶¶

(a) Except for individuals receiving SSI, the Department must complete an interview with at least one individual authorized to sign the application under OAR 461-115-0071(3) at initial application. ¶¶

(b) An interview is not required at redetermination except in the Qualified Medicare Beneficiaries-Disabled Worker (QMB-DW) program. ¶¶

(6) In the REF and REFM programs, a face-to-face interview is required. ¶¶

(7) In the Temporary Assistance for Domestic Violence Survivors (TA-DVS) program, the Department will conduct a required face-to-face interview with the survivor, unless there is a safety concern related to the domestic violence (see OAR 461-001-0000) situation or there is a hardship. An interview due to safety concern or hardship may be completed via phone, home visit, or offsite appointment.

Statutory/Other Authority: ORS 411.060, 411.404, 411.706, 411.816, 412.049, 414.826, 414.839, ORS 409.050

Statutes/Other Implemented: ORS 411.060, 411.404, 411.706, 411.816, 412.049, 414.826, 414.839, ORS

409.050, ORS 409.010, 411.070, 414.025, 414.231, ~~411.117~~2.072, 42 CFR 435.909

AMEND: 461-115-0700

RULE SUMMARY: OAR 461-115-0700 is being amended to implement a reasonable compatibility provision for resources that can be verified with the Asset Verification System (AVS). It is also being amended to establish that Oregon cannot require separate proof of identity for US citizens when citizenship is verified with the state's vital statistics agency or through the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) system. It is also being amended to remove references to OSIP and correct minor mistakes in sentence structure.

CHANGES TO RULE:

461-115-0700

Required Verification; ~~GA, OSIP~~, OSIPM, and QMB ¶

In the ~~GA, OSIP~~, General Assistance (GA), Oregon Supplemental Income Program Medical (OSIPM), and QMB Qualified Medicare Beneficiaries (QMB) programs:¶

(1) All eligibility (see OAR 461-001-0000) factors, including identity, must be verified at initial application, when there is a change to any factor, and whenever eligibility for benefits becomes questionable. See OAR 461-115-0704 for the requirements to provide verification of citizenship and immigration status.¶

(2) Methods of verifying information include the following:¶

(a) Electronic. Information available and provided to the Department from an electronic source, including but not limited to:¶

(A) State Wage Information Collection Agency.¶

(B) Internal Revenue Service.¶

(C) Social Security Administration.¶

(D) State Unemployment Compensation Agency.¶

(E) State agencies administering programs under Title 1, 10, 14, or 16 of the Social Security Act.¶

(F) SNAP agencies.¶

(G) Other insurance affordability programs.¶

(H) The Department of Treasury.¶

(I) The Department of Homeland Security.¶

(J) Asset Verification System.¶

(b) Self-attestation. Information provided orally or in writing by or on behalf of an individual.¶

(c) Documentation. Documentary evidence provided by or on behalf of an individual, or obtained by the Department from a third party.¶

(3) If necessary, information needed to determine eligibility must be provided by or on behalf of the individual requesting benefits.¶

(4) The Department must allow a reasonable amount of time to provide additional information, if necessary.¶

(5) Financial eligibility.¶

(a) Resources.¶

(A) In the OSIP, OSIPM, and QMB-DW programs, if the total self-attested value of gross "liquid resources" of the financial group (see OAR 461-110-0530) is less than \$400, further verification of the value of "liquid resources" is only required if questionable. For the purposes of this rule, "liquid resources" include cash as well as other resources that can be converted to cash within 20 business days, except that the cash surrender value of a life insurance policy is not considered a liquid resource.¶

(B) The Department must request and use information from available electronic sources, without requiring additional documentation, to verify a resource, unless:¶

(i) The information is not available to the Department electronically.¶

(ii) The information provided by self-attestation differs from the information received electronically and the individual or person acting on the individual's behalf could not provide a statement which reasonably explains the discrepancy.¶

(C) The Department must use the Asset Verification System when a resource or transfer of assets (see OAR 461-140-0210 to 461-140-0300) evaluation is necessary to determine eligibility, subject to the following provisions:¶

(i) Consent to use the Asset Verification System is required and a condition of eligibility. ¶

(ii) If resource information is not available, or not returned, through the Asset Verification System, or differs from self-attested information, resource documentation may be requested directly from the individual, subject to the other requirements of this section and subparagraph (iii) below.¶

(iii) If the reported value of total countable real property and bank accounts differs from what is returned by the Asset Verification System, including resources that were not reported, no further verification is needed if both of the following are true:

(I) Both values are below the applicable resource limit.

(II) No other countable resources are reported.

(b) Income. The Department verifies income through electronic, self-attestation, and documentary methods. Except for as provided in paragraph (A) of this subsection, individuals may self-attest to income that is not subject to verification by the Federal Data Services Hub (FDSH), such as self-employment or private pension. Income subject to verification by the FDSH is compared to self-attested income to determine if further verification is needed. Self-attestation may otherwise be accepted subject to the provisions in paragraph (B) of this subsection.

(A) Supplemental Security Income (SSI) and all Social Security Title II income will be verified via means separate from the FDSH check described in part (B) of this subsection. The verified amounts shall be used to determine eligibility.

(B) FDSH check. Self-attested income is compared to information obtained through a match with the FDSH.

(i) Step One. The self-attested income of each individual in the financial group is compared to the values returned by the FDSH for that individual to determine if it is considered "reasonably compatible," meaning no further verification is needed. The income is reasonably compatible if it meets any of the following:

(I) The FDSH returns a value greater than \$0, but less than the individual's attested amount.

(II) The FDSH returns a value greater than the attested amount, but within 110% of the individual's attested amount.

(III) The individual attests to \$0 income, and the FDSH returns \$0 or absent value.

(ii) Step Two. If any member of the financial group has income that is not reasonably compatible as described in paragraph (i) of this part above, the total self-attested income of each individual's financial group is compared to the total income obtained by the FDSH for the financial group to determine if it is considered reasonably compatible, meaning no further verification is required. The income is reasonably compatible if the total income of the individual's financial group obtained via the FDSH and the total self-attested income of the financial group are both within the income threshold for the benefit for which the individual is evaluated.

(iii) If the total self-attested income of the financial group results in financial ineligibility, the Department shall accept the attested information and deny benefits.

(iv) If self-attested income is not reasonably compatible under Step One or Step Two and does not result in financial ineligibility:

(I) Self-attested income will be used for the initial eligibility determination and documentary verification will be requested post-eligibility.

(II) Upon receipt of documentary verification, the Department will confirm or adjust ongoing eligibility as appropriate.

(III) If documentary verification cannot be obtained, the individual must provide a reasonable explanation as to why, which the Department may accept.

(6) Identity.

(a) Except as provided for in subsections (c), (d) and (de) of this section, individuals must provide documentation to verify identity.

(b) The Department must accept the following as proof of identity, provided such document has a photograph or other identifying information sufficient to establish identity, such as name, age, race, height, weight, eye color, or address:

(A) Driver's license issued by a state or territory.

(B) School identification card.

(C) U.S. military card or draft record.

(D) Identification card issued by the federal, state, or local government.

(E) Military dependent identification card.

(F) U.S. Coast Guard Merchant Mariner card.

(G) For children under the age 19, a clinic, doctor, hospital, or school record, including preschool or day care records.

(H) Two other documents containing consistent information that corroborates an applicant's identity. Such documents can include employer identification cards; high school, high school equivalency, and college diplomas; marriage certificates; divorce decrees; and property deeds or titles.

(c) The Department may accept the finding of identity from a federal or another state agency for the purposes of public assistance, law enforcement, internal revenue or tax bureau, or corrections, if the agency has verified and certified the identity of the individual.

(d) If the Department has verified an individual's citizenship via either a cross match with a state vital statistics agency documenting a record of birth, or a data match with the Department of Homeland Security's Systematic

Alien Verification for Entitlements (SAVE) program, no additional proof of identity is needed.

(e) If the individual does not have any document specified in subsection (b) of this section, and identity cannot be verified under subsections (c) or (d) of this section, the Department must accept an affidavit signed, under penalty of perjury, by an individual other than the applicant who can reasonably attest to the applicant's identity. Such affidavit must contain the individual's name and other identifying information described in subsection (b) of this section.

(7) Social Security numbers. The Department must verify that the SSN furnished by an individual was issued to that individual. Acceptable sources of verification must show a correct Social Security number, including but not limited to:

(a) Social Security Card.

(b) Social Security award letters or other correspondence or forms bearing the individual's SSN.

(c) Medicare card, if the individual is receiving Medicare off their own record.

(d) Information provided electronically to the Department from the Social Security Administration.

(e) Wage stubs or unemployment records.

(f) IRS forms or letters.

(8) Pregnancy. The Department must accept self-attestation of pregnancy unless the Department has information that is not reasonably compatible with such attestation.

(9) Residency, age, date of birth, household size. The Department may accept self-attestation as verification of residency, age, date of birth, and household size, unless the statement differs from information available to the Department electronically or otherwise, in which case the Department may require the individual to provide documentation.

(10) If the Department is unable to verify information electronically or from a third party, the Department will accept, on a case-by-case basis, self-attestation to verify all eligibility criteria, except citizenship and immigration status, under the following circumstances:

(a) Documentation does not exist at initial application or redetermination; or

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

(11) The Department may not deny, close, or reduce benefits if verification available to the Department is incompatible or absent, and the Department did not request additional information from the individual.

Statutory/Other Authority: 411.070, 411.404, 411.706, 413.085, 414.685, ORS 409.050, 411.060, 411.402, 42 USC 1396W, 42 CFR 435.940 - 435.965

Statutes/Other Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685, 414.839, 411.402, 42 USC 1396W, 42 CFR 435.940 - 435.965

AMEND: 461-120-0125

RULE SUMMARY: OAR 461-120-0125 is being amended to add eligibility provisions for multiple programs in OAR Chapter 461 for individuals with qualifying U.S. Citizenship and Immigration Services (USCIS) status. Amendments to the rule add eligibility provisions for individuals from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau who lawfully reside in the United States in accordance with the Compacts of Free Association (COFA). In addition, rule amendments add eligibility provisions for Ukrainian Humanitarian Parolees and individuals with certain relationships to them. This filing makes temporary rule changes permanent.

CHANGES TO RULE:

461-120-0125

#### Noncitizen Status Requirements ¶¶

An individual who must meet noncitizen status requirements under OAR 461-120-0110, must meet the noncitizen status requirements of the program for which they are applying. The requirements are listed in sections (2) through (6) of this rule.¶¶

(1) For purposes of this chapter of rules,¶¶

(a) In all programs, an individual is a "qualified noncitizen" if the individual is any of the following:¶¶

(A) An individual who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).¶¶

(B) An Iraqi or Afghan individual granted special immigrant visa status (SIV) under section 101(a)(27) of the INA. These individuals are lawfully admitted for permanent residence under the INA.¶¶

(C) An individual who is an "Amerasian" who is granted immigration status under section 584 of Public Law 100-202; the Foreign Operations, Export Financing, and Related Program Appropriations Act of 1988; as amended by Public Law 100-461. These individuals are lawfully admitted for permanent residence under the INA.¶¶

(D) An individual who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).¶¶

(E) An individual who is granted asylum under section 208 of the INA (8 U.S.C. 1158).¶¶

(F) An individual who is a "Cuban or Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).¶¶

(G) An individual who is a "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).¶¶

(H) An individual who is a family member of a "victim of a severe form of trafficking in persons" who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).¶¶

(I) An individual whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).¶¶

(J) An individual who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.¶¶

(K) An individual who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.¶¶

(L) An individual who is a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c), as determined by the U.S. Citizenship and Immigration Services (USCIS).¶¶

(b) In the ~~OSIPM and QMB~~ Bregon Supplemental Income Program Medical (OSIPM) and Qualified Medicare Beneficiaries (QMB) programs, in addition to subsection (a) of this section, an individual is a "qualified noncitizen" if the individual is from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau who lawfully reside in the United States in accordance with the Compacts of Free Association. The provisions in this subsection are retroactively effective December 28, 2020.¶¶

(c) In the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) program, in addition to subsection (a) of this section, an individual is a "qualified noncitizen" if the individual is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau who lawfully resides in the United States in accordance with the Compacts of Free Association. The provisions in this subsection are retroactively effective March 9, 2024.¶¶

(2) In all programs except the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs, an individual meets the noncitizen status requirements if the individual is one of the following:¶¶

(a) An Indigenous, First Nation, Inuit, Métis, or Aboriginal individual who is born in Canada to whom the provisions

of section 289 of the INA (8 U.S.C. 1359) apply.¶

(b) A qualified noncitizen (see section (1) of this rule) who is any of the following:¶

(A) A veteran of the United States Armed Forces who was honorably discharged for reasons other than noncitizen status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).¶

(B) A member of the United States Armed Forces on active duty (other than active duty for training).¶

(C) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in paragraphs (A) or (B) of this subsection.¶

(3) In the TANF program, an individual meets the noncitizen status requirements if the individual is one of the following:¶

(a) An individual who is a qualified noncitizen (see subsections (1)(a) and (1)(c) of this rule).¶

(b) An individual who is a noncitizen who is currently experiencing domestic violence (see OAR 461-001-0000) or who has a safety concern related to domestic violence.¶

(c) Effective October 1, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶

(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2023.¶

(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection, who is paroled into the U.S. after September 30, 2022.¶

(C) A parent or legal guardian of an individual listed in paragraph (A) of this subsection, who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2), who is paroled into the U.S. after September 30, 2022.¶

(d) Effective October 1, 2021:¶

(A) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant Conditional Permanent Resident status on or after July 31, 2021.¶

(B) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant SQ/SI Parole status on or after July 31, 2021.¶

(C) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) or (B) of this subsection.¶

(D) A parent or legal guardian of an individual listed in paragraph (A) or (B) of this subsection who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2).¶

(e) Effective May 21, 2022, through the end of their parole:¶

(A) An individual who was paroled into the U.S. between February 24, 2022, and September 30, 2023, and meets one of the following:¶

(i) Is a citizen or national of Ukraine.¶

(ii) Last habitually resided in Ukraine.¶

(B) An individual who was paroled after September 30, 2023, and who is one of the following:¶

(i) An unmarried child, under the age of 21 of an individual listed in paragraph (3)(e)(A) or subsection (3)(f) of this rule. An unmarried child is an individual as defined in section 101(b) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1101(b)), under the age of 21.¶

(ii) The spouse of an individual listed in paragraph (3)(e)(A) of ~~r~~ subsection (d)3)(f) of this rule.¶

(C) An individual who was paroled into the U.S. after September 30, 2023, and is ~~one of the following:~~¶

~~(i) At the parent, legal guardian, or primary caregiver of one of the following:~~¶

(i) An individual listed in paragraph (3)(e)(A) or subsection (3)(f) of this rule who is an unaccompanied refugee minor, as defined in section 412(d)(2)(B) of the INA (8 U.S.C. § 1522(d)(2)(B)).¶

(ii) An individual listed in paragraph (3)(e)(A) or subsection (3)(f) of this rule who is an unaccompanied child, as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g)(2)).¶

(f) Effective April 24, 2024, through the end of their parole, an individual who was paroled into the U.S. from October 1, 2023, through September 30, 2024, and is a citizen or national of Ukraine or last habitually resided in Ukraine.¶

(4) In the OSIPM and QMB programs an individual meets the noncitizen status requirements if the individual meets any of the following:¶

(a) The individual has been granted a USCIS status listed under paragraphs (1)(a)(B) through (1)(a)(I) or paragraph (1)(b) of this rule.¶

(b) Effective October 1, 2009, the individual is a qualified noncitizen and is under 19 years of age.¶

(c) The individual was a qualified noncitizen before August 22, 1996.¶

(d) The individual has been granted a USCIS status listed under paragraphs (1)(a)(A), and (1)(a)(J) through (1)(a)(L) and meets one of the following:¶

(A) Physically entered the United States or was granted the USCIS status on or after August 22, 1996; and has been in the U.S. for five years beginning on the date the USCIS status was granted.¶

(B) Physically entered the United States before August 22, 1996 and was continuously present in the United States between August 22, 1996, and the date the USCIS status was granted. An individual is not continuously

present in the United States if the individual is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date the USCIS status was granted.¶

(e) The individual is under the age of 19 and is one of the following:¶

(A) An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of noncitizens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:¶

(i) An individual currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);¶

(ii) An individual currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 USC 1229b);¶

(iii) An individual who is a "Cuban or Haitian entrant," as defined in section 202(b) Pub. L. 99-603 (8 USC 1255a), as amended;¶

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649 (8 USC 1255a), as amended;¶

(v) An individual currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;¶

(vi) An individual currently in deferred action status pursuant to Department of Homeland Security Operating Instruction OI 242.1(a)(22); or¶

(vii) An individual who is the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status.¶

(B) An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including those individuals as specified in section 101(a)(15) of the INA (8 USC 1101).¶

(f) In the OSIPM program, is receiving Supplemental Security Income (SSI) benefits.¶

(g) In the QMB program, is receiving SSI and Medicare Part A benefits.¶

(h) Effective July 31, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶

(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2023.¶

(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection, who is paroled into the U.S. after September 30, 2022.¶

(C) A parent or legal guardian of an individual listed in paragraph (A) of this subsection, who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2), who is paroled into the U.S. after September 30, 2022.¶

(i) Effective July 31, 2021:¶

(A) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant Conditional Permanent Resident status on or after July 31, 2021.¶

(B) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant SQ/SI Parole status on or after July 31, 2021.¶

(C) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) or (B) of this subsection.¶

(D) A parent or legal guardian of an individual listed in paragraph (A) or (B) of this subsection who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2).¶

(j) Effective February 24, 2022, through the end of their parole:¶

(A) An individual who was paroled into the U.S. ~~between from~~ February 24, 2022, ~~and through~~ September 30, 2023, and meets one of the following:¶

(i) Is a citizen or national of Ukraine.¶

(ii) Last habitually resided in Ukraine.¶

(B) An individual who was paroled after September 30, 2023, and who is one of the following:¶

(i) An unmarried child, ~~defined in section 101(b) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1101(b))~~, under the age of 21.¶

(ii) The spouse of an individual listed in paragraph (A) of subsection (d).¶

(C) An individual who was paroled into the U.S. after September 30, 2023, and is one of the following:¶

(i) A parent, legal guardian, or primary caregiver of an unaccompanied refugee minor, as defined individual listed in paragraph (4)(j)(A) of this rule.¶

(ii) The spouse of an individual listed in paragraph (4)(j)(A) of this rule.¶

(iii) The parent, legal guardian, or primary caregiver of an individual listed in paragraph (4)(j)(A) of this rule who is also determined to be either an unaccompanied child under section 4162(d)(2)(B) of the INA Homeland Security Act of 2002 (86 U.S.C. § 1522(d)(2)(B)).¶

(ii) An unaccompanied child, as defined in 279(g)(2) or an unaccompanied refugee minor under section 4612(gd)(2)(B) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g)(2) Immigration and Nationality Act (8 U.S.C. 1522(d)(2)(B)).¶

(5) In the REF and REFM programs, an individual meets the noncitizen status requirements if the individual is

admitted lawfully under any of the following provisions of law:¶

(a) The individual has been granted a USCIS status listed under paragraphs (1)(a)(B) through (1)(a)(H).¶

(b) The individual has been paroled as a refugee or asylee under section 212(d)(5) of the Immigration and Nationality Act (INA) (8 USC 1182(d)(5)).¶

(c) Effective October 1, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶

(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2023.¶

(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection, who is paroled into the U.S. after September 30, 2023.¶

(C) A parent or legal guardian of an individual listed in paragraph (A) of this subsection, who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2), who is paroled into the U.S. after September 30, 2023.¶

(d) Effective October 1, 2021:¶

(A) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant Conditional Permanent Resident status on or after July 31, 2021.¶

(B) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant SQ/SI Parole status on or after July 31, 2021.¶

(C) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) or (B) of this subsection.¶

(D) A parent or legal guardian of an individual listed in paragraph (A) or (B) of this subsection who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2).¶

(e) Effective May 21, 2022, through the end of their parole:¶

(A) An individual who was paroled into the U.S. ~~between~~from February 24, 2022, ~~and~~through September 30, 2023, and meets one of the following:¶

(i) Is a citizen or national of Ukraine.¶

(ii) Last habitually resided in Ukraine.¶

(B) An individual who was paroled after September 30, 2023, and who is one of the following:¶

(i) An unmarried child, under the age of 21 of an individual listed in paragraph (5)(e)(A) or subsection (5)(f) of this rule. An unmarried child is an individual defined in section 101(b) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1101(b)), under the age of 21.¶

(ii) The spouse of an individual listed in paragraph (5)(e)(A) ~~of~~ subsection (5)(f) of this rule.¶

(C) An individual who was paroled into the U.S. after September 30, 2023, and is ~~one of the following:~~¶

~~(i) At the parent, legal guardian, or primary caregiver of one of the following:~~¶

(i) An individual listed in paragraph (5)(e)(A) or subsection (5)(f) of this rule who is an unaccompanied refugee minor, as defined in section 412(d)(2)(B) of the INA (8 U.S.C. § 1522(d)(2)(B)).¶

(ii) An individual listed in paragraph (5)(e)(A) or subsection (5)(f) of this rule who is an unaccompanied child, as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g)(2)).¶

(f) Effective April 24, 2024, through the end of their parole, an individual who was paroled into the U.S. from October 1, 2023, through September 30, 2024, and is a citizen or national of Ukraine or last habitually resided in Ukraine.¶

(6) In the SNAP program,¶

~~(a) A~~ an individual meets the noncitizen status requirements if the individual meets any of the following:¶

~~(Aa)~~ Has been granted a USCIS status listed under paragraphs (1)(a)(B) through (1)(a)(I) or subsection (1)(c) of this rule.¶

~~(Bb)~~ Has been granted a qualified noncitizen USCIS status and is under age 18.¶

~~(Cc)~~ Has been granted a qualified noncitizen USCIS status and has a disability (see OAR 461-001-0015).¶

~~(Dd)~~ Was born on or before August 22, 1931, and on August 22, 1996, was lawfully residing in the United States.¶

~~(Ee)~~ Was a member of a Hmong or Highland Laotian Tribe at the time that the Tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101), and is a noncitizen who is lawfully residing in the United States.¶

~~(Ff)~~ Is a spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in ~~paragraph (E) of this subsection.~~ subsection (6)(e) of this rule.¶

~~(bg)~~ An individual meets the noncitizen status requirements when the individual has been granted a USCIS status listed under paragraph (1)(a)(A) or paragraphs (1)(a)(J) through (1)(a)(L) of this rule, and has completed one of the following:¶

(A) The individual has been residing in the United States for at least five years while a qualified noncitizen.¶

(B) The individual has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, subject to the following provisions:¶

(i) No quarter beginning after December 31, 1996, is a qualifying quarter if the individual received any federal,

means-tested benefit during the quarter. Federal means-tested benefits include SNAP, TANF, and Medicaid (except emergency medical).¶

(ii) For the purpose of determining the number of qualifying quarters of coverage, an individual is credited with all of the quarters of coverage worked by a parent of the individual while the individual was under the age of 18 and all of the qualifying quarters worked by a spouse of the individual during their marriage, during the time the individual remains married to such spouse or such spouse is deceased.¶

(iii) A lawful permanent resident who would meet the noncitizen status requirements, except for a determination by the Social Security Administration (SSA) that the individual has fewer than 40 quarters of coverage, may be provisionally certified for SNAP program benefits while SSA investigates the number of quarters creditable to the individual. An individual provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for SNAP program benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the individual does not have sufficient quarters.¶

(eh) Effective October 1, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶

(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2023.¶

(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection, who is paroled into the U.S. after September 30, 2022.¶

(C) A parent or legal guardian of an individual listed in paragraph (A) of this subsection, who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2), who is paroled into the U.S. after September 30, 2022.¶

(ei) Effective October 1, 2021:¶

(A) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant Conditional Permanent Resident status on or after July 31, 2021.¶

(B) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant SQ/SI Parole status on or after July 31, 2021.¶

(C) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) or (B) of this subsection.¶

(D) A parent or legal guardian of an individual listed in paragraph (A) or (B) of this subsection who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2).¶

(ej) Effective May 21, 2022, through the end of their parole:¶

(A) An individual who was paroled into the U.S. ~~between~~from February 24, 2022, ~~and~~through September 30, 2023~~4~~, and meets one of the following:¶

(i) Is a citizen or national of Ukraine.¶

(ii) Last habitually resided in Ukraine.¶

(B) An individual who was paroled after September 30, 2023, and who is one of the following:¶

(i) An unmarried child; under the age of 21 of an individual listed in paragraph (6)(j)(A) of this rule. An unmarried child is an individual as defined in section 101(b) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1101(b)); under the age of 21.¶

(ii) The spouse of an individual listed in paragraph (A) ~~of subsection (d)-6(j)(A) of this rule.~~¶

(C) An individual who was paroled into the U.S. after September 30, 2023, and is ~~one of the following:~~¶

~~(i) At the parent, legal guardian, or primary caregiver of one of the following:~~¶

(i) An individual listed in paragraph (6)(j)(A) of this rule who is an unaccompanied refugee minor, as defined in section 412(d)(2)(B) of the INA (8 U.S.C. § 1522(d)(2)(B)).¶

(ii) An individual listed in paragraph (6)(j)(A) of this rule who is an unaccompanied child, as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g)(2)).

Statutory/Other Authority: 409.050, 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 413.085, 414.231, 414.619

Statutes/Other Implemented: 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.231, 409.010, 411.070, 414.025, H.R. 133, 116th Cong. (2019-2020), Public Law 117-43, H.R. 7691, 117th Cong. (2021-2022), 45 CFR 400, H.R. 8035 - 118th Congress (2022-2023)

AMEND: 461-135-0835

RULE SUMMARY: OAR 461-135-0835 is being amended to add sections (7) and (8) to the rule to explain how the Estate Administration Unit (EAU) calculates a claim for incorrectly paid assistance under ORS 416.350(1), or a claim for assistance to which the person was not entitled under ORS 411.620, 411.630, 411.708, 411.640, or ORS 416.350(2). Rule changes indicate how EAU pursues recovery when, after the death of a recipient, it is discovered that the individual gave away an asset, or did not disclose an asset, and either circumstance would have resulted in the individual being ineligible. Additions to this rule do not change how EAU has always calculated these types of claims, rather it places the provisions within EAU's rule set, instead of the Aging and People with Disabilities (APD) rule set.

CHANGES TO RULE:

461-135-0835

Limits on Estate Claims ¶¶

(1) The Estate Administration Unit is designated and authorized to administer the estate recovery program for the Oregon Health Authority and the Department of Human Services, and to present and file claims for payment. The Manager and Assistant Manager of the Estate Administration Unit, Estate Administrators, Assistant Estate Administrators, and Accounts Receivable Specialist are authorized to present, file, and resolve claims for the Estate Administration Unit. The Manager or Assistant Manager may designate other individuals to present, file, or resolve claims. This rule sets out some of these claims.¶¶

(2) For the Oregon Supplemental Income Program (OSIP) (see OAR 461-101-0010):¶¶

(a) The amount of any payments or benefits, including an overpayment (see OAR 461-195-0501), are a claim against the probate estate (see OAR 461-135-0832) of any deceased recipient.¶¶

(b) The claim for correctly paid payments or benefits under OSIP are deferred until the death of the spouse (see OAR 461-001-0000) or registered domestic partner (see OAR 461-135-0832), if any, of the deceased recipient.¶¶

(c) If the deceased recipient has no probate estate, the enforcement of the claim has been deferred, or there are insufficient resources in the probate estate to pay the claim in full, the probate estate of the spouse or registered domestic partner of the deceased recipient, if any, is charged for any payments or benefits paid under OSIP to the deceased recipient, the spouse, or registered domestic partner.¶¶

(d) A claim for correctly paid payments or benefits under OSIP is deferred until the time that there is no child under age 21 (see OAR 461-135-0832), child with a disability (see OAR 461-135-0832), or child with a visual impairment (see OAR 461-135-0832).¶¶

(e) Transfers of real or personal property without adequate consideration, by recipients of payments or benefits under OSIP, are voidable and may be set aside under ORS 411.620.¶¶

(f) Except when there is a surviving spouse or registered domestic partner, or a surviving child under age 21, a child with a disability, or a child with a visual impairment, the amount of any payments or benefits provided is a claim against the estate (see OAR 461-135-0832) in any conservatorship proceedings and may be paid pursuant to ORS 125.495.¶¶

(3) For General Assistance (see OAR 461-135-0832):¶¶

(a) The amounts of any payments or benefits, including overpayments, are a claim against the probate estate of any deceased recipient. The amount includes the state's monthly contribution, paid prior to January 1, 2014, to the federal government for the recipient's Medicare Part D prescription drug coverage. Effective July 1, 2016, any correctly paid benefits under Oregon Laws 2016, chapter 93, section 1 are excluded, except than an overpayment of benefits under Oregon Laws 2016, chapter 93, section 1 is included in a claim against the probate estate.¶¶

(b) The claim for correctly paid payments or benefits under the General Assistance program is deferred until the death of the spouse or registered domestic partner, if any, of the deceased recipient.¶¶

(c) If the deceased recipient has no probate estate, the enforcement of the claim has been deferred, or there are insufficient resources in the probate estate to pay the claim in full, then the probate estate of the spouse or registered domestic partner of the deceased recipient, if any, is charged for any payments or benefits to the deceased recipient, the spouse, or registered domestic partner.¶¶

(d) A claim for correctly paid payments or benefits under General Assistance is deferred until the time that there is no child under age 21, child with a disability, or child with a visual impairment.¶¶

(e) Except when there is a surviving spouse or registered domestic partner, or a surviving child under age 21, a child with a disability, or child with a visual impairment, the amount of any assistance paid is a claim against the estate in any conservatorship proceedings and may be paid pursuant to ORS 125.495.¶¶

(4) For Medical Assistance (MA, as defined in OAR 461-135-0832):¶¶

(a) In determining the extent of the estate resources subject to the claim of the Department for correctly paid

benefits, except as provided in subsection (b) of this section, the Department must disregard resources in an amount equal to the value (see OAR 461-135-0832) of resources excluded in the most recent eligibility determination under OAR 461-160-0855, based on payments received under a qualified partnership policy (see OAR 461-001-0000). The disregard of resources specific to the estate recovery claim applies to MA benefits received after the effective date of the MA eligibility determination in which a qualified partnership policy was considered and approved. The amount of any MA incurred in a prior MA eligibility period where qualified partnership policy benefits were not considered is not subject to the estate resource disregard.¶

(b) There is no disregard of resources under subsection (a) of this section if the recipient, or the spouse of the recipient, at any time transferred the value of the qualified partnership policy excluded resource amount to another individual for less than fair market value prior to the death of the recipient or the recipient's spouse, or exhausted the disregarded resource amount by purchasing things of value to the recipient or the recipient's spouse while either was living.¶

(c) The amount of any incorrectly paid payments or benefits, excluding an administrative error overpayment, are a claim, against the probate estate of any deceased recipient.¶

(d) The claim for correctly paid payments or benefits under MA is deferred until the death of the surviving spouse, if any, of the deceased recipient. After the death of a surviving spouse, the deferred claim of the deceased recipient is a claim against the following assets (see OAR 461-135-0832) or their proceeds in the estate of the spouse. The Department has a claim against the estate of the spouse for medical assistance (see OAR 461-135-0832) paid to the recipient, but only to the extent that the spouse received property or other assets from the recipient through any of the following:¶

(A) Probate.¶

(B) Operation of law.¶

(e) A claim for correctly paid payments or benefits under MA is deferred until the time that there is no child under age 21, child with a disability, or child with a visual impairment.¶

(f) An MA claim in an estate includes:¶

(A) The amount of any payments or benefits paid prior to October 1, 1993 to or on behalf of a recipient 65 years of age or older are a claim against the probate estate of any deceased recipient.¶

(B) The amount of any payments or benefits, paid on or after October 1, 1993 and prior to July 18, 1995, to or on behalf of a recipient 55 years of age or older are a claim against the probate estate of any deceased recipient.¶

(C) The amount of any payments or benefits, paid on or after July 18, 1995 and prior to October 1, 2013, to or on behalf of a recipient 55 years of age or older are a claim against the estate of any deceased recipient. All correctly made payments on or after January 1, 2010 for Medicare cost sharing (see OAR 461-135-0832) are excluded from a claim.¶

(D) The amount of any payments or benefits, paid October 1, 2013 or later, to or on behalf of a recipient 55 years of age or older, during the time the Department was paying any of the cost of care of the individual in a nursing facility, home and community-based care (see OAR 461-001-0030), or in home services through the State Plan Personal Care Services (see OAR 411-034-0010), are a claim against the estate of any deceased recipient. All correctly made payments on or after January 1, 2010 for Medicare cost sharing are excluded from a claim.¶

(5) The amount paid, for a recipient age 55 or older, after December 31, 2013, to the federal government for the recipient's Medicare Part D prescription drug coverage is a claim against the estate of the deceased recipient.¶

(6) For trusts under OAR 461-145-0540(9), upon termination of the trust or upon the death of the original beneficiary the trust pays to the State or States from such remaining amounts in the trust an amount equal to the total amount of medical assistance paid on behalf of the original beneficiary. The State or States must be listed as the first payee or payees and first remainder beneficiary or beneficiaries, and have priority over payment of other debts and administrative expenses, and other beneficiaries, except as allowed in subsection (a) of this section. Subsections (4)(d) and (4)(e) of this rule do not apply to this section.¶

(a) Allowable administrative expenses payable before any State include:¶

(A) Taxes due from the trust, excluding taxes due from the beneficiary, to the State or States or federal government because of the death of the beneficiary; and¶

(B) Reasonable fees for administration of the trust estate such as an accounting of the trust to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust. Trustee fees or conservator fees, not both, are limited to the month of the original beneficiary's death and the prior month.¶

(i) For a person that is a trustee, but not a conservator, trustee fees after the month of death, if claimed, must be reasonable and approved by the Department prior to payment.¶

(ii) For a person that is a conservator and trustee, conservator fees after the month of death, if claimed, must be approved by the court, after the Department is given notice and opportunity to object.¶

(b) Upon the death of the original beneficiary, the following expenses and payments are examples of some of the types not permitted prior to reimbursement of the State or States for medical assistance:¶

- (A) Taxes due from the estate of the beneficiary other than those arising from inclusion of the trust in the estate;¶
- (B) Payment of debts owed to third parties;¶
- (C) Trustee or conservator fees, except as allowed by subsection (a) of this section;¶
- (D) Funeral expenses; and¶
- (E) Payments to residual beneficiaries.¶

(7) Regarding claims under ORS 411.620:¶

(a) Where the Department has a claim for correctly paid assistance and files an action under ORS 411.620(1) or (2) for a violation of ORS 411.630, 411.708(2), or 416.350(2), the amount of assistance resulting from the violation is the amount the Department would have been entitled to recover from the estate if the transferred asset were an asset of the estate.¶

(b) In addition or in the alternative at the discretion of the Department, the Department shall have a claim for recovery of incorrectly paid payments or benefits under ORS 416.350(1), or for assistance to which the person was not entitled, or that results from a violation, of or under ORS 411.620, ORS 411.630, ORS 411.708, ORS 411.640, or ORS 416.350(2), against the estate of the deceased recipient or against any person liable under such statutes, that includes: ¶

(A) For individuals who received public assistance or medical assistance and transferred an asset in a manner that constitutes a disqualifying transfer under OAR 461-140-0220 and 461-140-0242, a claim includes all assistance received during a disqualification period calculated in accordance with OAR 461-140-0296, except that the date the disqualification period begins is: ¶

(i) For an individual who transfers an asset while receiving assistance the disqualification period begins the month following the month the asset was transferred, except that if disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.¶

(ii) For an individual who transfers an asset prior to receiving assistance, the disqualification period begins on the date the person begins receiving assistance. ¶

(B) For individuals who received public assistance or medical assistance and failed to disclose a countable asset (OAR 461-140-0010) the claim includes all assistance received from the date the individual was required to disclose the asset. ¶

(8) Notwithstanding section (7), the Department retains the ability to void a transfer under ORS 411.620, ORS 411.630, ORS 411.708, or ORS 416.350(2), and to recover any other claim that the Department may have.

Statutory/Other Authority: ORS 411.060, 411.070, 411.404, 413.042, 413.085, 416.340, ORS 409.050, 416.350, 414.685

Statutes/Other Implemented: ORS 93.969, 125.495, 411.404, 411.620, 411.630, 411.708, 411.795, 413.085, 416.310, 416.350, 411.640

AMEND: 461-140-0040

RULE SUMMARY: OAR 461-140-0040 is being amended to clarify that income of an incapacitated individual with no legal or financial representation can only be considered unavailable while representation is being secured and upon approval by the Aging and People with Disabilities (APD) Medicaid Financial Eligibility policy unit. The APD Medicaid Financial Eligibility policy unit may determine initial unavailability for up to three months and any extensions if additional time is needed.

CHANGES TO RULE:

461-140-0040

#### Determining Availability of Income ¶¶

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

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

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

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

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

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

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

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

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

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

(a) Deemed income.¶¶

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

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

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

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

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

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

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

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

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

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

(b) Income received by another individual who does not pay the benefit applicant or recipient their share.¶¶

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

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

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

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

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

(A) The portion of a payment from an assistance program, such as public assistance, unemployment compensation, or Social Security withheld on or after July 1, 2014 to repay an overpayment from the same source if at least one member of the financial group was receiving OSIP, OSIPM, or QMB during the period the benefit was overpaid. The amount considered unavailable cannot exceed the amount of the overpaid benefit previously counted in determining eligibility (see OAR 461-001-0000) for OSIP, OSIPM, or QMB.¶

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

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

(D) For an individual determined eligible for community-based care (see OAR 461-155-0630) or nursing facility services, i:¶

(i) Income that cannot be accessed due to incapacity shall be considered unavailable for up to three months while a legal or financial representative is being established, if necessary to secure placement. ~~The Department may continue to consider this income unavailable.~~¶

(ii) Unavailability may be extended past the initial three months if additional time is needed to establish a legal or financial representative.¶

(iii) Unavailability of income under this paragraph is subject to approval by the APD Medicaid Financial Eligibility policy unit at initial request and for any extension.¶

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

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

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

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

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

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

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

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.619

Statutes/Other Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.619,

ORS 409.010, ~~411.117~~, 411.706, 414.117, 412.072

AMEND: 461-140-0296

RULE SUMMARY: OAR 461-140-0296 about length of disqualification due to an asset transfer is being amended to update the dollar amount (divisor) used when calculating the length of disqualification for individuals requesting or receiving nursing facility services or home and community-based care who have made a disqualifying transfer. The new divisor takes in consideration COLA changes. This permanent amendment keeps Oregon aligned with current federal guidance as described in federal statute 42 USC Chapter 7 Subchapter XIX Sec 1396p(c)(E)(i)(II).

CHANGES TO RULE:

461-140-0296

Length of Disqualification Due to an Asset Transfer; Nursing Facility Services or Home and Community-Based Care ¶

(1) This rule applies to individuals applying for or receiving Department-paid nursing facility services or home and community-based care (see OAR 461-001-0030).¶

(2) An individual who completes a disqualifying transfer of an asset in accordance with OARs 461-140-0210, 461-140-0220, 461-140-0242, and 461-140-0250 is disqualified from receiving Department-paid nursing facility services or home and community-based care. The length of a disqualification period resulting from the transfer is the number of months equal to the uncompensated value (see OAR 461-140-0250) for the transfer divided by the following dollar amount:¶

(a) If the initial month (see OAR 461-001-0000) is prior to October 1, 1998-\$2,595.¶

(b) If the initial month is on or after October 1, 1998 and prior to October 1, 2000-\$3,320.¶

(c) If the initial month is on or after October 1, 2000 and prior to October 1, 2002-\$3,750.¶

(d) If the initial month is on or after October 1, 2002 and prior to October 1, 2004-\$4,300.¶

(e) If the initial month is on or after October 1, 2004 and prior to October 1, 2006-\$4,700.¶

(f) If the initial month is on or after October 1, 2006 and prior to October 1, 2008-\$5,360.¶

(g) If the initial month is on or after October 1, 2008 and prior to October 1, 2010-\$6,494.¶

(h) If the initial month is on or after October 1, 2010 and prior to October 1, 2016-\$7,663.¶

(i) If the initial month is on or after October 1, 2016 and prior to October 1, 2018--\$8,425.¶

(j) If the initial month is on or after October 1, 2018 and prior to October 1, 2020---\$8,784.¶

(k) If the initial month is on or after October 1, 2020 and prior to October 1, 2022---\$9,551.¶

(l) If the initial month is on or after October 1, 2022---~~\$10,342~~ and prior to October 1, 2024--- \$10,342.¶

(m) If the initial month is on or after October 1, 2024--- \$14,585.¶

(3) For transfers by an individual and the spouse of an individual:¶

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

(b) The quotient resulting from the calculation in section (2) of this rule is not rounded. The whole number of the quotient is the number of full months the financial group is disqualified. This number might be zero full months. The remaining decimal or fraction of the quotient is used to calculate a partial month disqualification, which may be in addition to one or more full months. This remaining decimal or fraction is converted to a number of days by multiplying the decimal or fraction by the number of days in the month following the last full month of the disqualification period, if any. If this calculation results in a fraction of a day, the fraction of a day is rounded down.¶

(c) The date the disqualification begins is:¶

(A) For an individual who either transfers an asset while they are already receiving Department-paid nursing facility services or home and community-based care, or transfers an asset on or after the date that is 60 months prior to the date of request (see OAR 461-115-0030) but fails to report the transfer at initial application, the first of the month following the date the Department learns the asset was transferred and the timely continuing benefit decision notice period ends (see OAR 461-175-0050), except that if disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.¶

(B) For an individual who transfers an asset prior to submitting an application for services and being determined eligible who reports the transfer at application, the date of request for nursing facility services or home and community-based care as long as the applicant or individual would otherwise be eligible but for this disqualification period. If the applicant or individual is not otherwise eligible on the date of request, the disqualification begins the first date following the date of request that the applicant or individual would be otherwise eligible but for the disqualification period.¶

(d) If both spouses of a couple are applying for or receiving Department-paid nursing facility services or home and

community-based care, part of the disqualification is apportioned to each of them. If one member of the couple is serving a disqualification when the other member of the couple applies for or starts receiving Department-paid nursing facility services or home and community-based care, any remaining disqualification is apportioned equally to each member of the couple. If one spouse is unable to serve the resulting disqualification period for any reason, the remaining disqualification applicable to both spouses must be served by the remaining spouse.¶¶

(4) If an asset is owned by more than one person, by joint tenancy, tenancy in common, or similar arrangement, the share of the asset owned by the individual is considered transferred when any action is taken either by the individual or any other person that reduces or eliminates the individual's control or ownership in the individual's share of the asset.¶¶

(5) 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) If an individual or the spouse of an individual purchases an annuity on or before December 31, 2005 or there is a potential disqualifying transfer under section (11) of OAR 461-145-0022, and the only requirement that is not met is that the annuity pays benefits beyond the actuarial life expectancy of the annuitant, as determined by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration, a disqualification period is assessed for the value of the annuity beyond the actuarial life expectancy of the annuitant.¶¶

(7) Effective January 1, 2023, the Department ends the disqualifications previously established under this rule based on an income cap trust.

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

Statutes/Other Implemented: 42 USC 1396p, ORS 409.010, 411.060, 411.704, 411.706

AMEND: 461-145-0330

RULE SUMMARY: OAR 461-145-0330 about loans and interest on loans is being amended clarify that section (6) applies only to individuals in nonstandard living arrangements and section (7) applies to those in standard living arrangements. It is also being amended to change "spouse" to "community spouse" in section (6).

CHANGES TO RULE:

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:¶¶

(a) In the OSIP, regon Supplemental Income Program Medical (OSIPM), and QMB Qualified Medicare Beneficiaries (QMB) programs:¶¶

(A) "Bona fide loan agreement" means an agreement that:¶¶

(i) Is enforceable under state law;¶¶

(ii) Is in effect at the time the cash proceeds are provided to the borrower; and¶¶

(iii) Includes an obligation to repay and a feasible repayment plan.¶¶

(B) "Negotiable loan agreement" means a loan agreement in which the instrument ownership and the whole amount of money expressed on its face can be transferred from one person to another (i.e., sold) at prevailing market rates.¶¶

(b) In all programs:¶¶

(A) "Reverse-annuity mortgage" means a contract with a financial institution (see OAR 461-001-0000) under which the financial institution provides payments against the equity in the home that must be repaid when the homeowner dies, sells the home, or moves.¶¶

(B) The proceeds of a home equity loan or reverse-annuity mortgage (see paragraph (A) of this subsection) are considered loans.¶¶

(3) In all programs, in order to treat payments as a loan that a member of the financial group (see OAR 461-110-0530) receives as a borrower, there must be an oral or written loan agreement. This agreement must state when repayment of the loan is due to the lender.¶¶

(4) Payments for a purported loan that do not meet the requirements of section (3) of this rule are counted as unearned income.¶¶

(5) When a member of a financial group receives cash proceeds as a borrower from a loan that meets the requirements of section (3) of this rule:¶¶

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

(b) In the Refugee Assistance (REF), Refugee Assistance Medical (REFM), SNAP, and Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) programs, the loan is excluded. If retained after the month of receipt, the loan proceeds are treated in accordance with OAR 461-140-0070.¶¶

(c) In the OSIP, OSIPM, and M and Qualified Medicare Beneficiaries-Disabled Worker (QMB-DW) programs:¶¶

(A) If the loan is a bona fide loan agreement (see paragraph (2)(a)(A) of this rule), the money provided by the lender is not income but is counted as the borrower's resource if retained in the month following the month of receipt (notwithstanding OAR 461-140-0070).¶¶

(B) If the loan is not a bona fide loan agreement, the money provided by the lender is counted as income in the month received and is counted as a resource if retained in the month following the month it was received.¶¶

(d) In the Qualified Medicare Beneficiaries-Basic (QMB-BAS), QMB-SMB Qualified Medicare Beneficiaries-Specified Low Income Medicare Beneficiary (QMB-SMB), and QMB-SMF programs:¶¶

(A) If the loan is a bona fide loan agreement, the money provided by the lender is not considered income.¶¶

(B) If the loan is not a bona fide loan agreement, the money provided by the lender is counted as income in the month received.¶¶

(C) All money provided by the lender is excluded as a resource.¶¶

(6) In the OSIPM (except OSIPM-EPD) program employed Persons with Disabilities) program, for individuals in a nonstandard living arrangement (see OAR 461-001-0000), if an individual or a community spouse (see OAR 461-001-00030) of an individual uses funds to purchase a mortgage or to purchase or lend money for a promissory note or loan:¶¶

(a) In a transaction occurring on or after July 1, 2006:¶¶

(A) The balance of the payments owing to the individual or spouse of the individual is a transfer of assets for less than fair market value (see OAR 461-001-0000), unless all of the following requirements are met:¶¶

- (i) The total value of the transaction is being repaid to the individual or spouse of the individual within three months of the life expectancy per the actuarial life expectancy of that individual as established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration. If the loan, promissory note, or mortgage are jointly owned by the individual and their spouse, the requirements of this section are met if the transaction is repaid according to the life expectancy of either the individual or their spouse.¶
  - (ii) Payments are made in equal amounts over the term of the transaction without any deferrals or balloon payments.¶
  - (iii) The contract is not cancelled upon the death of the individual receiving the payments under this transaction.¶
  - (iv) No one other than the estate of the lender is designated as remainder beneficiary. ¶
  - (B) If any of the requirements in paragraph (a)(A) of this section are not met, payments against the principal and interest are treated as unearned income. The outstanding principal balance of the loan is excluded as a resource.¶
  - (b) In a transaction occurring before July 1, 2006, or for a transaction occurring on or after July 1, 2006, that meets all of the requirements of subsection (a) of this section, the loan is treated as follows:¶
    - (A) Interest income is treated as unearned income.¶
    - (B) If the loan is both a negotiable loan agreement (see paragraph (2)(a)(B) of this rule) and a bona fide loan agreement, the loan is counted as a resource valued at the outstanding principal balance. Payments against the principal are excluded as income.¶
    - (C) If the loan does not qualify under paragraph (B) of this subsection, payments against the principal are counted as unearned income. The outstanding principal balance of the loan is excluded as a resource.¶
  - (7) In the OSIPM program for individuals in a standard living arrangement (see OAR 461-001-0000), OSIPM-EPD, and QMB-DW programs, if an individual uses funds to purchase a mortgage or to purchase or lend money for a promissory note or loan:¶
    - (a) Interest income is treated as unearned income.¶
    - (b) If the loan is both a negotiable loan agreement and a bona fide loan agreement, the loan is counted as a resource of the lender valued at the outstanding principal balance. Payments against the principal are excluded as income.¶
    - (c) If the loan does not qualify under subsection (b) of this section, the balance of the loan is excluded as a resource. The payments against the principal are counted as income to the lender.¶
  - (8) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, if an individual uses funds to purchase a mortgage or to purchase or lend money for a promissory note or loan:¶
    - (a) Interest income is counted as unearned income.¶
    - (b) Payments against the principal of all loans are excluded as income.¶
  - (9) In all programs other than the OSIP, OSIPM, and QMB programs:¶
    - (a) The interest payment is counted as unearned income.¶
    - (b) The payment of principal is excluded.
- Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.619
- Statutes/Other Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.619, ORS 409.010, 414.117

AMEND: 461-145-0380

RULE SUMMARY: OAR 461-145-0380 is being amended to clarify that the equity value of an annuitized retirement plan allowing an individual to withdraw funds is counted as a resource; however, the penalties for withdrawal are not counted.

CHANGES TO RULE:

461-145-0380

Pension and Retirement Plans ¶

(1) Pension and retirement plans include the following:¶

(a) Benefits employees receive only when they retire. These benefits can be disbursed in lump-sum or monthly payments.¶

(b) Benefits that employees are allowed to withdraw when they leave a job before retirement.¶

(c) The following retirement plans authorized by section 401 of the Internal Revenue Code of 1986:¶

(A) Traditional Defined-Benefit Plan.¶

(B) Cash Balance Plan.¶

(C) Employee Stock Ownership Plan.¶

(D) Keogh Plan.¶

(E) Money Purchase Pension Plan.¶

(F) Profit-Sharing Plan.¶

(G) Simple 401(k).¶

(H) 401(k).¶

(d) Retirement plans authorized by section 403 of the Internal Revenue Code of 1986 at subsections (a) or (b).¶

(e) The following retirement plans and annuities authorized by section 408 of the Internal Revenue Code of 1986 at subsections (a), (b), (c), (k), (p), or (q), or at section 408A:¶

(A) Individual Retirement Annuity.¶

(B) Individual Retirement Account (IRA).¶

(C) Deemed Individual Retirement Account or Annuity under a qualified employer plan.¶

(D) Accounts established by employers and certain associations of employees.¶

(E) Simplified Employee Pension (SEP).¶

(F) Simple Individual Retirement Account (Simple-IRA).¶

(G) Roth IRA.¶

(f) The following retirement plans offered by governments, nonprofit organizations, or unions:¶

(A) 457(b) Plan.¶

(B) 501(c)(18) Plan.¶

(C) Federal Thrift Savings Plan under 5 USC 8439.¶

(g) In all programs except the OSIP, OSIPM, and Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries (QMB) programs, an annuity purchased by an individual with funds from a plan authorized under subsection (c), (d), or (f) of this section.¶

(2) An annuitized retirement plan described in subsection (1)(e) of this rule, purchased by the spouse (see OAR 461-001-0000), is not considered a retirement plan and is treated in accordance with OAR 461-145-0020 and OAR 461-145-0022.¶

(3) Except as provided in subsection (c) of this section, benefits an individual receives from pension and retirement plans are treated as follows:¶

(a) Monthly payments are counted as unearned income.¶

(b) All payments not covered by subsection (a) of this section are counted as periodic income (see OAR 461-001-0000 and 461-140-0110) or lump-sum income (see OAR 461-001-0000 and 461-140-0120).¶

(c) In the OSIP, OSIPM, and Qualified Medicare Beneficiaries-Disabled Worker (QMB-DW) programs, if the equity value (see OAR 461-001-0000) of the pension or retirement plan is counted as a resource under section (4) of this rule, any payments received are considered the conversion of a resource and are not counted as income.¶

(4) In the OSIP, OSIPM, and QMB-DW programs:¶

(a) Except for an annuity purchased with funds from a retirement plan described in subsection (1)(e) of this rule:¶

(A) The equity value of a pension or retirement plan is excluded as a resource if the individual is eligible for monthly or periodic payments under the terms of the plan and has applied for those payments. When an individual is permitted to choose or change a payment option, the individual must select the option that:¶

(i) Provides payments commencing on the earliest possible date; and¶

(ii) Completes payments over the actuarial life expectancy, as published in the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration, of the individual.¶¶

(B) The equity value of all pension and retirement plans not covered by paragraph (A) of this subsection that allows an individual to withdraw funds, minus any penalty for withdrawal, is counted as a resource.¶¶

(b) The equity value of an annuitized retirement plan described in subsection (1)(e) of this rule is excluded as a resource if it meets the payout requirements of OAR 461-145-0022(10)(d). Otherwise, the equity value of an annuitized retirement plan that allows an individual to withdraw funds, minus any penalty for withdrawal, is counted as a resource.¶¶

(c) For an individual in a standard living arrangement (see OAR 461-001-0000), the equity value of pension and retirement plans owned by a non-applying spouse or parent (see OAR 461-001-0000) is excluded as a resource. Dividends and interest earned on pension funds owned by a non-applying spouse or parent are excluded as income.¶¶

(5) In the Qualified Medicare Beneficiaries-Basic (QMB-BAS), Qualified Medicare Beneficiaries-Specified Low-Income Medicare Beneficiary (QMB-SMB), and QMB-SMF programs, dividends and interest earned on pension funds owned by a non-applying spouse are excluded as income.¶¶

(6) In the Refugee Assistance (REF), Refugee Assistance Medical (REFM), SNAP and supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) programs, the value of retirement accounts identified in sections 401(a), 401(k), 403(a), 403(b), 408, 408(k), 408(p), 408A, 457(b), 501(c)(18), or 529A of the Internal Revenue Code are excluded as resources. The value of retirement accounts designated as a Federal Thrift Savings Plan account, IRA, myRA, Roth IRA, SEP, Simple IRA, and any other retirement plan designated as tax-exempt under a successor or similar provision of the Internal Revenue Code of 1986 are excluded resources.¶¶

(7) In all programs except the OSIP, OSIPM, QMB, REF, REFM, SNAP, and TANF programs, the equity value of a pension and retirement plan that allows an individual to withdraw funds before retirement, minus any penalty for early withdrawal, is counted as a resource.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, 412.007

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 412.007

AMEND: 461-155-0630

RULE SUMMARY: OAR 461-155-0630 is being amended to clarify that payment for room and board for an individual unable to access income due to incapacity, with no legal or financial representation, can only be made while representation is being secured and upon approval by the Aging and People with Disabilities (APD) Medicaid Financial Eligibility policy unit. The APD Medicaid Financial Eligibility policy unit shall determine initial unavailability for up to three months and any extensions if additional time is needed. This rule is also being amended to clarify the maximum payment amount.

CHANGES TO RULE:

461-155-0630

Special Need; Community-Based Care; OSIPM ¶¶

In the Oregon Supplemental Income Program Medical (OSIPM) program:¶¶

(1) An individual is considered living in a community-based care (see OAR 461-001-0000) facility if the individual resides at one of the following care settings licensed by the Department:¶¶

- (a) Adult Foster Home.¶¶
- (b) Residential Care Facility.¶¶
- (c) Assisted Living Facility.¶¶
- (d) Specialized Living Facility.¶¶
- (e) Group Care Home.¶¶

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

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

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

- (A) The absence occurs because the individual is admitted to a hospital or nursing home.¶¶
- (B) The Department determines the intent of the individual to return to the community-based care facility.¶¶
- (C) The community-based care facility is willing to accept the room and board payment.¶¶
- (D) The individual returns within the calendar month following the month in which the absence began.¶¶

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

(4) ~~The Department may authorize p~~Payment for room and board may be authorized for up to three months for an ~~incapacitated individual w~~individual who cannot access income due to incapacity subject to the following provisions:¶¶

(a) Payment under this section is subject to approval by the APD Medicaid Financial Eligibility policy unit.¶¶

(b) The individual must meet all of the following requirements:¶¶

(A) When the individual is determined eligible for community-based care, the individual has no legal or financial representative, and p.¶¶

(B) Payment for room and board is necessary to secure placement. The payments are allowed while a¶¶

(C) A legal or financial representative is being established and.¶¶

(c) The payment may be extended past the initial three month periods if the Department policy unit determines additional time is needed to establish a legal or financial representative.¶¶

(d) The payment is the difference between the countable income and the room and board standard under OAR 461-155-0270.

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

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

AMEND: 461-155-0700

RULE SUMMARY: OAR 461-155-0700 is being amended to clarify that individuals receiving reduced SSI and Veteran's benefit payments who are leaving a nursing facility must pursue reinstatement of their full or previous benefit amount in order to receive payment for room and board and personal incidentals.

CHANGES TO RULE:

461-155-0700

Special Need; Personal Incidentals and Room and Board Allowances; OSIPM ¶¶

In the Oregon Supplemental Income Program Medical (OSIPM) program:¶¶

(1) In the following circumstances, personal incidentals and room and board allowances may be paid for an individual to reside in a community-based care facility (see OAR 461-155-0630(1)) to avoid placement in a nursing facility or leave a nursing facility or an acute care hospital, when an individual meets the requirements of one of the following subsections:¶¶

(a) Is determined to be eligible based on a disability determination made by the Department (see OAR 461-125-0370).¶¶

(A) To receive this payment, the individual must pursue Supplemental Security Income (SSI) by making application with the Social Security Administration (SSA) and appealing denials until SSA makes a final administrative decision. If SSI is denied at the final SSA administrative level, the individual is no longer eligible for this payment.¶¶

(B) The payment is the difference between the countable (see OAR 461-001-0000) income of the individual and the OSIPM program adjusted income standard (see OAR 461-155-0250).¶¶

(b) Is leaving a nursing facility and limited to a maximum SSI payment of \$30 or to a maximum Veterans benefit payment of \$90.¶¶

(A) To receive this payment, the individual must pursue reinstatement back to the full SSI standard with the Social Security Administration or the full rate of pension with the Veteran Affairs Office.¶¶

(B) The payment is the difference between the countable income of the individual and the OSIPM program adjusted income standard (see OAR 461-155-0250).¶¶

(c) Is a qualified non-citizen under OAR 461-120-0125 who is not eligible for SSI due to not meeting the requirements to become a naturalized citizen within the SSI time limit.¶¶

(A) The individual must pursue naturalization.¶¶

(B) The payment is the difference between the countable income of the individual and the OSIPM adjusted income standard (see OAR 461-155-0250).¶¶

(d) Does not have sufficient income to divert to the community spouse (see OAR 461-001-0030) due to the difference between the personal needs allowance related to a nursing facility placement and the personal needs allowance and room and board related to a community-based care facility placement. The allowance is issued only when the individual or community spouse requests or chooses a nursing facility placement rather than a community-based care facility placement because the community spouse needs the resulting higher diversion amount to meet his or her monthly expenses.¶¶

(A) For all individuals, the allowance is the difference between the amount of the individual's income that would be available to divert to the community spouse under a nursing facility placement and the amount of the individual's income available under the community-based care facility placement, using the liability calculation as outlined in OAR 461-160-0620.¶¶

(B) For an individual under a community-based care facility placement whose income is less than the adjusted OSIPM program standard, the allowance is the amount calculated under paragraph (A) of this subsection plus the difference between the OSIPM program adjusted income standard and the individual's countable income.¶¶

(2) Room and board allowance (see OAR 461-155-0270), without personal incidentals, may be paid for an individual to reside in a community-based care facility to avoid placement in a nursing facility, when an individual is leaving a public institution (see OAR 461-135-0950) and the individual's SSI is suspended, subject to the following provisions:¶¶

(a) The individual's SSI must have been suspended due to placement in a public institution.¶¶

(b) The individual must pursue reinstatement of SSI, and verification must be provided to the Department.¶¶

(c) The payment is the difference between the countable income of the individual and the OSIPM Room and Board Standard (see OAR 461-155-0270).¶¶

(d) If SSI is reinstated or reinstatement of SSI is denied, the individual is no longer eligible for this allowance.¶¶

(3) The payment amount is prorated in the first month for an individual who moves to a community-based care facility on any day other than the first day of the month.

Statutory/Other Authority: ORS 411.060, 411.070, 411.704, 411.706

Statutes/Other Implemented: ORS 411.060, 411.070, 411.704, 411.706

AMEND: 461-160-0540

RULE SUMMARY: OAR 461-160-0540 is being amended to clarify that this rule applies to all applicants for and recipients of QMB programs, not just those living in the community or residing in a mental health residential care setting.

CHANGES TO RULE:

461-160-0540

Determining Income Eligibility; ~~QMB and OSIPM (except OSIPM-EPD) Living in the Community or Residing in a 24-Hour Mental Health Residential Care Setting and QMB~~ ¶

(1) This rule is used to determine income eligibility for the ~~OSIPM (except OSIPM-EPD) and QMB~~ Qualified Medicare Beneficiaries (QMB) programs for all individuals, and for the Oregon Supplemental Income Program Medical (OSIPM) (except OSIPM-Employed Persons with Disabilities) programs for individuals who--- ¶

(a) Live in the community or a 24-hour mental health residential care setting; ¶

(b) Do not receive SSI; and ¶

~~(c) Do not receive supplemental Security Income (SSI); and ¶~~

(c) Do not receive Department (see OAR 461-001-0000) paid nursing facility services or home and community-based care (see OAR 461-001-0030). ¶

(2) In the OSIPM program: ¶

(a) Individuals residing in a 24-hour mental health residential care setting -- such as an adult foster home, residential treatment home, residential treatment facility, or a secure treatment facility -- meet the income requirements if their adjusted income (see OAR 461-001-0000) is equal to or less than the income standard specified in OAR 461-155-0250(6). ¶

(b) Except as provided in subsection (a) of this section, individuals meet the income requirements if the adjusted income of the individual's financial group (see OAR 461-110-0530) is less than the OSIPM program adjusted income standard. ¶

(3) In the Qualified Medicare Beneficiaries (QMB-BAS) and Qualified Medicare Beneficiaries-Disabled Worker (QMB-DW) programs, an individual meets the income requirements if the adjusted income of the individual's financial group is equal to or less than the QMB program adjusted income standard. ¶

(4) In the Qualified Medicare Beneficiaries-Specified Low Income Medicare Beneficiary (QMB-SMB) and QMB-SMF programs, an individual meets the income requirements if the adjusted income of the individual's financial group is less than the adjusted income standard.

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

Statutes/Other Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706, 42 CFR 435.219, 42 CFR 435.726