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Secretary of State  
Certificate and Order for Filing  
**TEMPORARY ADMINISTRATIVE RULES**  
A Statement of Need and Justification accompanies this form.

SSP 38-2010(T)

I certify that the attached copies\* are true, full and correct copies of the TEMPORARY Rule(s) adopted on November 1, 2010 by the \_\_\_\_\_  
Date prior to or same as filing date.

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

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

to become effective November 1, 2010 through February 12, 2011  
Date upon filing or later A maximum of 180 days including the effective date.

**RULE CAPTION**

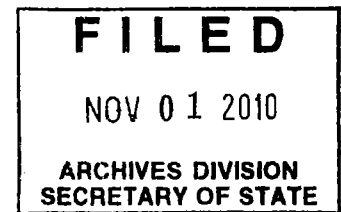
Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

**ADOPT:**

**AMEND:** 461-150-0055, 461-160-0700

**SUSPEND:** 461-150-0055(T), 461-160-0700(T)



ORS 411.060, 411.070, 411.404, 414.231  
Stat. Auth.

42 USC 1396a, 42 CFR 435.600, 42 CFR 435.902, 42 CFR 435.903, 42 CFR 457.301, 42 CFR 457.305, 42 CFR 457.320, 42 CFR 457.340, 42 CFR 457.350  
Other Authority

ORS 411.060, 411.070, 411.083, 411.404, 414.025, 414.231  
Stats. Implemented

**RULE SUMMARY**

OAR 461-150-0055 which (was amended by temporary rule on August 16, 2010 and) concerns eligibility and budgeting in the Oregon Health Plan (OHP) program is being amended further to state that its provisions apply to the Healthy KidsConnect (HKC) program. This rule also is being amended to state how the Department determines the budget month (the calendar month from which information is used to determine eligibility and benefit level for the payment month) when the Department initiates a redetermination of eligibility for an HKC or Oregon Health Plan (OHP) program client by sending the client a DHS 945 form about the need to renew their medical benefits. In addition, this rule is being amended to restate how the Department determines the countable income of an HKC or OHP program financial group (the individuals whose income and resources count in determining eligibility). This rule also is being amended to clarify which standard is used to determine eligibility for an HKC, Oregon Health Plan - Persons Under 19 (OHP-CHP), or Oregon Health Plan - Children

(OHP-OPC) program client when the Department is using an Express Lane Eligibility (ELE) finding to determine the client's eligibility.

OAR 461-160-0700 which (was amended by temporary rule on August 16, 2010 and technical amendment on September 8, 2010 and) concerns how the Department uses income when determining eligibility for Oregon Health Plan (OHP) and Healthy KidsConnect (HKC) program benefits is being amended further to restate which countable income the Department uses for a client's budget month (the calendar month from which information is used to determine eligibility and benefit level for the payment month). This rule also is being amended to remove the provision about how the Department determines the members of a need group following an Express Lane Agency (ELA) finding of eligibility. In addition, this rule is being amended to remove provisions allowing the Department to make an eligibility determination for an Oregon Health Plan - Persons Under 19 (OHP-CHP), Oregon Health Plan - Children (OHP-OPC), Oregon Health Plan - Children Under 6 (OHP-OP6), and Oregon Health Plan - Pregnant Females and their newborn children (OHP-OPP) program need group member or a need group members who was a victim of domestic violence to be eligible for OHP program benefits when the countable income of the financial group (the individuals whose income and resources count in determining eligibility) was below the applicable OHP program income standard even when the average countable income of the financial group equaled or exceeded the applicable OHP program income standard.

  
\_\_\_\_\_  
Authorized Signer

Robert Trachtenberg  
Printed Name

11-1-10  
Date

A copy of the temporary rules can be accessed at the Self-Sufficiency Programs website:  
[http://www.dhs.state.or.us/policy/selfsufficiency/ar\\_search.htm](http://www.dhs.state.or.us/policy/selfsufficiency/ar_search.htm)

\*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in the Rulemaking Action, and electronic copy of rules. ARC 940-2005

**Secretary of State**  
**STATEMENT OF NEED AND JUSTIFICATION**

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services - Children, Adults and Families

461

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Amending OARs 461-150-0055 and 461-160-0700

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients

Statutory Authority: ORS 411.060, 411.070, 411.404, 414.231

Other Authority: 42 USC 1396a, 42 CFR 435.600, 42 CFR 435.902, 42 CFR 435.903, 42 CFR 457.301, 42 CFR 457.305, 42 CFR 457.320, 42 CFR 457.340, 42 CFR 457.350

Statutes Implemented: ORS 411.060, 411.070, 411.083, 411.404, 414.025, 414.231

Need for the Temporary Rule(s):

OAR 461-150-0055 needs to be amended to state that its provisions apply to the Healthy KidsConnect (HKC) program. The rule had not stated that its provisions apply to HKC program clients potentially causing confusion about how to determine eligibility and budgeting for HKC program clients and possibly resulting in incorrect eligibility and budgeting decisions, client requested contested case hearings, and Department expense and effort to correct inaccurate decisions. The amended rule states its provisions apply to the HKC program. This rule also is being amended to state how the Department determines the budget month (the calendar month from which information is used to determine eligibility and benefit level for the payment month) when the Department initiates a redetermination of eligibility for an HKC or Oregon Health Plan (OHP) program client by sending the client a DHS 945 form about the need to renew their medical benefits. The rule had stated that for all Department initiated redeterminations the budget month was the month the Department initiated a date of request, potentially resulting in redundant budget months if the Department sent a form DHS 945 to a client before the last month of the current eligibility period. The amended rule states that when the Department initiates a redetermination by sending a client a form DHS945, the budget month is the last month of the current eligibility period. In addition, this rule is being amended to restate how the Department determines the countable income of an HKC or OHP program financial group (the individuals whose income and resources count in determining eligibility). The rule had state that the Department averaged countable income from the client's budget month and the month prior to the budget month, requiring clients to provide more income information, potentially resulting in delays while income from multiple months was verified or computation errors when averaging the income, and possibly resulting in incorrect eligibility and budgeting decisions, client requested contested case hearings, and Department expense and effort to correct inaccurate decisions. The amended rule states that the Department only uses a client's income from the budget month to determine the countable income. This rule also is being amended to clarify which standard is used to determine eligibility for an HKC, Oregon Health Plan - Persons Under

19 (OHP-CHP), or Oregon Health Plan - Children (OHP-OPC) program client when the Department is using an Express Lane Eligibility (ELE) finding to determine the client's eligibility. The rule had stated that the number of need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) members was the same as the Express Lane Agency (ELA) determined number of eligibility group members, potentially causing confusion and incorrect eligibility decisions, client requested contested case hearings, and Department expense and effort to correct inaccurate decisions when the need group size varied significantly from the ELA determined eligibility group size. The amended rule state that the number of eligibility group members determined by the ELA is used to determine eligibility without regard to need group size.

OAR 461-160-0700 needs to be amended to restate which countable income the Department uses for a client's budget month in the Oregon Health Plan (OHP) and Healthy KidsConnect (HKC) programs. The rule had stated that the Department used average countable income as determined under OAR 461-150-0055 for a client's budget month income, potentially resulting in incorrect eligibility determinations as OAR 461-150-0055 no longer uses average countable income to determine budget month income, client requested contested case hearings, and Department expense and effort to correct inaccurate decisions. The amended rule states that the Department uses only the budget month's countable income in eligibility determinations. This rule also needs to be amended to remove the provision about how the Department determines the members of a need group following an Express Lane Agency (ELA) finding of eligibility, as this provision is already and more properly located in another rule and there is no need for the redundant provision in this rule. The amended rule removes the redundant provision. In addition, this rule needs to be amended to remove provisions allowing the Department to make an eligibility determination for an Oregon Health Plan - Persons Under 19 (OHP-CHP), Oregon Health Plan - Children (OHP-OPC), Oregon Health Plan - Children Under 6 (OHP-OP6), and Oregon Health Plan - Pregnant Females and their newborn children (OHP-OPP) program need group member or a need group members who was a victim of domestic violence to be eligible for OHP program benefits when the countable income of the financial group was below the applicable OHP program income standard even when the average countable income of the financial group equaled or exceeded the applicable OHP program income standard, as the Department is no longer using average countable income in these eligibility determinations and retaining these provisions would not be in line with Department policy and could result in confusion leading to incorrect eligibility determinations, client requested contested case hearings, and Department expense and effort to correct inaccurate decisions. The amended rule removes these provisions, aligning income calculations across the Department's medical assistance programs and simplifying HKC and OHP eligibility determinations.

Documents Relied Upon (and where they are available): The Oregon State Plan Under Title XIX of the Social Security Act, Section 2 and The Oregon State Plan Under Title XXI of the Social Security Act, both available from: The Department of Human Services, Division of Medical Assistance Programs, 500 Summer Street NE, Salem, OR 97301.

Justification of Temporary Rule(s):

The Department finds that failure to act promptly by amending OAR 461-150-0055 will result in serious prejudice to the public interest, HKC and OHP program clients, and the Department. The rule changes clarify the HKC program eligibility and budgeting determinations processes, state how the Department determines the budget month when the Department sends the client a DHS 945 form about the need to renew their medical benefits to initiate an eligibility redetermination for HKC and OHP program clients, simplify how the Department determines the countable income of an HKC or OHP program financial group, and clarify which standard the Department uses to determine eligibility for an HKC, Oregon Health Plan – Persons Under 19 (OHP-CHP), or Oregon Health Plan – Children (OHP-OPC) program client when the Department is using an Express Lane Eligibility (ELE) finding to determine the client's eligibility. These rule changes likely will improve the accuracy and efficiency of the Department's HKC and OHP program eligibility and budgeting decisions, allowing the Department to provide access to medical assistance benefits to qualified clients sooner. These rule changes cannot wait to be implemented after the full 49-day permanent rulemaking procedure because public interest requires these changes be implemented by November 1, 2010 to achieve these benefits to clients and the Department more quickly.

The Department finds that failure to act promptly by amending OAR 461-160-0700 will result in serious prejudice to the public interest, medical assistance program clients, and the Department. These rule changes streamline the Department rules by removing redundant and unnecessary provisions, clarifying how the Department determines a client's countable income, align income calculations across the Department's medical assistance programs, and simplify HKC and OHP program eligibility determinations. These rule changes likely will improve the accuracy and efficiency of the Department's medical assistance program eligibility and budgeting decisions, allowing the Department to provide access to medical assistance benefits to qualified clients sooner. These rule changes cannot wait to be implemented after the full 49-day permanent rulemaking procedure because public interest requires these changes be implemented by November 1, 2010 to achieve these benefits to clients and the Department more quickly.



Authorized Signer

Robert Trachtenberg

Printed Name

11-1-10

Date

## 461-150-0055

### Eligibility and Budgeting; HKC, OHP

In the HKC and OHP programs:

- (1) The *budget month* (see OAR 461-001-0000) is:
  - (a) For a new applicant, the month of application.
  - (b) For a client reapplying at the end of an OHP *certification period* (see OAR 461-001-0000), no longer eligible for his or her current OHP program, or moving from the BCCM, EXT, GAM, MAA, MAF, OSIPM, REFM, or SAC programs to the OHP program, the last month of the current *eligibility* (see OAR 461-001-0000) period.
  - (c) When the Department initiates a redetermination of *eligibility* --
    - (A) The last month of the current eligibility period if the Department initiates the redetermination by sending a DHS 945 form.
    - (B) For all cases not covered by paragraph (A) of this subsection, the month the Department initiates a *date of request* (see OAR 461-115-0030).
  - (d) For an individual joining a *filing group* (see OAR 461-110-0400), the month in which the individual requests medical benefits.
  - (e) For a late reapplication, the month the Department receives the new application.
  - (f) For a new applicant or current recipient who is not eligible using the *budget month* described in subsections (1)(a) to (1)(d) of this rule, any month falling within 45 days after the date of request.
- (2) *Countable* (see OAR 461-001-0000) income is determined as follows:
  - (a) Income is considered available during a month under OAR 461-140-0040.
  - (b) Income is not annualized, converted, or prorated.
  - (c) For a self-employed client, *countable* self-employment income is determined under OAR 461-145-0920 and 461-145-0930.
- (3) Except as provided in section (5) of this rule, the *countable* income of the *financial group* (see OAR 461-110-0530) is calculated as follows:
  - (a) The income the *financial group* has already received in the *budget month* and income that reasonably may be expected to be received in the *budget month* is added.
  - (b) When an ELA determination finds a child eligible for medical assistance benefits, the income of the *financial group* to which the child belongs is determined under section (5) of this rule.
- (4) A change in income or resources during a *certification period* (see OAR 461-001-0000) does not affect the *eligibility* of the *benefit group* (see OAR 461-110-0750) for that *certification period*.
- (5) In the HKC, OHP-CHP, and OHP-OPC programs, when the Department uses a finding made during an ELE determination and the child meets all other HKC, OHP-CHP, or OHP-OPC program nonfinancial eligibility requirements, the standard for the number of eligibility group members determined by the ELA is used to determine eligibility regardless of the *need group* (see OAR 461-110-0630) size. The *countable* income of the *financial group* is the same as the income amount determined by the ELA.
  - (a) A child is deemed eligible for the HKC, OHP-CHP, or OHP-OPC program as follows:
    - (A) If the income of the *need group* is below 163 percent of the federal poverty level (FPL) as listed in OAR 461-155-0180, the Department deems the child eligible for OHP-OPC.
    - (B) If the income of the *need group* is at or above 163 percent of the FPL but under 201 percent of the FPL, the Department deems the child eligible for OHP-CHP.

(C) If the income of the *need group* is at or above 201 percent of the FPL, the Department deems the child eligible for HKC.

(b) If the income of the *need group* is above 301 percent of the FPL, the Department determines eligibility using the standard medical assistance eligibility determination processes.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.404, 414.231

#### **461-160-0700**

##### **Use of Income; HKC, OHP**

In the HKC and OHP programs, the Department uses income to determine eligibility as follows:

(1) The *countable* (see OAR 461-001-0000) income of the *financial group* (see OAR 461-110-0530) received and expected to be received in the *budget month* (see OAR 461-001-0000) is determined under OAR 461-150-0055.

(2) For each member of the *need group* (see OAR 461-110-0630), the *countable* income of the *financial group* from the *budget month* is compared to the applicable OHP program income standard. If the *countable* income of the *financial group* is below the applicable income standard for the *need group* size and all other financial and non-financial eligibility requirements are met, the *need group* member is eligible for OHP program benefits. If the *countable* income of the *financial group* equals or exceeds the applicable OHP program income standard, the *need group* member is ineligible for OHP program benefits.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 414.025, 414.231