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

CHAPTER 414  
**OREGON DEPARTMENT OF EDUCATION**  
**EARLY LEARNING DIVISION**

**FILED**

04/28/2023 1:35 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Employment Related Day Care Program (ERDC) Rules under New Department of Early Learning and Care

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/02/2023 5:00 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:  
Kayla Weststeyn  
Rules Coordinator

### HEARING(S)

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

DATE: 05/16/2023

TIME: 5:00 PM - 6:00 PM

OFFICER: Crys O'Grady

### REMOTE MEETING DETAILS

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

PHONE NUMBER: 1-669-216-1590

CONFERENCE ID: 1605394560

### SPECIAL INSTRUCTIONS:

Please register by 4PM on May 15 via the link provided. After registering, you will receive a confirmation email containing information about joining the meeting. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Crys O'Grady by email at Crys.OMGrady@ode.oregon.gov.

### NEED FOR THE RULE(S)

HB 3073 (2021) transfers the Employment Related Day Care program (ERDC) from the Oregon Department of Human Services (ODHS) to the incoming Department of Early Learning and Care (DELIC) on July 1, 2023. These rules are critical to administering the ERDC program, including determining family eligibility and setting forth requirements for child care providers to receive ERDC subsidy payments. The rules also effectuate several programmatic expansions pursuant to HB 3073, including a more protected 12 month certification period for eligible families and allowing families receiving Temporary Assistance for Needy Families benefits to receive ERDC.

The ODHS is repealing its rules governing the ERDC program. Both agencies will effectively repeal (ODHS) and replace

(DELC) the ERDC rules on July 1, 2023, effectuating the transfer.

References to "Department" in this filing mean the incoming Department of Early Learning and Care, which is, at the date of this filing, the current Early Learning Division.

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

House Bill 3073 from 2021 regular session:

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3073/Enrolled>

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

The Department anticipates that the transfer of the Employment Related Day Care (ERDC) rules will preserve the status quo as it relates to racial equity in Oregon.

Policy changes made to preserve twelve-month eligibility periods for families will have a positive impact on racial equity in Oregon. There are unemployment and job loss disparities within the state of Oregon, and the added protections for families needing child care to remain stable during a job loss should have a positive impact on families otherwise disproportionately impacted by unemployment or job loss. The Department anticipates that the eligibility changes related to enabling families receiving Temporary Assistance for Needy Families benefits to access ERDC will generate a positive racial equity impact for Oregonians.

The way that families access benefits and interface with the state will not materially change, resulting in little to no increased barriers to accessing the program; child care providers will continue see little to no change to the status quo, with no material effects anticipated.

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#### FISCAL AND ECONOMIC IMPACT:

The fiscal impact of the rules is directly related to the transfer and expansion of the Employment Related Day Care program in accordance with HB 3073 (2021). The Department is expected to assume the budgetary responsibility for the ERDC program, totaling approximately \$306M in general and federal funds for the '21-'23 fiscal year. The Governor's recommended FY '23-'25 budget includes an additional \$50M. ODHS will no longer receive appropriations for the program, resulting in a budgetary reduction for funds previously utilized for child care provider payments and program staffing (See ODHS's corresponding rule notices for more details).

The Department estimates no fiscal impact to ERDC program applicants, recipients, or providers; local government; small businesses including providers who consider themselves a small business; and large businesses. There is no change anticipated in the cost of compliance for small business with the transfer of the ERDC rules or the eligibility changes proposed.

The following HB 3073-driven policy changes are expected to yield a positive economic benefit for those children and families impacted:

- Preservation of a 12-Month Eligibility Period: All families approved for ERDC will receive a full 12 months of benefits, unless federally prescribed requirements are no longer met. This change reduces the number of reasons that families lose benefits before the 12 month certification is up, including being unable to connect to a provider within 3 months. This change is expected to benefit both existing and new families receiving ERDC by extending the duration, and therein likely realization, of their benefits compared to the status quo. Currently, approximately 250 families see their cases

closed

each month, many of which will now be able to continue receiving benefits, or the opportunity to receive benefits, with this change.

- Ability to Receive ERDC and TANF Benefits Simultaneously: Families who qualify for TANF and need child care assistance may qualify for ERDC; this is for first-time applicants, current TANF recipients, and current ERDC recipients.
- Enabling current TANF recipients to access ERDC will result in greater access to child care benefits, with a copayment of \$0 per month. This increased access – in both hours and duration – will create the opportunities for families to achieve greater stability in balancing child care needs among other economic and wellbeing activities.
- Enabling current ERDC recipients to gain access to TANF while currently receiving ERDC will positively benefit them by making cash assistance available. The average amount a family receiving TANF sees is approximately \$500.
- Families applying for states benefits for the first time will no longer have to choose between receiving TANF or ERDC, assuming dual eligibility would have been found, and can observe the benefits afforded to current ERDC and TANF recipients without delay.

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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).*

The Department and the Oregon Department of Human Services will be fiscally impacted as outlined above; members of the public not participating in the program will not economically affected by the rules and those families participating are expected to be economically affected as stated above.

The Department estimates no fiscal impact to ERDC program applicants, recipients, or providers; local government; small businesses including providers who consider themselves a small business; and large businesses. Approximately 3,000 child care providers, of various licensed and unlicensed types, participate in the ERDC program; the size and business model of child care providers varies, though many are small businesses. There is no change anticipated in the cost of compliance for small business with the transfer of the ERDC rules or the eligibility changes proposed.

Reporting: No anticipated increase in reporting activities for small businesses.

Recordkeeping: No anticipated increase in recordkeeping activities for small businesses.

Administrative Activities: No anticipated administrative activity changes that prompt additional costs for small businesses.

Professional Services: No anticipated increase in costs.

Equipment Supplies: No anticipated increase in costs.

Labor: No anticipated increase in costs.

Increased Administration: No anticipated increase in administration costs.

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

The Department hosted two information sessions about the ERDC program and its transfer to the incoming

Department of Early Learning and Care. Both sessions were open to all who were interested, and many Child Care Resources and Referral Agencies, Early Learning Hubs, and child care providers attended from across the state.

Additionally, the Oregon Department of Human Services ( ODHS) and ELD held four Rulemaking Advisory Committee meetings to review: (1) the changes to ODHS's rules repealing the ERDC ruleset, and (2) to review drafts of the rules ELD intended to notice for adoption. Child care providers, child care resources and recovery agencies, and early learning hubs participated in the RACs, as well as members of the public.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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NOTE: Additional PDF filed with this filing not included in this document. Please contact Oregon Department of Education, Early Learning Division for a copy of this document.

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RULES PROPOSED:

414-175-0001, 414-175-0002, 414-175-0005, 414-175-0006, 414-175-0007, 414-175-0010, 414-175-0011, 414-175-0015, 414-175-0020, 414-175-0021, 414-175-0022, 414-175-0023, 414-175-0024, 414-175-0025, 414-175-0030, 414-175-0035, 414-175-0040, 414-175-0041, 414-175-0050, 414-175-0051, 414-175-0052, 414-175-0055, 414-175-0060, 414-175-0065, 414-175-0070, 414-175-0075, 414-175-0076, 414-175-0077, 414-175-0080, 414-175-0081, 414-175-0082, 414-175-0085, 414-175-0090, 414-175-0091, 414-175-0092, 414-175-0095, 414-175-0096, 414-175-0097, 414-175-0098, 414-175-0099, 414-175-0100, 414-175-0105

ADOPT: 414-175-0001

RULE SUMMARY: OAR 414-175-0001 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). The rule sets forth the purpose of the ERDC program and the delegation of its administration in accordance with Oregon Revised Statutes.

CHANGES TO RULE:

414-175-0001

Purpose

(1) Under ORS 329A.500, the Department of Early Learning and Care has authority for the ERDC program. ¶  
(2) The purpose of division 175 rules is to establish eligibility criteria for the Employment Related Day Care (ERDC) program, which makes child care assistance available to eligible families. The rules also prescribe provider requirements and set forth the conditions to receive payment for providing child care to eligible families. ¶  
(3) Pursuant to ORS XXX.XXX (SB 427 2023), the Department of Early Learning and Care may delegate by interagency agreement duties, functions or powers of the ERDC program to the Director of the Oregon Department of Human Services. These rules apply to the administration of the Department of Early Learning and Care, including as delegated to the Oregon Department of Human Services.  
Statutory/Other Authority: ORS 329A.500, HB 3073 (2021)  
Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0002 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule contains the definitions that apply to the Employment Related Day Care Program.

CHANGES TO RULE:

414-175-0002

Definitions

The following definitions apply to division 175, unless the context indicates otherwise:¶

- (1) "Adjusted income" means the amount determined by subtracting income deductions from countable income.¶
- (2) "Assets" mean income and resources.¶
- (3) "Authorized representative" means an individual aged 18 years or older or an organization permitted by these rules to act on behalf of an applicant or beneficiary in assisting the applicant or beneficiary with their application, renewal of eligibility, and other on-going communications with the Department.¶
- (4) "Basic decision notice" means a decision notice mailed no later than the date of action given in the notice.¶
- (5) "Budgeting" means the process of calculating the benefit level.¶
- (6) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine eligibility and benefit level for the payment month.¶
- (7) "Capital asset" means property that contributes toward earning self-employment income, either directly or indirectly. A "capital asset" generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.¶
- (8) "Categorically eligible" means eligible for the ERDC program based on the presence of a single factor, or set of factors, except that certain federal requirements apply. ¶
- (9) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child. The status of "caretaker" ends once the individual no longer exercises care, control, and supervision of the child for 30 days.¶
- (10) "Certification period" means the period for which an individual is certified eligible for a program.¶
- (11) "Child" includes natural, step, and adoptive children. The term "child" does not include an unborn child. A "child" need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or noncitizen status requirements of OAR 414-175-0021, and must be:¶
  - (a) Under the age of 18; or¶
  - (b) Under the age of 19 and in secondary school or vocational training at least half time.¶
- (12) "Continuing benefit decision notice" means a decision notice that informs the individual of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.¶
- (13) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered to determine eligibility.¶
- (14) "Custodial parents" mean parents who have physical custody of a child. "Custodial parents" may be receiving benefits as dependent children or as caretaker relatives for their own children.¶
- (15) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.¶
- (16) "Department" means the Department of Early Learning and Care, or its delegate, the Oregon Department of Human Services, in accordance with ORS XXX.XXX (SB 427 2023) and as described in rule.¶
- (17) "Domestic violence" means the occurrence of one or more of the acts described in subsections (a) to (d) of this section between family members, intimate partners, or household members:¶
  - (a) Attempting to cause or intentionally, knowingly, or recklessly causing physical injury or emotional, mental, or verbal abuse.¶
  - (b) Intentionally, knowingly, or recklessly placing another in fear of imminent serious physical injury.¶
  - (c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.¶
  - (d) Using coercive or controlling behavior.¶
- (e) As used in this section, "family members" and "household members" mean any of the following:¶
  - (A) Spouse;¶
  - (B) Former spouse;¶
  - (C) Individuals related biologically or by marriage (see section (46) of this rule), or adoption;¶
  - (D) Individuals who are cohabitating or have cohabited with each other;¶
  - (E) Individuals who have been involved in a sexually intimate or dating relationship; or¶
  - (F) Unmarried parents of a child.¶
- (18) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.¶

- (19) "ERDC" or "Employment Related Day Care" means Oregon's primary child care assistance program for eligible families under this rule set.¶
- (20) "Equity value" means fair market value minus encumbrances.¶
- (21) "Experiencing homelessness" means an individual who is experiencing a lack of a fixed, regular, and adequate nighttime residence. This includes, but is not limited to, individuals who are:¶
- (a) Living in an emergency or transitional shelter.¶
  - (b) Sharing housing with others due to loss of housing or economic hardship, or ¶
  - (c) Staying in motels, campgrounds, hotels, cars, parks, public places, tents, trailers, or other similar settings.¶
- (22) "Fair market value" means the amount an item is worth on the open market.¶
- (23) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.¶
- (24) "Illegal activity" means an activity that is illegal under either Oregon law or federal law, or both. Working in the marijuana industry is considered an "illegal activity" under this rule.¶
- (25) "Income producing property" means real or personal property that generates income for the financial group. Examples of "income producing property" are:¶
- (a) Livestock, poultry, and other animals.¶
  - (b) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, and condominiums.¶
- (26) "Initial month" of eligibility means any of the following:¶
- (a) The first month a benefit group is eligible for a program benefit in Oregon after a period during which the group is not eligible, or¶
  - (b) The first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.¶
- (27) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).¶
- (28) "Legally married" means a marriage uniting two individuals according to:¶
- (a) The statutes of the state where the marriage occurred;¶
  - (b) The common law of the state in which the two individuals previously resided while meeting the requirements for common law marriage in that state; or¶
  - (c) The laws of a country in which the two individuals previously resided while meeting the requirements for legal or cultural marriage in that country.¶
- (29) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a "life estate" enables the owner of the "life estate" to possess, use, and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A "life estate" is created when an individual owns property and then transfers ownership to another individual while retaining, for the rest of the individual's life, certain rights to that property. In addition, a "life estate" is established when a member of the financial group purchases a "life estate" interest in the home of another individual.¶
- (30) "Lodger" means someone who:¶
- (a) Is living with an individual receiving Department benefits;¶
  - (b) Is not a member of the individual's filing group; and¶
  - (c) Pays the filing group for room and board.¶
- (31) "Lump-sum income" means earned or unearned income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. "Lump-sum income" includes but is not limited to:¶
- (a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.¶
  - (b) Income from inheritance, gifts, winnings, and personal injury claims.¶
  - (c) Income received less frequently than annually.¶
- (32) "Marriage" means the union of two individuals who are legally married.¶
- (33) "Minor parent" means a parent under the age of 18.¶
- (34) Nonstandard living arrangement" means each of the following locations:¶
- (a) Foster care.¶
  - (b) Residential Care facility.¶
  - (c) Drug or alcohol residential treatment facility.¶
  - (d) Shelter for individuals who are homeless or domestic violence shelter.¶
  - (e) Lodging house if paying for room and board.¶
  - (f) Correctional facility.¶
  - (g) Medical institution.¶

(35) "Ongoing month" means any month following the initial month of eligibility, if there is no break in the program benefit of one or more calendar months.¶

(36) "ODHS" or "Oregon Department of Human Services" means the Oregon Department of Human Services.¶

(37) "Parent" means the biological or legal parent of an individual or unborn child.¶

(a) If the person who gave birth (parent 1) to the child lives with an individual (parent 2) and either parent 1 or parent 2 claims that parent 2 is the other biological parent of the child or unborn, and no one else claims to be the other biological parent, parent 2 is treated as a parent even if parentage has not been legally established.¶

(b) A stepparent relationship exists if:¶

(A) The individual is legally married to the child's biological or adoptive parent; and¶

(B) The marriage has not been terminated by legal separation, divorce, or death.¶

(c) A legal adoption erases all prior legal and biological relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a "parent" if both of the following are true:¶

(A) The child lives with the biological parent; and¶

(B) The legal parent has given up care, control, and supervision of the child.¶

(38) "Payment month" means the calendar month for which benefits are issued.¶

(39) "Periodic income" means income received on a regular basis less often than monthly.¶

(40) "Primary person" means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The caretaker is the primary person for ERDC.¶

(41) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as "real property".¶

(42) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.¶

(43) "Shelter-in-kind" means an agency or individual outside the financial group provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs of the financial group. "Shelter-in-kind" does not include temporary shelter provided by a domestic violence shelter, shelter for individuals who are homeless, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park, or bus station.¶

(44) "Sibling" means the brother or sister of an individual. "Biologically-related" means they share at least one biological or adoptive parent. "Step" means they are not biologically-related, but are related by the marriage of their parents.¶

(45) "Spousal support" means income paid (voluntarily, per court order, or per administrative order) by a separated or divorced spouse to a member of the financial group.¶

(46) "Spouse" means an individual who is legally married to another individual.¶

(47) "Stable income" means income that is the same amount each time it is received.¶

(48) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.¶

(49) "Timely continuing benefit decision notice" means a decision notice that informs the individual of the right to continued benefits.¶

(50) "Trust funds" mean money, securities, or similar property held by an individual or institution for the benefit of another individual.¶

(51) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.¶

(52) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0005 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines the application timeline and process for the ERDC program.

CHANGES TO RULE:

414-175-0005

Application for ERDC Benefits

(1) A caretaker, or someone authorized to act on behalf of the caretaker, must submit an application for ERDC benefits on a form approved by the Department. As used in this rule, the "applicant" is the caretaker, or someone authorized to act on behalf of the caretaker, who submits an application. The applicant must submit the application to the Oregon Department of Human Services. Submitting an application to the Oregon Department of Human Services constitutes a request for benefits. ¶

(2) The application must be accessed through the Oregon Department of Human Services. This includes, but is not limited to: ¶

(a) Online at <https://www.oregon.gov/dhs/ASSISTANCE/CHILD-CARE/Pages/Parents.aspx>; ¶

(b) With a paper application; or ¶

(c) By contacting the Oregon Department of Human Services to request assistance with applying for benefits. The request may be oral or in writing. ¶

(3) The Date of Request is the day the request for benefits is received by the Oregon Department of Human Services. ¶

(4) An applicant has forty-five (45) days to complete the application from the Date of Request. The Department may allow additional time if: ¶

(a) Information needed to determine eligibility is expected to be received after the 45-day deadline, and the applicant has no control over the information; ¶

(b) Circumstances beyond the control of the applicant prevent the Department from making the decision within the 45-day period; or ¶

(c) As otherwise provided in these rules. ¶

(5) As used in this rule, a "complete" application is one that: ¶

(a) Enables the Department to determine eligibility in accordance with Division 175 of Chapter 414 of the Oregon Administrative Rules. ¶

(b) Is signed by the applicant. ¶

(A) An applicant who is unable to sign the application may sign with a mark, witnessed by Oregon Department of Human Services representative. ¶

(B) An applicant submitting an electronic application must submit the application with an electronic signature. ¶

(6) Except as provided otherwise in subsection (6)(b) and (c) of this rule, an interview with an adult in the filing group (see OAR 414-175-0015) or the authorized representative of the filing group is required to process an initial application and a renewal of benefits. ¶

(a) If an applicant requests a face-to-face interview, the Oregon Department of Human Services will conduct a face-to-face interview. ¶

(b) An interview is not required when the Department has implemented the Child Care Reservation List and it is determined that a decision notice of ineligibility will be sent under OAR 414-175-0010. ¶

(c) A filing group that is experiencing homelessness or requires child care for a current foster child is not required to complete an interview during "priority processing," as described in section (8) of this rule. ¶

(7) If the Department requests additional information that is necessary to determine eligibility, the applicant is entitled to a written notice that includes a statement of the specific information needed to determine eligibility and the date by which the applicant must provide the required information. ¶

(8) A filing group that is experiencing homelessness or requires child care for a current foster child may receive "priority processing." For purposes of this rule, "priority processing" means the benefits may be open for up to three months while pending for verification of income, work schedule, verification of immunization records, or a copy of the medical or non-medical exemption form during the application period. ¶

(9) The Department, through the Oregon Department of Human Services, will send a decision notice not later than 45th day after the Date of Request. The Department may extend the period if one or more of the following subsections applies: ¶

(a) Information needed to determine eligibility is expected to be received after the 45-day deadline, and the applicant has no control over the information. ¶

(b) Other circumstances beyond the control of the applicant prevent the Department from making the decision

within the 45-day period.¶

(10) If an applicant files an application containing the caretaker's name and address, the Department must send the caretaker a decision notice.¶

(11) An applicant may withdraw an application at any time.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0006 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines who can act as an authorized representative to complete, sign, and submit any applications, renewals, or documents on behalf of the applicant for ERDC.

CHANGES TO RULE:

414-175-0006

Authorized Representatives

(1) Unless otherwise limited by these rules, an authorized representative may do any of the following:¶

(a) With the exception of the authorized representative designation form and subject to the exception in subsection (c) of this section (1): complete, sign, and submit any applications, renewals, or documents on behalf of the applicant or beneficiary.¶

(b) Receive copies of notices and other communications from the Department for the applicant or beneficiary.¶

(c) Act on behalf of the applicant or recipient by reporting information and submitting requests to the Department or the Oregon Department of Human Services.¶

(2) The following individuals may appoint an authorized representative on a form designated by the Department subject to the limitations listed in sections of this rule, unless the individual is included in the filing group for the purpose of determining eligibility based on tax filing status:¶

(a) The head of household, primary person, or primary contact of any age.¶

(b) Any individual age 18 and older who is included in each eligibility determination group of the head of household, primary person, or primary contact.¶

(c) An individual given legal guardianship or power of attorney for an individual age 18 and older who is included in each eligibility determination group of the head of household, primary person, or primary contact.¶

(3) The Department may accept a designation of an authorized representative via any of the following methods, which must include either a handwritten or electronic signature of both the individual designating the authorized representative and the authorized representative:¶

(a) The Internet.¶

(b) E-mail.¶

(c) Mail.¶

(d) Telephonic recording.¶

(e) In person.¶

(f) Other electronic means.¶

(4) The following individuals may not serve as an authorized representative: ¶

(a) An individual serving an Intentional Program Violation, unless the Department determines no one else is available to serve as the authorized representative.¶

(b) A person who may cause harm to the individual.¶

(c) A person who may have a conflict of interest.¶

(d) Employees of the Department or an employee of the Department's designee or contractor involved in the certification or issuance processes for ERDC benefits, unless a designated official determined no one else is available to serve as an authorized representative and has given approval.¶

(5) The authorized representative must maintain the confidentiality of any information provided by the Department or the Oregon Department of Human Services regarding the represented individual.¶

(6) An individual or organization ceases to be an authorized representative when:¶

(a) A represented individual notifies the Department or the Oregon Department of Human Services that the designation is terminated:¶

(b) A represented individual appoints a different authorized representative:¶

(c) The authorized representative notifies the Department or the Oregon Department of Human Services that the designation is terminated:¶

(d) The Department or Oregon Department of Human Services determines the authorized representative is no longer permitted to be the authorized representative; or¶

(e) There is a change in the legal authority upon which the authorized representative's authority was based.¶

(7) An authorized representative may be subject to an overpayment (see OAR 461-195-0501 and OAR 461-195-0541) in addition to other penalties. The Oregon Department of Human Services, on behalf of the Department, may prohibit the person from serving as an authorized representative for one year.¶

(8) If an individual has applied for or is requesting benefits under the ERDC program, through an authorized representative for purposes of these rules, the individual must utilize the same authorized representative to apply for benefits on behalf of the individual under any other programs in Chapter 461 of the Oregon Administrative

Rules, in accordance with OAR 461-115-0090.  
Statutory/Other Authority: ORS 329A.500  
Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0007

RULE SUMMARY: OAR 414-175-0007 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines when a new application is not required for the ERDC program.

CHANGES TO RULE:

414-175-0007

When New Applications are Not Required

A new application is not required when: ¶

(1) A single application can be used both to determine an individual is ineligible on the Date of Request and to determine the individual is eligible when anticipated changes make the Filing group eligible within forty-five (45) days from the Date of Request; ¶

(2) A case is closed and reopened during the same calendar month; ¶

(3) A case closed during the certification period and the individual reports a change in circumstances prior to the end of the month following the closure, and the reported change will make the individual eligible; or ¶

(4) To add any individual, including a newborn child, to the Benefit Group.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0010

RULE SUMMARY: OAR 414-175-0010 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines when a waitlist will be created for the ERDC program and how selection for benefits from the waitlist occurs.

CHANGES TO RULE:

#### 414-175-0010

##### Wait List for ERDC

(1) Eligibility is subject to the availability of funds. The Department may implement a Child Care Wait List whenever the Department determines that sufficient funding is not available to sustain benefits for all of the applicants requesting ERDC benefits.¶

(2) The following applicants are subject to placement on the Child Care Wait List when the Child Care Wait List is in effect:¶

(a) New applicants for ERDC when no member of the ERDC filing group meets the requirements of at least one of the following paragraphs:¶

(A) Received a partial or full month of REF, SFPSS, or TANF program cash benefits from the state of Oregon in at least one of the preceding three months.¶

(B) Is eligible for and being placed in a current opening in a Head Start program contracted slot or an Early Head Start Child Care Partnership contracted slot.¶

(C) The caretaker is currently working with Child Welfare as part of a CPS assessment or open case, an ongoing safety plan is in place, and Child Welfare has determined the use of child care as part of an ongoing safety plan will:¶

(i) Prevent removal of the child from their home;¶

(ii) Allow a child to be returned home; or¶

(iii) Allow for placement of the child with a relative or with an adult whom the child or the family of the child has an established relationship.¶

(D) Determined eligible for TA-DVS program benefits from the state of Oregon in the current month or at least one of the preceding three months.¶

(b) Caretakers who are reapplying for ERDC after a break in ERDC benefits of two or more consecutive, calendar months.¶

(3) When the Child Care Wait List is in effect, the Department must place all applicants who are subject to the Child Care Wait List under section (2) of this rule on the Child Care Wait List for future selection. The Department sends these applicants a decision notice of ineligibility for the ERDC program.¶

(4) Each month, on the basis of an estimate of available funds, an appropriate number of individuals from the Child Care Wait List are selected on a first-in and first-out basis and invited to apply for ERDC.¶

(5) After an individual is selected from the Child Care Wait List, the individual must establish a date of request no later than 45 days after the date on the selection letter. The individual may request child care benefits from the Department:¶

(a) Without completing a new application, when the previous application is within 45 days of its date of request; or¶

(b) By submitting a new application for child care benefits to the Department in accordance with OAR 414-175-0005.¶

(6) The processing time frame for the ERDC application is the same as that specified in OAR 414-175-0005, except that:¶

(a) If the Department does not receive a request for benefits within the deadline to apply, the individual is dropped from the Child Care Wait List. ¶

(b) An individual who requests benefits after the 45-day deadline to apply (see section (5) of this rule) will be returned to the Child Care Wait List.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0011

RULE SUMMARY: OAR 414-175-0011 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines that the length of time for ERDC benefits is 12 months and that in certain situations this period can be extended. In very limited situations, ERDC benefits may be terminated before the 12 month certification end date.

CHANGES TO RULE:

414-175-0011

Certification Period

(1) The length of the certification period may not be less than 12 months. In the following situations the certification period may be extended beyond the certification end date:¶

(a) Caretakers in authorized work search and medical leave are limited to no more than three additional months.¶

(b) Caretakers on military transition are limited to no more than six additional months.¶

(c) Caretakers who have entered into a contracted slot with Head Start, Early Head Start or the Early Head Start Child Care Partnership program are limited to no more than eleven additional months.¶

(d) Caretakers who are Categorically Eligible through a determination of TANF eligibility may have their ERDC benefits extended through the end of the TANF benefit period.¶

(2) ERDC benefits may be terminated mid-certification only if one of the following occur:¶

(a) There is no longer an eligible child or no longer an eligible caretaker in the need group pursuant to OAR 414-175-0020;¶

(b) Benefits were determined in error; or¶

(c) A Caretaker or Authorized Representative in the Need Group requests to terminate their ERDC benefits.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0015 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines the eligibility group structure used to determine ERDC benefits.

CHANGES TO RULE:

414-175-0015

Eligibility Group Structure

(1) The Household Group is used to determine whose information is relevant to the application. The household group generally consists of the individuals who live together with or without the benefit of a dwelling.¶

(a) For individuals who are experiencing homelessness, the household group consists of the individuals who consider themselves living together. Individuals who are experiencing homelessness who do not consider themselves living together are considered separate households.¶

(b) A separate dwelling is not recognized for the purpose of determining the members of a household group unless the living space has, separate from any other dwelling, an access to the outside that does not pass through another dwelling, a functional sleeping area, bathroom, and kitchen facility.¶

(c) Each individual in the household group who applies for benefits is an applicant. The household group and applicants form the basis for determining who is in the remaining eligibility groups.¶

(d) A separate household group is established for individuals who live in the same dwelling as another household group, if all the following subsections are true:¶

(A) There is a landlord-tenant relationship between the two household groups in which the tenant is billed by the landlord at fair market value for housing.¶

(B) The tenant lives independently from the landlord.¶

(C) The tenant:¶

(i) Has and uses sleeping, bathroom, and kitchen facilities separate from the landlord; or¶

(ii) Shares bathroom or kitchen facilities with the landlord, but the facilities are in a commercial establishment that provides room or board or both for compensation at fair market value.¶

(e) Except when a child lives with different caretakers during the month, individuals who live with more than one household group during a calendar month are members of the household group in which they spend more than half of their time. If a child lives with different caretakers during the month, the child is considered a member of both household groups. ¶

(f) Individuals absent from the household for thirty (30) days or more are no longer part of the household group, except for the following:¶

(A) Absent because the individual is in an acute care medical facility remains in the household group unless the individual enters long-term care.¶

(B) Absent because of education, training, or employment, including long-haul truck driving, fishing, or active duty in the U.S. armed forces;¶

(C) Absent to care for an emergent need of an individual related to illness, injury, or death;¶

(D) Absent but reasonably anticipated to return within ninety (90) days; or¶

(E) A caretaker relative who is absent for up to ninety (90) days while in a residential alcohol or drug treatment facility is in the household group.¶

(F) A child who is absent for thirty (30) days or more is in the household group if the child is:¶

(i) Absent for illness (unless the child is in a long-term care Title XIX facility), social service, or educational reasons; or¶

(ii) In foster care, but expected to return to the household within the next thirty (30) days.¶

(2) The Filing group is used to determine which individuals within the Household group must satisfy all relevant eligibility criteria. ¶

(a) The filing group consists of the following:¶

(A) Each individual from the household group who chooses to apply for benefits; and¶

(B) Each individual who must apply for benefits because of his or her relationship to an individual described in subsection (2)(a)(A) of this section.¶

(b) If the filing group does not include at least one applicant who meets all nonfinancial eligibility requirements, the filing group is ineligible.¶

(c) When an individual in a household group is in more than one filing group for the same program, the filing groups must be combined, unless specified otherwise in administrative rule.¶

(d) The filing group consists of each of the following applicants and household group members, even if the individuals does not meet nonfinancial eligibility requirements:¶

(A) The Caretaker of the child for whom ERDC benefits are requested, unless a child care provider is caring for the child of:¶

(i) A member of the National Guard or U.S. Armed Forces Reserve unit; or¶

(ii) Who has been called to active duty away from the child's home for more than thirty (30) days. ¶

(B) An unmarried child and any sibling, less than eighteen (18) years of age or eighteen (18) years of age and attending secondary school or vocational training at least half time, in the care and custody of the caretaker. A foster child is included if the caretaker wants to include the child in the need group. ¶

(C) Any Parent of a child required to be in the filing group. ¶

(D) Any Parent of an unborn child. ¶

(E) The Spouse of the Caretaker. ¶

(e) A Minor parent may form a separate filing group with their dependent child or children when the minor parent applies as a caretaker. ¶

(3) The financial group, need group, and benefit group consist of each individual in the filing group. Each individual in each group must satisfy all relevant eligibility criteria for the benefit group to be determined eligible to receive benefits.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0020

RULE SUMMARY: OAR 414-175-0020 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines the general eligibility requirements for the ERDC program.

CHANGES TO RULE:

#### 414-175-0020

##### General Eligibility Requirements

- (1) To be eligible for benefits, an individual must be a resident of Oregon. ¶
- (a) There is no minimum amount of time an individual must live in Oregon to be a resident. ¶
- (b) The individual must intend to remain in Oregon. ¶
- (c) An individual is not a resident if the individual is in Oregon solely for vacation. ¶
- (d) An individual continues to be a resident of Oregon during a temporary period of absence if the individual intends to return when the purpose of the absence is completed. ¶
- (2) An individual is not required to provide or apply for a social security number (SSN) to be included in the Filing group. ¶
- (3) The filing group must include a child who needs child care. ¶
- (4) A child must live with a caretaker. ¶
- (5) A filing group is not eligible for child care when the caretaker or parent in the filing group receives a grant for child care from the Office of Student Access and Completion for any month the grant is intended to cover, regardless of when the grant is received. ¶
- (6) Until May 1, 2024, children in the Need Group must meet the immigration or legal status requirements in OAR 414-175-0021 and the age requirements in OAR 414-175-0022. ¶
- (7) The filing group must certify that they do not exceed the resource limit and must meet the income limits in OAR 414-175-0050. ¶
- (8) A filing group not willing to show verification of immunizations, proof that the immunization series has started, or a copy of the medical or non-medical exemption form for the child is not eligible for ERDC benefits.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0021 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines the citizenship and noncitizen status requirements for participation in the ERDC program. This rule amends the citizenship requirement to sunset on May 1, 2024.

CHANGES TO RULE:

414-175-0021

Citizenship and Noncitizen Status

(1) Until May 1, 2024, a child in a filing group must meet one of the following citizenship and noncitizen status requirements:¶

(a) Be a citizen of the United States; ¶

(b) Be a citizen of Puerto Rico, Guam, the Virgin Islands or Saipan, Tinian, Rota or Pagan of the Northern Mariana Islands;¶

(c) Be a national from American Samoa or Swains Islands; ¶

(d) Be enrolled in programs that are subject to Head Start Performance Standards and are supported by both Head Start and CCDF funds. Caretakers must submit verification of Head Start enrollment in lieu of other documentation; ¶

(e) Be enrolled in contracted programs. A Head Start eligibility checklist may be used as verification; or¶

(f) Meet one of the following noncitizen status requirements:¶

(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 Afghan or Iraqi 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 dependent child who meets the requirements of 8 U.S.C. 1641(c), as determined by the U.S. Citizenship and Immigration Services (USCIS).¶

(M) An Indigenous, First Nation, Inuit, Métis or Aboriginal individual who is an "American Indian" born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.¶

(N) A member of an "Indian tribe," as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).¶

(O) An individual who is a noncitizen who is currently a survivor of domestic violence or who is at risk of becoming a survivor of domestic violence.¶

(2) A caretaker or an authorized representative must report the citizenship or noncitizen status of any child required to meet the requirements above. An adult member of the filing group or an authorized representative must sign a statement under penalty of perjury attesting to this status for each child in the Filing Group.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500



ADOPT: 414-175-0022

RULE SUMMARY: OAR 414-175-0022 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines the age requirements for children in ERDC. Children must be under 13 years of age or under 18 years of age and meet certain outlined criteria.

CHANGES TO RULE:

414-175-0022

Age Requirements

(1) If the year of an individual's birth is known but the month is unknown, the month of birth is presumed to be July. If the date of birth is unknown, the date of birth is presumed to be the first of the month.

(2) To be determined eligible for ERDC benefits at the time of application or recertification, a child must be:

(a) Under 13 years of age; or

(b) Under 18 years of age, and:

(A) Physically or mentally incapable of selfcare;

(B) Under court supervision;

(C) Receiving foster care;

(D) Eligible for the high need rate for child care in OAR 414-175-0076; or

(E) Subject to circumstances that significantly compromise the child's safety or the caretaker's ability to work or participate in an assigned activity if child care is not available.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0023 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines how a caretaker can establish a need for child care through participation in employment, education, military leave, or medical leave. The rule also outlines when job loss is covered. The rule covers when copayments are waived or reduced and the calculation for child care hour authorizations, including for categorically eligible families.

CHANGES TO RULE:

414-175-0023

Requirement to Establish a Child Care Need and Hours Authorizations

(1) The following is required to establish a child care need:

(a) Except for as described in (2) below, every caretaker in the filing group must meet one of the following requirements:

(A) Receive income from employment. This includes self-employment and employment through a work study program.

(B) Participate in education hours, either through:

(i) Coursework that leads to a certificate, degree, or job-related knowledge or skills attainment at an institution of higher education approved to receive federal financial aid; or

(ii) Participation in a high school education or general equivalency diploma (GED) program. To be eligible under this subparagraph the caretaker must be twenty (20) years of age or younger.

(C) Be on medical leave from current employment or education.

(b) Except for as described in (2) below, if there are multiple caretakers required to be in the filing group, and one of them does not meet any of the criteria in section (1)(a) above, that caretaker is considered available to provide child care, making the filing group ineligible, except in the following situations:

(A) The adult is physically or mentally unable to provide adequate child care. This must be verified pursuant to 414-175-0024.

(B) Confirmation is received from the Office of Child Welfare Programs that supervised contact is required between the child and the adult.

(2) If a child or caretaker is Categorically Eligible for ERDC benefits in accordance with OAR 414-175-0025, sections (1), (3), and (4) of this rule do not apply and the copay is waived.

(3) When child care is covered and when copays are waived or reduced

(a) The cost of dependent child care may be paid for by the Department (is covered) when dependent child care is necessary for the caretaker to perform the caretaker's job duties or complete educational hours, including study time.

(b) The cost of dependent child care is not covered by the Department when free care is available, such as during school hours for school-age children, unless a child is not attending in-person schooling and is instead participating in distance learning.

(c) Child care is not covered if the nature of the work of the caretaker does not make it necessary for a person other than the caretaker to provide the care. Child care is not covered during a period of time when:

(A) The nature of the work allows the caretaker to provide the care without significantly affecting the work;

(B) The caretaker provides child care in a residence; or

(C) The caretaker works for a provider of child care in a residence, unless the provider is a certified family child care home under OAR 414-350-0000 to 414-350-0400.

(d) The cost of dependent child care may continue to be paid for by the Department (is covered) during the certification period with no change to the authorized child care hours or copay amount subject to the following provisions:

(A) When a reduction in work hours occurs, the copay may be adjusted.

(B) When a job loss occurs:

(i) When a caretaker has a permanent job loss from all employment the copay is waived for:

(I) The remainder of the certification period if there are three or more months remaining in the period; or

(II) For up to three months for instances where job loss occurred in months 10 through 12 of the certification period.

(ii) The waiver ends if the caretaker becomes employed.

(iii) Any reason a caretaker is experiencing job loss is a "good cause" reason and qualifies a caretaker for authorized work search.

(C) For military transition:

(i) When a caretaker who is a discharged U.S. military member returns from active duty in a military war zone, the

copay is waived for up to six months starting the month after the military member returns home.¶

(ii) The copay waiver ends at the end of the six month period if the caretaker becomes employed. The copay waiver ends before the end of the six month period if the caretaker returns to active duty.¶

(D) Under this section child care may be used for work, work search, education hours, military transition activities, or other activities to maintain a part-time or full-time slot at a child care facility.¶

(e) In the ERDC program the cost of dependent child care may be paid for by the Department (is covered) at the beginning of the certification period or may continue to be paid for by the Department (is covered) with no change to the authorized child care hours if the caretaker is on medical leave from current employment or education during the certification period. Medical leave includes a Caretaker on leave due to their own condition or to care for a child in the Filing Group.¶

(A) When a Caretaker is on medical leave the reason for the leave must be verified including diagnosis and prognosis under OAR 414-175-0024, except that parental leave may be authorized for up to three calendar months without medical documentation.¶

(B) When a caretaker is on medical leave during the certification period and meets section (1) of this rule, the copay is waived starting the month after medical leave begins. The copay waiver:¶

(i) May not go beyond the last day of the certification period, subject to OAR 414-175-0011.¶

(ii) Ends at the end of the medical leave period, unless the caretaker is still on medical leave or requires extended parental leave and new verification is received prior to the end of the month noted on the original documentation, or for parental leave without medical documentation, prior to the end of third calendar month.¶

(f) When a caretaker is on medical leave at the time of initial application or certification, and meets subsection (1) of this rule, the copay may be waived. The copay waiver:¶

(i) May not go beyond the last day of the certification period, subject to OAR 414-175-0011.¶

(ii) Ends at the end of the medical leave period, unless the caretaker is still on medical leave or requires extended parental leave and new verification is received prior to the end of the month noted on the original documentation, or for parental leave without medical documentation, prior to the end of the third calendar month.¶

(4) The cost of dependent child care may be paid for (is covered) by the Department, only if all the following are true:¶

(a) The child is a member of the benefit group and is in the care, control, and custody of an individual in the group.¶

(b) The provider of child care is not in the filing group.¶

(c) The provider of child care is not a parent of a child in the filing group.¶

(5) Child Care Hours Allowances¶

(a) Unless otherwise specified below, child care hours are determined as follows:¶

(A) When the allowable child care need totals 20 or fewer weekly hours of dependent child care, 20 weekly hours are allowed.¶

(B) When the allowable child care need totals more than 20 but no more than 40 weekly hours of dependent child care, 40 weekly hours are allowed.¶

(C) When the allowable child care need totals more than 40 weekly hours, up to 75 weekly hours are allowed.¶

(D) In addition to the weekly hours allowed in paragraphs (5)(a) through (c), above, study hours will be allowed as follows:¶

(i) 5 weekly hours for a caretaker who spends less than 12 hours a week in education settings.¶

(ii) 10 weekly hours for a caretaker who spends 12 or more hours a week in education settings.¶

(b) For a need group that has been determined Categorically Eligible for ERDC in accordance with OAR 414-175-0025, child care hours are determined as follows:¶

(A) 20 weekly hours of child care are allowed. ¶

(B) A caretaker may request additional weekly child care hours. The caretaker must state a reason for needing additional weekly child care hours. Any reason for needing additional weekly child care hours is sufficient to allow a higher amount of weekly hours in accordance with subsections (5)(a)(B) and (C) above, except that the reason cannot be to secure access to a child care facility requiring a child to be in care for more than 25 weekly hours.¶

(c) In addition to the hours allowance provided in (5)(a) or (b) above, a need group receives 25% of the weekly hours allowance each week for the purposes of travel or commuting.¶

(d) Monthly hours allowances are calculated by multiplying the need group's weekly hours allowance by 4.3.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0024

RULE SUMMARY: OAR 414-175-0024 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines what written medical documentation is required from the client for verification purposes, including medical details in the documentation.

CHANGES TO RULE:

414-175-0024

Verification of Medical Documentation

(1) Medical documentation must be written and must contain all the following: ¶

(a) A diagnosis in medical terminology, including an explanation of whether the impairment limits the individual's ability to perform normal functions and, if so, how. ¶

(b) A prognosis, including an expected recovery time frame. ¶

(c) Clinical findings from physical examination, psychiatric evaluation, X rays, or a laboratory procedure, including specific data supporting diagnosis of a condition that causes disability, either on a medical or psychiatric basis. ¶

(2) Except as provided otherwise in section (3) of this rule: ¶

(a) To determine eligibility, the Department will accept evaluations from the following medical sources: medical evaluations only from licensed physicians, including psychiatrists, osteopaths, and ophthalmologists; mental evaluations only from psychiatrists and licensed or certified psychologists; and measurement of visual acuity and visual fields only from ophthalmologists and licensed optometrists. ¶

(b) The Department will accept supplemental medical and vocational information to augment evaluations from acceptable medical sources, from a licensed social worker, licensed physical or occupational therapist, or licensed nurse practitioner. ¶

(3) The Department will also accept medical evaluations from licensed nurse practitioners and physician assistants; and mental evaluations from psychiatric mental health nurse practitioners. ¶

(4) The client must provide or cooperate in obtaining sufficient medical documentation.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0025

RULE SUMMARY: OAR 414-175-0025 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule amends categorical eligibility for ERDC. If an individual is determined eligible for Temporary Assistance for Needy Families (TANF) benefits, they will be categorical eligibility for ERDC. Categorical eligibility for ERDC requires ongoing compliance with the following federal Child Care Development Fund requirements, which include citizenship and immunization requirements.

CHANGES TO RULE:

414-175-0025

Categorical Eligibility for ERDC

(1) Subject to section (2) of this rule, a child or caretaker and their associated need group are categorically eligible for ERDC benefits if:¶

(a) a child care need is established through an application in accordance with OAR 414-175-0005, and¶

(b) any one of the following factors is true for a child or a caretaker in a need group:¶

(A) The individual is determined eligible for Temporary Assistance for Needy Families (TANF) benefits.¶

(2) Categorical eligibility for ERDC requires ongoing compliance with the following federal Child Care Development Fund requirements:¶

(a) Until May 1, 2024, children in the Need Group must meet the immigration or legal status requirements in OAR 414-175-0021 and the age requirements in OAR 414-175-0022; ¶

(b) The filing group must certify that they do not exceed the resource and must meet the income limits in OAR 414-175-0050; and¶

(c) The Need Group is willing to show verification of immunizations, proof that the immunization series has started, or a copy of the medical or non-medical exemption form for the child is not eligible for the ERDC program.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0030 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines the general financial eligibility for the ERDC program, including what is considered countable income and assets.

CHANGES TO RULE:

414-175-0030

General Financial Eligibility

(1) General Financial Eligibility Provisions¶¶

- (a) An available asset, either income or a resource, is categorized as either excluded or countable.¶¶
- (b) Excluded assets are identified in the rules in this chapter and are not considered when an individual's eligibility and benefit level are determined.¶¶
- (c) An available asset not specifically excluded is countable, and its value is used in determining the eligibility and benefit level of an individual.¶¶
- (d) An asset may not be counted as a resource and as income in the same month.¶¶
- (e) The treatment of a check is based on the source of the funds.¶¶
- (f) If an asset is converted to other uses, the asset is treated under the other applicable rules.¶¶

(2) Resources¶¶

- (a) Jointly-owned resources are available to members of a financial group only to the extent they own the resource. For the purposes of this rule, "liquid resources" means cash as well as other resources that can be converted to cash within 20 business days.¶¶
- (b) A resource is not available to an individual in the financial group in each of the following situations:¶¶
  - (A) The individual has a legal interest in the resource, but the resource is not in the individual's possession and the individual is unable to gain possession of it. ¶¶
  - (B) The resource is jointly owned with others not in the financial group who are unwilling to sell their interest in the resource, and the individual's interest is not reasonably saleable.¶¶
  - (C) The individual verifiably lacks the competence to gain access to or use the resource and there is no legal representative available to act on the individual's behalf.¶¶
  - (D) The individual is a victim of domestic violence and:¶¶
    - (i) Attempting to use the resource would subject the individual to risk of domestic violence; or¶¶
    - (ii) The individual is using the resource to avoid the abusive situation.¶¶
- (c) A resource is not considered available during the time the owner does not know he or she owns the resource. ¶¶
- (d) If a resource is subject to an early withdraw penalty, the amount of the penalty is not available.¶¶

(3) Determining Availability of Income¶¶

- (a) Income is considered available the date it is received or the date a individual in the financial group 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.¶¶
- (b) The following income is considered available even if not received:¶¶
  - (A) Deemed income.¶¶
  - (B) The portion of a payment from an assistance program, such as public assistance, unemployment compensation, or Social Security, withheld to repay an overpayment. ¶¶
  - (c) The amount of income considered available is the gross before deductions, such as garnishments, taxes, or other payroll deductions including flexible spending accounts.¶¶
  - (d) 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 individual their share.¶¶
    - (C) Income received by an individual in 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 under subsection (3)(a) of this rule.¶

(E) 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.¶

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

(i) 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.¶

(ii) If 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.¶

(G) Income controlled by the individual's abuser if the individual is a survivor of domestic violence, the individual's abuser controls the income and will not make the money available to the filing group, and the abuser is not in the individual's filing group.¶

(4) Treatment of Excluded Assets¶

(a) Excluded income remains excluded so long as it is kept in a separate account and not commingled with other funds.¶

(b) Excluded income that is commingled in an account with funds not excluded remains excluded for six months from the date it is commingled, after which it is counted as a resource.¶

(5) Periodic income is averaged over the applicable period.¶

(6) Lump sum income is excluded. ¶

(7) Income received from an illegal activity is considered countable income. As used in this rule, "illegal activity" means an activity that is illegal under either Oregon law or federal law, or both. Working in the marijuana industry is considered an "illegal activity" under this rule.¶

(8) Individuals applying for ERDC are not required to make a good faith effort to obtain any asset to which the individual has a legal right or claim.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0035 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines the specific assets are countable or excluded for the purposes of evaluating whether the Financial Group meets the income and resource limits in OAR 414-175-0050.

CHANGES TO RULE:

414-175-0035

Specific Financial Requirements

The following assets are countable or excluded for the purposes of evaluating whether the Financial Group meets the income and resource limits in OAR 414-175-0050:

(1) Achieving a Better Life Experience (ABLE) Act

(a) In all programs, funds held in ABLE Act accounts are excluded as resources.

(b) Monies withdrawn from ABLE Act accounts are excluded as income if they are used for Qualified Disability Expenses. For purposes of this rule, "Qualified Disability Expenses" include, but are not limited to, the following:

(A) Education;

(B) Housing;

(C) Transportation;

(D) Employment training and support;

(E) Assistive technology and personal support services

(F) Health;

(G) Prevention and wellness;

(H) Financial management and administrative services;

(I) Legal fees;

(J) Expenses for oversight and monitoring; and

(K) Funeral and burial expenses.

(c) Funds withdrawn from ABLE Act accounts for purposes other than Qualified Disability Expenses, above, are counted as unearned income.

(1) Adoption Assistance

(a) Adoption assistance is excluded.

(2) Agent Orange Settlement Act

(a) Benefits from the Agent Orange Settlement Fund made by Aetna Life and Casualty for settling Agent Orange disability claims are excluded.

(b) Payments made under the Agent Orange Act of 1991, and issued by the U.S. Treasury through the Department of Veterans Affairs, are counted as unearned income.

(3) Alaska Permanent Fund Dividend

(a) The Alaska Permanent Fund Dividend is issued annually to eligible Alaskan residents who apply for the payment. Out-of-state residents, except military personnel and students who claim Alaska as their residence, are not eligible unless they resided in Alaska and filed for the payment before leaving the state.

(b) Alaska Permanent Fund Dividend payments are considered lump-sum income and therefor excluded.

(4) Animals

(a) Animals that are kept as pets or raised as food for the filing group are excluded.

(b) The treatment of an animal considered income-producing property is covered by section (35) of this rule.

(5) Annuities

(a) For the purposes of section (6):

(A) "Actuarially sound" means commercial annuities (see subsection (a)(iv) of this section) that pay principal and interest out in equal monthly installments over the actuarial life expectancy of the annuitant, with no deferral and no balloon payments. For purposes of this definition, the actuarial life expectancy is established by the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration and, for transactions (including the purchase of an annuity) occurring on or after July 1, 2008, the payout period must be within three months of the actuarial life expectancy, measured at the time of purchase.

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

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

(i) Under age 21; or

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

(D) "Commercial annuities" means contracts or agreements (not related to employment) by which an individual

receives annuitized payments on an investment for a lifetime or specified number of years.

(b) An annuity is counted as a resource if the annuity does not make regular payments for a lifetime or specified number of years.

(c) Commercial annuities and payments from such annuities are counted as are counted as unearned income to the payee.

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

(6) Bank Account

(a) As used in this rule, a bank account includes a money market account and an account in a financial institution, except that accounts in financial institutions for stocks, bonds, and certificates of deposit (CDs) are covered in section (68) of this rule.

(b) Money in a bank account available to one or more members of the financial group is counted as a resource in accordance with OAR 414-175-0030 , unless it is excluded under this rule.

(c) In each of the following situations, money in a bank account is excluded as a resource:

(A) A burial fund if excluded under section (9) of this rule.

(B) Funds from excluded income if excluded as a resource under OAR 414-175-0030 (4).

(C) An Individual Education Account if excluded under section (24) of this rule.

(D) Money for a plan for self-support if excluded under section (55) of this section.

(E) Proceeds from the sale of a home if excluded as a resource under section (62) of this rule.

(d) Interest and dividends earned on funds in a bank account are counted as unearned income, unless the account is excluded as a resource under section (6)(c) of this rule or under another rule in this chapter of rules.

(7) Black Lung Benefits

(a) Black Lung Benefits paid to miners or their survivors under the provisions of the Federal Mine Safety and Health Act are counted as unearned income.

(8) Burial Arrangements and Burial Fund

(a) The following definitions apply to section (9):

(A) "Burial arrangement" means an agreement with an entity -- such as a funeral agreement (which means an arrangement made with a licensed funeral provider), burial insurance, or a burial trust designating a funeral director as the beneficiary that establishes provisions for payment of an individual's burial costs. A "burial arrangement" does not include a burial space, which is covered in section 10, or a burial fund.

(B) "Burial fund" means an identifiable fund set aside for an individual's burial costs. A "burial fund" does not include a burial space, which is covered in section (10), or a burial arrangement.

(C) Burial insurance is considered a form of life insurance and treated in accordance with section (44) of this rule.

(b) The equity value of one prepaid burial arrangement for each member of the filing group is excluded.

(c) A burial fund is counted as a resource.

(d) There is no overpayment for the time period during which the burial arrangement or burial fund existed if the individual:

(A) Cancels an excluded burial arrangement; or

(B) Uses an excluded burial fund for any purpose other than burial costs.

(e) If an asset originally used as a burial arrangement or burial fund is converted to other uses, the asset is treated under the other applicable rules.

(9) Burial Space and Merchandise

(a) For the purpose of this rule, burial spaces include conventional gravesites, crypts, mausoleums, urns, niches, burial vaults, and other repositories that are traditionally used for the remains of deceased individuals. Burial spaces also include headstones and the opening and closing of the gravesite, and the reasonable and necessary improvements or additions to such spaces. Burial merchandise includes, but is not limited to, urns, caskets, liners, headstones, markers, plaques and foundations.

(b) The Department excludes as a resource the equity value of all burial space or merchandise for each member of the financial group, except that for burial space and merchandise that serves the same purpose, only one item per individual is excluded.

(10) Cash

(a) In the month of receipt, cash is counted as income, unless the cash qualifies as excluded income in this rule.

(b) After the month of receipt, cash (including cash on hand, cash in a safety deposit box, and cash held by others) is counted as a resource, unless the cash qualifies as an excluded resource in this rule.

(c) Foreign currency that can be converted to U.S. currency is treated in the same manner as cash under this rule. The value of foreign currency is its value in U.S. currency, determined by the current exchange rate.

(d) The treatment of a check is based on the source of the funds.

(11) Child Support and Cash Medical Support

(a) Child support and cash medical support paid by a non-custodial parent for a dependent child or minor parent in the financial group are considered income of the dependent child or minor parent, whether the support is paid voluntarily or in accordance with an order to pay child support.

(b) Child support is considered countable unearned income if it is received by the financial group or is countable under section (40) of this rule. Otherwise, it is excluded.

#### (12) Contributions

(a) Contributions are monies, not considered gifts or winnings under section (31) of this rule, given voluntarily to a member of a financial group by someone who is not in the group.

(b) Contributions are counted as unearned income.

#### (13) Coronavirus Aid, Relief, and Economic Security (CARES) Act

(a) Recovery Rebate payments authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) are:

(A) Excluded assets in the month of receipt;

(B) Excluded assets for 12 full months starting with the month following the month of receipt, and

(C) After the 12-month period, the remainder is countable as a resource.

(b) Federal Pandemic Unemployment Assistance payments authorized by the CARES Act are not Disaster Unemployment Assistance and are treated as follows:

(A) Retroactive payments are counted as periodic or lump-sum income; and

(B) All other payments are counted as unearned income.

(c) Federal Pandemic Unemployment Compensation payments authorized by the CARES Act are treated as follows:

(A) Federal Pandemic Unemployment Compensation payments are not Disaster Unemployment Assistance; and

(B) The payments are excluded assets.

#### (14) Corporations and Business Entities

(a) The value of stocks or other ownership interest in a corporation is a resource.

(b) Resources of the corporation essential to the employment of an individual are excluded. For instance, if the corporation owns equipment used by the individual to produce income for the corporation, the equipment is an excluded resource. If an individual must own stock in the corporation as a condition of working for the corporation, the stock is an excluded resource.

(c) Except as provided in OAR 414-175-0030(3)(a), gross income of a corporation is income of an individual if determined to be self-employment as defined in section (81) of this rule and is considered available when the business receives the income. If not self-employment, the income of a corporation is considered income of the business until distributed to the individual.

(d) For an expenditure by a business entity or corporation that benefits a principal such as a car or housing payment:

(A) The payment is considered available when the expenditure is made.

(B) For purposes of this rule, a "principal" means an individual with significant authority in a business entity or corporation, including a sole proprietor, a self-employed person, a partner in a partnership, a member or manager of a limited liability company, and an officer or principal stockholder of a closely held corporation.

#### (15) Disability Benefits

(a) This rule covers public and private disability benefits, except the following:

(A) Agent Orange disability benefits (covered in section (4) of this rule).

(B) Paid Leave Oregon benefits (covered in section (82) of this rule).

(C) Radiation Exposure Compensation Act payments (covered in section (57) of this rule).

(D) Social security based on disability or SSI (covered in sections (64) and (65) of this rule).

(E) Veterans benefits (covered in section (75) of this rule).

(F) Workers compensation (covered in section (79) of this rule).

(b) For each disability payment covered by this section:

(A) If received monthly or more frequently, income from employer-sponsored disability insurance is counted as earned income if paid to an individual who is still employed while recuperating from an illness or injury.

(B) All payments other than those in subsection (b)(A) of this section are counted as periodic or lump-sum income.

#### (16) Disaster Relief

(a) As used in section (17) of this rule:

(A) A major disaster is any natural catastrophe such as a hurricane or drought, or, regardless of cause, any fire, flood or explosion, which the President determines causes damage of sufficient severity and magnitude.

(B) An emergency is any occasion or instance for which the President determines that Federal assistance is needed to supplant State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

(C) Disaster Unemployment Assistance is emergency assistance authorized under P.L. 100-107 and received by individuals who are unemployed as a result of a major disaster. Individuals receiving Disaster Unemployment Assistance are not eligible for other unemployment compensation and cannot receive both at the same time. Payments are limited to 26 weeks.¶

(b) Except as otherwise stated in sections (d) to (h) of this rule and in OAR 414-175-0030, payments described in section (c) of this rule are not counted as income or resources when determining eligibility for or benefit levels.¶

(c) This rule applies to each of the following payments if precipitated by an emergency or major disaster:¶

(A) Payments received under the Disaster Relief Act of 1974 (P.L. 93-288, section 312(d)) as amended by the Disaster Relief and Emergency Assistance Amendments of 1988 (P.L. 100-707, Section 105(i)).¶

(B) Disaster assistance comparable to subsection (a) of this section provided by States, local governments, and disaster assistance organizations.¶

(C) Payments from the Federal Emergency Management Agency (FEMA).¶

(D) Individual and Family Grant Assistance program (IFG).¶

(E) Grants or loans by the Small Business Administration (SBA).¶

(F) Voluntary disaster assistance organizations, such as the Red Cross.¶

(G) Private insurance payments for losses due to a major disaster such as flood, wind, land movement.¶

(d) Government payments designated for the restoration of a home damaged in a disaster are excluded as income or resources in the month of receipt and as a resource in subsequent months, if the household is subject to a legal sanction if the funds are not used as intended.¶

(e) Each payment made to farmers under the Disaster Assistance Act of 1988 (P.L. 100-387) for crop losses or failure in a disaster is excluded.¶

(f) Income received from public and private organizations by individuals working in disaster relief efforts and funded under a National Emergency Grant by WIA title 1 (P.L. 105-220) is excluded. An individual is eligible under this funding source if he or she is a dislocated worker, a long-term unemployed individual, or is temporarily or permanently laid off as a consequence of the disaster. Eligibility under this funding source is limited to a period of up to six months per disaster.¶

(g) Disaster Unemployment Assistance is excluded as both income and a resource.¶

(h) Payments for flood mitigation received by a homeowner under the National Flood Insurance Act of 1968 as amended by P.L. 109-64, are not counted as income or resources.¶

(17) Dividends, Interest, and Royalties¶

(a) Dividends are counted as unearned income.¶

(b) Interest income is counted as unearned income. ¶

(c) Royalties are counted as unearned income, except that royalties are counted as earned income if the individual is actively engaged in the activity from which the royalties are accrued.¶

(18) Domestic Volunteer Services Act (VISTA, RSVP)¶

(a) Payments under Title I, VISTA, University Year of Action, and Urban Crime Prevention, are excluded, except for payments are counted as earned income if the total value of all compensation is equal to or greater than compensation at the state minimum wage.¶

(b) Payments are excluded for programs under Title II (National Older Americans Volunteer Programs), which include:¶

(A) Retired Senior Volunteer Program (RSVP) Title II, Section 201.¶

(B) Foster Grandparent Program Title II, Section 211.¶

(C) Older American Community programs.¶

(D) Senior Companion Program.¶

(19) Small Business Act (SCORE, ACE)¶

(a) Payments are excluded for programs under 15 USC 637(a)(1) (the Small Business Act), which include:¶

(A) Service Corps of Retired Executives (SCORE); and¶

(B) Active Corps of Executives (ACE).¶

(20) Earned Income from Other Benefits Programs or Census Bureau Work¶

(a) TANF Jobs Plus income is counted as earned income.¶

(b) Wages received under the Tribal TANF Jobs programs are counted as earned income.¶

(c) The income of a temporary employee of the U.S. Census Bureau employed to assist in taking the census is excluded.¶

(21) Earned Income Tax Credit (EITC) and Child Tax Credit¶

(a) There are federal and state earned income tax credit (EITC) programs for low-income families.¶

(A) An EITC may be claimed in one of two ways:¶

(i) At the time an income tax return is filed with the Internal Revenue Service (IRS).¶

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

(B) The EITC is excluded from assets (see OAR 461-001-0000) in the month of receipt and then for a maximum of

12 calendar months starting with the month following the month of receipt of the refund or payment. All funds remaining after the 12-month period are counted as a resource.<sup>¶</sup>

(b) The Child Tax Credit is determined and administered by the IRS.<sup>¶</sup>

(A) A Child Tax Credit may be claimed in one of two ways:<sup>¶</sup>

(i) At the time an income tax return is filed with the IRS.<sup>¶</sup>

(ii) As monthly advance Child Tax Credit payments from the IRS.<sup>¶</sup>

(B) The Child Tax Credit is excluded from assets in the month of receipt and then for a maximum of 12 calendar months starting with the month following the month of receipt of the refund or payment. All funds remaining after the 12-month period are counted as a resource.<sup>¶</sup>

(22) Economic Recovery Payment<sup>¶</sup>

(a) The \$250 economic recovery payment authorized by the American Recovery and Reinvestment Act of 2009 is excluded income in the month of receipt and an excluded resource in the month of receipt and for the following nine months.<sup>¶</sup>

(23) Educational Income<sup>¶</sup>

(a) Educational income is income designated specifically for educational expenses. To be considered educational income, the income must be received by one of the following:<sup>¶</sup>

(A) A student at a recognized institution of post-secondary education. Post-secondary education is education offered primarily to individuals 18 years of age or older. Admission may - but does not necessarily - require a high school diploma or equivalent.<sup>¶</sup>

(B) A student at a school for individuals with disabilities.<sup>¶</sup>

(C) A student in a vocational education program.<sup>¶</sup>

(D) A student in a program that provides for completion of requirements for a secondary school diploma or the equivalent.<sup>¶</sup>

(b) To determine the amount of educational income to exclude, education expenses listed in the financial aid award letter are used unless one of the following is true:<sup>¶</sup>

(A) The student provides verification of amounts different from those listed in the award letter, in which case the verified amounts from the student are used.<sup>¶</sup>

(B) The student receives child care benefits - ERDC or other child care subsidies. The amount the student actually pays for child care (including the ERDC copay) is excluded as educational income instead of the amount shown in the award letter.<sup>¶</sup>

(C) The student states that actual transportation costs exceed the amount allowed for the expense in the award letter. In that situation, the number of miles to and from school is multiplied by \$0.20. The product or the amount from the award letter, whichever is greater, is excluded.<sup>¶</sup>

(c) The following items are excluded:<sup>¶</sup>

(A) Educational income authorized by the Carl D. Perkins Vocational and Applied Technology Education Act or Title IV of the Higher Education Act or made available by the Bureau of Indian Affairs (BIA).<sup>¶</sup>

(B) All income from educational loans.<sup>¶</sup>

(d) The cost of the following items from remaining educational funds (including non Title IV work study, externship, graduate assistantship, graduate fellowship wages, and internship is excluded: tuition, mandatory fees, books and supplies, transportation, required rental or purchase of equipment or materials charged to students enrolled in a specific curriculum, other miscellaneous personal expenses (except room and board), and loan originator fees and insurance premiums required to obtain an educational loan.<sup>¶</sup>

(e) After allowing exclusions, the remaining income is treated as follows:<sup>¶</sup>

(A) Income received through work study (including work study provided through a VA program or other educational program), fellowships and teaching-assistant positions not excluded by subsection (c) or (d) of this section (24) of the rule is earned income.<sup>¶</sup>

(B) Educational income not covered by subsection (e)(i) of this section (24) is prorated over the period it is intended to cover. If the individual has already received the income, the prorated amount is counted monthly beginning with the first month of the period. If the individual has not received the income at the time the determination is made, the prorated income is counted starting in the month the individual expects to receive it.<sup>¶</sup>

(f) Educational awards paid under the National and Community Service Trust Act of 1993 (including AmeriCorps) are treated in accordance with section (50) of this rule.<sup>¶</sup>

(24) Energy Assistance Payments<sup>¶</sup>

(a) All energy assistance payments or allowances made under any federal, state, or local law are excluded as income and as a resource.<sup>¶</sup>

(25) Family Abuse Prevention Act (FAPA) Payments<sup>¶</sup>

(a) Family Abuse Prevention Act (FAPA) payments are court-ordered payments to survivors of domestic violence made under authority of ORS 107.718(1)(h). A payment is considered available when actually received by the survivor of abuse.<sup>¶</sup>

(b) The first \$2,500 is excluded; the excess above \$2,500 is counted as a resource.¶

(26) Filipino Veterans Equity Compensation Fund¶

(a) The Department excludes from income a payment received by a veteran or the spouse of a veteran who served in the military of the Government of the Commonwealth of the Philippines during World War II and made under the Filipino Veterans Equity Compensation Fund authorized by the American Recovery and Reinvestment Act of 2009.¶

(27) Floating Homes and Houseboats¶

(a) Floating homes and houseboats are treated in the same manner as real property under section (58) of this rule.¶

(b) Floating homes and houseboats are subject to section (32) and (35) of this rule, if applicable.¶

(28) Food Programs Other Than the SNAP program¶

(a) The following benefits are excluded:¶

(A) Benefits from the Special Supplemental Food Program for Women, Infants and Children (WIC), including demonstration projects (coupons exchanged for food at farmers markets) under the Hunger Prevention Act of 1988 (Pub. L. 100-435, section 501.¶

(B) The value of supplemental food assistance provided to children under the Child Nutrition Act of 1966 (Pub. L. 89-642) and the National School Lunch Act (Pub. L. 79-396, section 12(e), and Pub. L. 94-105).¶

(C) Nutrition Assistance program benefits received in Puerto Rico, American Samoa or the Commonwealth of the Northern Mariana Islands.¶

(D) The value of supplemental food assistance provided for seniors in the Senior Farm Direct Nutrition Program (see OAR 333-052-0030) funded by grants from the United States Department of Agriculture.¶

(E) Benefits from the tribal Food Distribution Program.¶

(29) Foster Care Payments and Guardianship Assistance Benefits¶

(a) Payments for foster care and benefits from the Guardianship Assistance program (OAR 413-070-000) are excluded.¶

(30) Gifts and Winnings¶

(a) For the purposes of section 31:¶

(A) "Gifts" are items given to or received by an individual on or for a special occasion, such as a holiday, birthday, graduation, or wedding. "Gifts" are not given or received on a regular basis.¶

(B) "Winnings" are prizes given to an individual in a contest, game of chance, or similar event. "Winnings" in the form of money may be distributed in different payment frequencies, such as monthly, periodically (such as quarterly), or in a single payment.¶

(b) Gifts and winnings are excluded.¶

(31) Home¶

(a) Home defined: A home is the place where the filing group lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:¶

(A) Land on which the home is built and contiguous property. Property must meet all the following criteria to be considered contiguous property:¶

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group.¶

(ii) It must not be separated by a public right-of-way, such as a road.¶

(iii) It must be property that cannot be sold separately from the home.¶

(B) Other dwellings on the land surrounding the home that cannot be sold separately from the home.¶

(b) Exclusion of home and other property:¶

(A) For an individual who has an initial month of long-term care or home and community-based care on or after January 1, 2006:¶

(i) For purposes of this subsection, "child" means a biological or adoptive child who is:¶

(I) Under age 21; or¶

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

(ii) The equity value of a home is excluded if the requirements of at least one of the following subparagraphs are met:¶

(I) The child of the individual or relative dependent on the individual for support occupies the home.¶

(II) The Spouse of the individual occupies the home.¶

(III) The equity in the home is \$688,000 or less, and either the individual occupies the home or the home is listed for sale per section (58) of this rule.¶

(IV) Notwithstanding OAR 414-175-0030(8), the equity in the home is more than \$688,000 and the individual is unable legally to convert the equity value in the home to cash.¶

(B) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.¶

(c) Exclusion during temporary absence: The value of a home is excluded in each of the following situations:

(A) For the purposes of this section, "evidence" includes a written statement from a competent individual.

(B) During the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.

(32) Housing and Urban Development

(a) Payments from HUD made to a third party in behalf of the individual are excluded.

(b) HUD payments made directly to a member of the financial group, except Youthbuild Program payments and Family Investment Centers payments, are excluded.

(c) Escrow accounts established for families participating in the Family Self-Sufficiency (FSS) program sponsored by HUD are excluded.

(d) Payments related to family investment centers issued under the Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, sec. 515, 104 Stat. 4196 (1990), are treated as follows:

(A) Wages are earned income, and stipends are unearned income.

(B) Service payments for items such as child care, basic education, literacy, or computer skills training are excluded.

(33) Income-Producing Sales Contract

(a) The equity value of an income-producing sales contract is excluded.

(b) Income received from a sales contract is treated as provided in section (62) of this rule.

(34) Income Producing Property

(a) Income from income producing property is counted as follows:

(A) If a member of the financial group actively manages the property 20 hours or more per week, the income is treated in the same manner as self-employment income (section (81) of this rule).

(B) If a member of the financial group does not actively manage the property 20 hours or more per week, the income is counted as unearned income with exclusions allowed only in accordance with section (81) of this rule.

(b) The equity value of income-producing property is excluded.

(35) Youth Transitions Program Subsidies

(a) Youth Transitions program subsidies are payments and services provided to children 16 to 20 years of age by the Department. The Youth Transitions program (including the Chafee Housing program) is described at OAR 413-030-0400 to 413-030-0460. The subsidies help the children live independently when their foster care payments are discontinued upon reaching 16 years of age.

(b) The subsidies are excluded from income.

(36) American Indian and Alaska Native Benefits

(a) In this rule, the names of sovereign tribal nations are often listed as shown in the public law. The Department has also attempted (in parenthesis) to include the names of sovereign tribal nations as they call themselves, if different than the name in the public law. When there is a conflict, the rule provision applies to the Tribe subject to the public law.

(b) The following benefits or payments are excluded as income and resources.

(A) Public Law 84-736: Payments from the distribution of funds held in trust to the Seminole Indians of Florida (The Seminole Tribe of Florida).

(B) Public Law 84-926: Payments from the distribution of funds held in trust to the Pueblos of Zia and Jemez Tribes of Florida.

(C) Public Law 92-480: Payments from the distribution of funds held in trust to the Stockbridge Munsee Indian Community (Stockbridge Munsee Community) of Wisconsin.

(D) Public Law 92-488: Payments from the distribution of funds held in trust to the Burns Indian Colony (Burns Paiute Tribe) in Oregon.

(E) Public Law 93-531: Relocation assistance payments to members of the Navajo (Navajo Nation or Dine') or Hopi Tribe.

(F) Public Law 94-114, section 6: Distribution of receipts from lands held in trust by the United States for the following tribes:

(i) Assiniboine and Sioux Tribes of Montana.

(ii) Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin.

(iii) Blackfeet Tribe of Montana.

(iv) Cherokee Nation of Oklahoma.

(v) Cheyenne River Sioux Tribe of South Dakota.

(vi) Chippewa Tribe of Minnesota (Minnesota Chippewa Tribe).

(vii) Crow Creek Sioux Tribe of South Dakota.

(viii) Devil's Lake Sioux Tribe of North Dakota.

(ix) Fort Belknap Indian Community of Montana.

(x) Keweenaw Bay Indian Community of Michigan.

(xi) Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin.<sup>¶</sup>

(xii) Lower Brule Sioux Tribe of North Dakota.<sup>¶</sup>

(xiii) Navajo Tribe (Navajo Nation or Dine') of New Mexico.<sup>¶</sup>

(xiv) Oglala Sioux Tribe of South Dakota.<sup>¶</sup>

(xv) Rosebud Sioux Tribe (Sicangu Lakota Oyate, or Burnt Thigh Nation comprised of the Ogalala, Sicangu or Brule, Hunkpapa, Miniconjou, Sihasapa or Blackfoot, Itazipacola, and Oohenupa) of South Dakota.<sup>¶</sup>

(xvi) Shoshone - Bannock Tribes of Idaho.<sup>¶</sup>

(xvii) Standing Rock Sioux Tribe of North Dakota.<sup>¶</sup>

(G) Public Law 94-540: Judgment funds distributed to members of the Grand River Bands of Ottawa Indians.<sup>¶</sup>

(H) Public Law 95-433: Judgment funds distributed to members of the Confederated Tribes and Bands of the Yakama (formerly Yakima) Indian Nation (comprised of the Yakama Palouis, Pisuouse, Wenatchsahpam, Klikatat, Klingquit, Kow-was-say-ee, Li-was, Skin-pha, Wish-ham, Shyiks, Ocehchotes, Ka-milt-pha, and Se-ap-Cat), or the Apache Tribe of the Mescalero Reservation (Mescalero Apache Tribe).<sup>¶</sup>

(I) Public Law 95-498: Receipts derived from trust lands awarded to the Pueblo of Santa Ana and distributed to members of that Tribe.<sup>¶</sup>

(J) Public Law 95-499: Receipts derived from trust lands awarded to the Pueblo of Zia and distributed to members of that Tribe.<sup>¶</sup>

(K) Public Law 95-608: Indian child welfare payments.<sup>¶</sup>

(L) Public Law 96-305: Relocation assistance payments to members of the Navajo (Navajo Nation or Dine') or Hopi Tribe.<sup>¶</sup>

(M) Public Law 96-318: Judgment funds distributed to members of the Delaware Tribe of Indians and the absentee Delaware Tribe of Western Oklahoma (Delaware Tribe of Western Oklahoma).<sup>¶</sup>

(N) Public Law 96-420: Funds and distributions to members of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians under the Maine Indian Claims Settlement Act.<sup>¶</sup>

(O) Public Law 97-372: Distributions of judgment funds to members of the Shawnee Tribe of Indians (Absentee Shawnee Tribe of Oklahoma (Absentee Shawnee Tribe of Indians of Oklahoma), the Eastern Shawnee Tribe of Oklahoma, and the Cherokee Band of Shawnee descendants).<sup>¶</sup>

(P) Public Law 97-376: Judgment funds distributed per capita to members of the Miami Tribe of Oklahoma and the Miami Indians of Indiana (Miami Nation of Indians of Indiana).<sup>¶</sup>

(Q) Public Law 97-403: Payments on judgments funds to the Turtle Mountain Band of Chippewa, Arizona.<sup>¶</sup>

(R) Public Law 97-408: Payments on judgment funds to the Blackfeet Tribe, Gros Ventre (Aaniih) Tribe, and Assiniboine (Nakoda) Tribe (Montana) and the Papago (Tohono O'odham Nation) (Arizona).<sup>¶</sup>

(S) Public Law 98-64: Payments from judgment funds held in trust by the US Secretary of the Interior.<sup>¶</sup>

(T) Public Law 98-123: Judgment funds held in trust and per capita and interest payments disbursed to the Red Lake Band of Chippewa Indians (Red Lake Nation or Miskwaagamiwi-Zaagaiganing).<sup>¶</sup>

(U) Public Law 98-124: Judgment funds held in trust and per capita and interest payments made to the members of the Assiniboine (Nakoda) Tribe of the Fort Belknap Indian Community (Montana) and the Assiniboine Tribe of the Fort Peck Reservation (Montana).<sup>¶</sup>

(V) Public Law 98-432: Judgment funds and income distributed to members of the Shoalwater Bay Indian Tribe.<sup>¶</sup>

(W) Public Law 99-130: Per Capita and dividend payment distributions of judgment funds to members of Santee Sioux Tribe (Santee Sioux Nation) of Nebraska, Flandreau Santee Sioux Tribe, Prairie Island Sioux (Prairie Island Indian Community or Tinta Wita), Lower Sioux (Lower Sioux Indian Community or Cansa'yapi) and Shakopee Mdewakanton Sioux Community (Mdewakanton) of Minnesota.<sup>¶</sup>

(X) Public Law 99-146, section 6(b): Funds distributed per capita or held in trust for members of the Chippewas of Lake Superior (Lake Superior Chippewa Indians). The funds are distributed to the following reservations:<sup>¶</sup>

(i) Wisconsin: Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Lac Courte Oreilles Band of Lake Superior Bands of Chippewa Indians (Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin) of the Lac du Flambeau Reservation, Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, Red Cliff Reservation (Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin), St. Croix Chippewa Reservation (St. Croix Chippewa Indians of Wisconsin).<sup>¶</sup>

(ii) Michigan: Keweenaw Bay Indian Community (L'Anse, Lac Vieux Desert and Ontonagon Bands).<sup>¶</sup>

(iii) Minnesota: Fond du lac (Fond du Lac Band of Lake Superior Chippewa or Nah-gah-chi-wa-nong) Reservation, Grand Portage (Grand Portage Band of Lake Superior Chippewa, Grand Portage Anishinaabe, or Gichi-Onigaming) Reservation, Bois Fort (Bois Forte Band of Chippewa or Zagaakwaandagowiniwag) Reservation (including Nett Lake, Vermillion Lake and Deer Creek), White Earth (White Earth Nation or Gaa-waabaabiganikaag) Reservation.<sup>¶</sup>

(Y) Public Law 99-264: Payments and funds held in trust to the White Earth Band of Chippewa Indians in Minnesota (White Earth Nation or Gaa-waabaabiganikaag) under the White Earth Reservation Land Settlement Act of 1985, Section 16.<sup>¶</sup>

(Z) Public Law 99-346 section 6(b)(2): Per capita payments and income from a distribution of funds held in trust to the Saginaw Chippewa Indian Tribe of Michigan.

(AA) Public Law 99-377 section 4(b): Per capita payments distributed or held in trust to the Chippewas of Mississippi under Public Law 99-377 Section 4(b), to those with affiliation with the Mille Lacs (Mille Lacs Band of Ojibwe or Misi-zaaga'iganiing), White Earth (White Earth Nation or Gaa-waabaabiganikaag) and Leech Lake (Leech Lake Band of Ojibwe or Gaa-zagaskwaajimekaag) Reservations in Minnesota, and paid by the Indian Claims Commission.

(BB) Public Law 100-139: Judgment payments disbursed to the Umpqua Tribe Cow Creek Band (Cow Creek Band of Umpqua Tribe of Indians).

(CC) Public Law 100-383: Per capita restitution payments made to eligible Aleuts (Unangan or Unangax) who were relocated or interned during World War II.

(DD) Public Law 101-41: Funds, assets or income received from the trust fund established and paid to the Puyallup Tribe (the Puyallup Tribe of Indians or see emboldened word in attachment) of the State of Washington under Section 9(b) of the Puyallup Tribe of Indians Settlement Act of 1989.

(EE) Public Law 101-503 Section 8(b): Settlement payments, funds distributed or held in trust to members of the Seneca Nation (Seneca Nation of Indians or O-non-dowa-gah) under the Seneca Nation Settlement Act of 1990.

(FF) Public Law 102-171: Payments to the Aroostook Band (Mi'kmaq Nation) under the Micmac Settlement Act.

(GG) Public Law 103-116: Settlement funds, income, payments or distributions from Trust Funds to members of the Catawba Indian Tribe (The Catawba Nation or yeh is-WAH h'reh) under the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993.

(HH) Public Law 103-436: Payments from the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (comprised of the Chelan or see emboldened word in attachment, Chief Joseph Band of Nez Perce or wal'wama, Colville or see emboldened word in attachment, Entiat or see emboldened word in attachment, Lakes or see emboldened word in attachment, Methow or see emboldened word in attachment, Moses-Columbia or see emboldened word in attachment, Nespelem or see emboldened word in attachment, Okanogan or see emboldened word in attachment, Palus or paluspa, Sanpoil or see emboldened word in attachment, and Wenatchi or see emboldened word in attachment).

(II) Public Law 103-444: Payments made or benefits granted by the Crow Boundary Settlement Act of 1994.

(JJ) Public Law 105-143: Distributions of judgment funds to the Ottawa and Chippewa of Michigan under the Michigan Indian Land Claims Settlement Act.

(KK) Public Law 108-270: Per capita distribution of judgment funds to members of the Western Shoshone Indians (Newe).

(LL) Public Law 111-291 section 101: Payments from the Tribal Trust Accounting and Management Lawsuits. If the funds are comingled with other funds, the resource is excluded for only 12 months and counted thereafter.

(MM) Tribal Benefits from timber sales or oil reserves from land held in trust by the Secretary of the Interior.

(NN) Payments from the Bureau of Indian Affairs from the General Assistance program.

(c) Educational income from the Bureau of Indian Affairs is treated pursuant to section (24) of this rule.

(d) The following payments are excluded unearned income:

(A) Public Law 85-794: Distribution of Per Capita Funds to the Red Lake Band of Chippewa Indians (Red Lake Nation or Miskwaagamiiwi-Zaagaiganing) from the proceeds of the sale of timber and lumber on the Red Lake Reservation.

(B) Public Law 93-134: Indian Judgement Funds Distribution Act payments received from trust or restricted lands under 25 USC 1408.

(C) Public Law 97-458: Payments received from trust or restricted lands under 25 USC 1408.

(e) The Department excludes the first \$2,000 of each per capita payment per individual in the financial group and the balance is counted as unearned periodic income of the following payments:

(A) Public Law 100-411: Per capita payments of claims settlement funds to members of the Coushatta Tribe of Louisiana (The Sovereign Nation of the Coushatta Tribe of Louisiana).

(B) Public Law 100-581: Judgment funds distributed to members of the Wisconsin Band of Potawatomi (Hannahville Indian Community and Forest County Potawatomi).

(C) Public Law 101-618: Per capita distributions of settlement funds under the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 (Toi-Ticutta).

(f) Public Law 101-277 funds appropriated in satisfaction of judgments awarded to the Seminole and paid by the Indians Claims Commission is counted as follows:

(A) The Department excludes the first \$2,000 of each per capita payment per individual in the financial group and counts the balance as unearned periodic income.

(B) These payments are allocated to members of the Seminole Nation of Oklahoma, Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida and the independent Seminole of Florida.

(g) The Department excludes the first \$2,000 of each capita payment per individual in the financial group and

counts the balance as unearned periodic income.¶

(A) Public Law 94-189: Judgment funds distributed to members of the Sac and Fox Nation.¶

(B) Public Law 98-602: Per Capita distributions of judgment funds to members of the Wyandotte Tribe (Wyandotte Nation, see emboldened word in attachment, or Wanda; consisting of Tionontati, Attignawantan, and Wenrohronon (Wenro)) in Oklahoma and Absentee Wyandotte.¶

(h) The following payments are excluded unearned income:¶

(A) Public Law 92-254: Distribution of Per Capita Funds by the Blackfeet Tribe and Gros Ventre (Aaniih) Tribe tribal governments to members, which resulted from judgment funds to the Tribes.¶

(B) Public Law 103-66: Payments for land held in trust by the Secretary of the Interior under 25 USC 1408.¶

(C) Payments from land designated as American Indian or Alaska Native trust land and not addressed elsewhere in this rule.¶

(i) For the following payments, the Department excludes the first \$2,000 each year of per capita payments per individual in the financial group and counts the balance as unearned periodic income.¶

(A) Public Law 92-203, the Alaska Native Claim Settlement Act payments.¶

(B) Public Law 100-241, the Alaska Native Claim Settlement Act Amendment of 1987.¶

(j) Public Law 98-500, section 8(b) (Old Age Assistance Claims Settlement Act) payments are excluded in the ERDC program.¶

(k) The Department excludes the first \$2,000 of each per capita payment per individual in the financial group and counts the balance as unearned periodic income for the following:¶

(A) Public Law 100-580: Funds distributed to the Hoopa Valley Tribe and the Yurok Tribe under the Hoopa-Yurok Settlement Act, and paid by the Indian Claims Commission.¶

(B) Public Law 97-436: Per capita distributions of judgment funds to members of the Confederated Tribes (Wascoes, Warm Springs, Paiutes) of the Warm Springs Reservation.¶

(l) Tribal payments for child care are treated as follows:¶

(A) Provider-direct payments are counted as the provider's earned income.¶

(B) All individual-direct payments are excluded.¶

(m) Commercial fishing income under one of the Columbia River Fishing Treaties for the Confederated Tribes and Bands of the Yakama (formerly Yakima) Indian Nation (comprised of the Yakama Palouis, Pisuouse, Wenatchsahpam, Klikatat, Klingquit, Kow-was-say-ee, Li-was, Skin-pha, Wish-ham, Shyiks, Ocehchotes, Ka-milt-pha, and Se-ap-Cat), Confederated Tribes of the Warm Springs (comprised of the Wascoes, Warm Springs, and Paiutes), Confederated Tribes of the Umatilla Indian Reservation (comprised of the Cayuse, Umatilla, and Walla Walla), and Nez Perce Tribe (Nimiipuu) is counted as earned income.¶

(n) Tribal-TANF payments are counted in the same manner as TANF program payments under section (56) of this rule.¶

(o) All other American Indian or Alaska Native benefit payments distributed by the tribe and not excluded by public law are excluded, including:¶

(A) Profit share or per capita income from tribal casinos¶

(B) Income derived from land not held in trust by the secretary of the interior such as timber sales or sale of oil reserves.¶

(C) Public Law 91-259: Payments from the distribution of judgment funds to members of the Confederated Tribes of the Umatilla Indian Reservation (comprised of the Cayuse, Umatilla, and Walla Walla).¶

(p) All other American Indian or Alaska Native benefit payments distributed by a Tribe and not included or excluded by public law are excluded assets.¶

(q) American Indian or Alaska Native lands held jointly with the tribe, or land that may not be sold without the approval of the Bureau of Indian Affairs (BIA) are excluded resources.¶

(37) Individual Development Account (IDA)¶

(a) An Individual Development Account (IDA) is a trust-like savings account established under P.L. 105-285 designed to help low-income individuals save for specified purposes. The individual makes deposits from their earnings, and these are matched by a combination of government and private-sector funds.¶

(b) Deposits from the account holder's earnings are excluded from gross earned income.¶

(c) Matching deposits from government and private-sector funds are excluded from income.¶

(d) The IDA savings account is excluded from resources.¶

(e) Interest earned by the IDA savings account is excluded from income.¶

(f) For patient liability calculations, all income deposited into an IDA savings account is counted as earned income.¶

(g) If an individual makes an emergency withdrawal from the IDA savings account, that income is counted as lump-sum income and therefore excluded.¶

(38) Inheritance¶

(a) An inheritance may be received in the form of monies, property, or other assets.¶

(b) An inheritance is excluded. ¶

(39) In-Kind Income ¶

(a) This rule does not apply to shelter-in-kind income. (See section (63) of this rule for shelter-in-kind income). ¶

(b) In-kind income that is earned is treated according to the administrative rules on earned income. ¶

(c) In-kind income that is unearned (except third-party payments) is treated as follows: ¶

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

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

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

(A) Payments made to a third party that should legally be paid directly to a member of the financial group are counted as unearned income. ¶

(e) Payments made to a third party that the payee is not legally obligated to pay directly to a member of the financial group and that the financial group does not have the option of taking as cash, and payments made by the noncustodial parent to a third party that are court-ordered are excluded. ¶

(40) Job Corps ¶

(a) A living allowance payment is counted as earned income. ¶

(b) A readjustment allowance payment is counted as earned income. ¶

(c) A support service payment for an item already covered by the benefits of the benefit group is counted as unearned income. All other support service payments (including clothing allowances) are excluded. ¶

(d) A reimbursement is treated as provided in section (60) of this rule. ¶

(41) Workforce Innovation and Opportunity Act ¶

(a) Payments to individuals made under Title I-B of the Workforce Innovation and Opportunity Act (WIOA) are treated as provided in this rule. ¶

(A) Need-based (stipend) payments are treated as unearned income. ¶

(B) OJT (On-the-Job Training) and work experience payments are counted as earned income. ¶

(C) A support service payment for an item already covered by the benefits of the benefit group is excluded. All other support service payments (including lunch payments and clothing allowances) are excluded. ¶

(D) A reimbursement is treated as provided in section (60) of this rule. ¶

(E) YouthBuild Program payments are excluded. ¶

(42) Life Estate ¶

(a) If a financial group is living in real property while a member holds a life estate in this property, the property is treated as a home pursuant to section (32) of this rule. ¶

(43) Life Insurance ¶

(a) Benefits paid on a life insurance policy are counted as unearned income in the month received. ¶

(A) The Department counts benefits as received when the insured individual dies or when the insured individual is eligible for and receives accelerated payments before death, such as when the insured individual has a terminal illness. ¶

(B) When the payment is a lump sum due to the death of the insured individual a deduction is allowed, not to exceed \$1,500, for the cost of the deceased individual's last illness and burial if these costs were not otherwise insured. ¶

(b) Burial insurance that generates a cash surrender value is treated in the same manner that this rule treats life insurance. ¶

(c) Burial insurance that does not generate a cash surrender value is excluded. ¶

(d) When the ownership or beneficiary of a life insurance policy has been irrevocably assigned and designated for burial, it is treated in accordance with section (9) of this rule and is not counted towards the \$1,500 life insurance limit. ¶

(e) The value of the life insurance policy is treated as follows: ¶

(A) All term insurance that has no cash surrender value is excluded. ¶

(B) The cash surrender value of the life insurance policy is excluded. ¶

(44) Loans and Interest on Loans ¶

(a) 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 sections of this rule. ¶

(b) For the purposes of section (45): ¶

(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 are considered loans. ¶

(c) In order to treat payments as a loan that a member of the financial group 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. ¶

(d) Payments for a purported loan that do not meet the requirements of subsection (c) of section 45 are counted as unearned income.¶

(e) When a member of a financial group receives cash proceeds as a borrower from a loan that meets the requirements of subsection (c) of section 45:¶

(A) Educational loans are treated according to section (24) of this rule.¶

(B) The loan is excluded. If retained after the month of receipt, the loan proceeds are treated in accordance with section (4) of OAR 414-175-0030.¶

(45) Lodger Income¶

(a) Lodger income is the amount a lodger pays the filing group for room (rent) and board (meals).¶

(b) Lodger income is treated as self-employment income.¶

(46) Manufactured and Mobile Homes¶

(a) Manufactured and mobile homes are treated in the same manner as real property under section (58) of this rule.¶

(b) Manufactured and mobile homes are subject to sections (32) and (35) of this rule, if applicable.¶

(47) Military Income¶

(a) Military income (pay and allowances of a member of a uniformed service) is treated as follows:¶

(A) Military income is counted as earned income of the member's financial group, except as provided in subsection (a)(ii) of section (48), below.¶

(B) The portion of military pay and allowances available to the financial group is counted as unearned income if the member is not included in the filing group.¶

(48) Vehicles¶

(a) All motor vehicles and recreational vehicles are excluded. ¶

(49) National and Community Services Trust Act (NCSTA), including AmeriCorps (other than AmeriCorps VISTA)¶

(a) The National and Community Service Trust Act (NCSTA) of 1993 (P.L. 103-82) amended the National and Community Service Act (NCSA) of 1990 (P.L. 101-610) that established a Corporation for National and Community Service. The Corporation administers national service programs providing living allowance, educational award, child care, and in-kind benefits.¶

(b) NCSTA payments, including AmeriCorps (see Section (50) of this rule) are treated as follows:¶

(A) The living allowance (stipend benefits) is excluded.¶

(B) Educational award and in-kind benefits are excluded.¶

(C) For individuals who are eligible for direct provider payment of child care, the allowance is counted as unearned income. The allowance is excluded only if the individual already pays the provider. The provider may be paid for only the costs not covered by the allowance.¶

(50) Older Americans Act¶

(a) Benefits under Title III of the Older Americans Act of 1965 (Nutrition Program for the Elderly) are excluded.¶

(b) A wage or salary paid under Title V of the Older Americans Act of 1965 (Experience Works, American Association of Retired Persons, National Association for Spanish-Speaking Elderly, National Council on Aging, National Council on Black Aging, National Council of Senior Citizens, National Urban League, U.S. Forest Service) is considered earned income.¶

(c) Payments under Title V of the Older Americans Act of 1965 that are not a wage or salary are excluded.¶

(51) Pension and Retirement Plans¶

(a) 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:¶

(i) Traditional Defined-Benefit Plan.¶

(ii) Cash Balance Plan.¶

(iii) Employee Stock Ownership Plan.¶

(iv) Keogh Plan.¶

(v) Money Purchase Pension Plan.¶

(vi) Profit-Sharing Plan.¶

(vii) Simple 401(k).¶

(viii) 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:¶

(i) Individual Retirement Annuity.¶

- (ii) Individual Retirement Account (IRA).¶
- (iii) Deemed Individual Retirement Account or Annuity under a qualified employer plan.¶
- (iv) Accounts established by employers and certain associations of employees.¶
- (v) Simplified Employee Pension (SEP).¶
- (vi) Simple Individual Retirement Account (Simple-IRA).¶
- (vii) Roth IRA.¶
- (F) The following retirement plans offered by governments, nonprofit organizations, or unions:¶
  - (i) 457(b) Plan.¶
  - (ii) 501(c)(18) Plan.¶
  - (iii) Federal Thrift Savings Plan under 5 USC 8439.¶
- (G) An annuity purchased by an individual with funds from a plan authorized under subsection (a)(iii), (iv) or (vi) of section 52, above.¶
- (b) An annuitized retirement plan described in subsection (a)(v) of section 52, purchased by the spouse, is not considered a retirement plan and is treated in accordance with section (6) of this rule.¶
- (c) 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 or lump-sum income.¶
- (d) 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.¶
- (52) Personal Belongings¶
  - (a) Personal belongings are items needed for maintenance and occupancy of the home and personal items found in or near the home that are used on a regular basis, are ordinarily worn or carried by the individual, or otherwise have an intimate relation to the individual. The value of personal belongings is excluded.¶
  - (b) Items that otherwise meet the definition of personal belongings but were acquired or are held for their value or as an investment are not personal belongings. The value of such items is counted.¶
- (53) Personal Injury Settlements¶
  - (a) Personal injury settlements are excluded. ¶
  - (b) This rule does not apply to workers compensation payments (see section (79) if this rule for the treatment of those payments).¶
- (54) Plans for Self Support¶
  - (a) A plan for self support may be approved by the Social Security Administration or the Oregon Department of Human Services. ¶
  - (b) Assets listed in an approved plan for self support are excluded.¶
- (55) Program Benefits¶
  - (a) A EA payment made directly to the individual is counted as unearned income. Dual payee and provider-direct payments are excluded.¶
  - (b) Employment Payments (see OAR 461-001-0025 and 461-135-1270) are excluded.¶
  - (c) Payments from ERDC are excluded unless the individual is the provider.¶
  - (d) Payments from the MAGI medical (including MAGI-CHIP), OSIPM, QMB, and REFM programs are excluded.¶
  - (e) Payments from JPI (see OAR 461-135-1260) are issued as a food benefit and are excluded.¶
  - (f) SNAP payments are treated as follows:¶
    - (A) The value of a SNAP benefit is excluded.¶
    - (B) OFFSET service payments are excluded.¶
  - (g) Benefits from the GA, OSIP (except OSIPM-ICP), REF, SFPSS, TANF, and tribal-TANF programs are counted as unearned income.¶
  - (h) JOBS, REF, and TANF JOBS Plus support service payments are excluded.¶
    - (A) For the treatment of JOBS Plus income, see OAR 461-145-0130.¶
  - (i) Payments and funds held in a contingency fund from OSIPM-ICP (OSIPM-Independent Choices Program) are excluded. ¶
  - (j) Pre-TANF program payments are excluded. ¶
  - (k) TA-DVS payments are excluded.¶
- (56) Radiation Exposure Compensation Act¶
  - (a) Radiation Exposure Compensation Act payments are issued to compensate individuals for injuries or deaths resulting from exposure to radiation from nuclear testing or uranium mining and are excluded.¶
- (57) Real Property¶
  - (a) For purposes of this section 58, manufactured and mobile homes and floating homes and houseboats are treated in the same manner as real property.¶
  - (b) The applicant has the burden of proof of establishing the fair market value of real property. Fair market value

may be established by any methodology determined to accurately reflect the fair market value of the real property, including the provision of an appraisal or comparative market analysis performed by an impartial individual who is certified or licensed in the applicable jurisdiction.¶

(c) Real property that is not income-producing or the home of the financial group is treated is excluded.¶

(d) The treatment of real property that is income producing is covered in section (35) of this rule. ¶

(e) The treatment of the home of the financial group is covered in section (32) of this rule.¶

#### (58) Refunds¶

(a) The Department excludes the following refunds in the month they are received:¶

(A) Refunds on merchandise that was purchased or received as a gift.¶

(B) Refunds of utility and rental deposits.¶

(b) The Department counts any refund amount remaining after the month of receipt as a resource.¶

#### (59) Reimbursement¶

(a) For the treatment of USDA meal reimbursements, see section (74) of this rule.¶

(b) The reimbursement of a business expense for an individual who is self-employed is treated as self-employment income.¶

(c) A reimbursement is excluded, except that a reimbursement for child care from a source outside of the Department is counted as unearned income.¶

#### (60) Resettlement and Placement (R&P) Grants¶

(a) A Reception and Placement (R&P) grant is a payment made by the United States Department of State through a national refugee resettlement agency to a local resettlement agency, refugee sponsor, or refugee. An R&P grant is provided to the resettlement agency to help with the costs of initial resettlement of a refugee in the United States. The resettlement agency provides a part of this grant to the refugee, usually in the refugee's first month after arrival, for the refugee's initial resettlement needs and not for ongoing living expenses.¶

(b) An R&P grant is excluded from consideration as income or a resource for purposes of determining program eligibility or benefit levels, except as provided in OAR 414-175-0030(4).¶

#### (61) Sale of a Resource¶

(a) All proceeds from the sale of a resource are excluded as income and as a resource.¶

#### (62) Shelter In-Kind Income¶

(a) Shelter-in-kind payments are excluded, except earned shelter-in-kind is not excluded.¶

(b) A payment for which there is a legal obligation to pay to a member of the financial group that is made to a third party for shelter expenses of a member of the financial group is counted as unearned income.¶

#### (63) Social Security Benefits¶

(a) Except for Supplemental Security Income (SSI) and death benefits remaining after burial costs, Social Security benefits:¶

(A) All payments other than monthly payments are counted as periodic or lump-sum income, except that the representative payee fee paid by an individual who is required by the Social Security Administration to receive payments through a representative payee is excluded. ¶

(i) The amount of the exclusion is limited to the amount authorized by the Social Security Administration.¶

#### (64) Social Security Death Benefit¶

(a) Money remaining from Social Security death benefits after the payment of burial costs is treated as lump-sum income and therefore excluded. ¶

#### (65) Spousal Support¶

(a) Spousal support is counted as unearned income.¶

#### (66) Supplemental Security Income¶

(a) If an individual is required by law to receive a Supplemental Security Income (SSI) benefit through a representative payee, the representative's fee is excluded.¶

(b) A monthly SSI payment is counted as unearned income.¶

(c) Lump-sum SSI payments are excluded. ¶

#### (67) Stocks, Bonds, and Other Securities¶

(a) The equity value of mutual funds, and securities, including stocks, bonds, educational savings bonds, and certificates of deposit (CDs), is counted as a resource, except that the value of a savings bond issued by the United States Department of the Treasury is excluded during the minimum retention period if the owner has received a denial of a request for a hardship waiver based on financial need.¶

(b) Interest and dividends on items covered by subsection (a) of section (68) are treated as provided in section (18) of this rule.¶

#### (68) Striker's Benefits¶

(a) Strikers' benefits are payments made to strikers by their union, whether or not based on the striker's participation in picketing and are counted as unearned income.¶

#### (69) Tax Refund¶

(a) Federal Tax Refunds:¶

(A) If received on or after January 1, 2010, federal income tax refunds are excluded from income and resources in the month of receipt and then for 12 full months starting with the month following the month of receipt of the refund or payment. All funds remaining after the 12-month period are counted as a resource.¶

(B) If received before January 1, 2010, federal income tax refunds are counted as a resource.¶

(b) State tax refunds and property tax refunds, including Elderly Rental Assistance (ERA) are:¶

(A) considered lump-sum income in the month received, and therefore excluded;¶

(B) counted as a resource in the month after the month of receipt.¶

(70) Trusts¶

(a) All trust funds are excluded.¶

(71) Unemployment Compensation¶

(a) Unemployment compensation benefits are treated as follows:¶

(A) Retroactive payments are counted as periodic or lump-sum income.¶

(B) Disaster Unemployment Assistance is treated as provided in section (17) of this rule.¶

(C) All payments not covered under sections (i) and (ii) of subsection (72)(a) are counted as unearned income.¶

(72) Uniform Relocation Act¶

(a) Reimbursements from the Federal Uniform Relocation Assistance Act (42 U.S.C. 4621-4625) and from the Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651-4655) are excluded.¶

(73) USDA Meal Reimbursement¶

(a) A USDA meal reimbursement is counted as self-employment income, except for the portion excluded in accordance with subsection (b) of section (74), below.¶

(b) The proportionate share of a USDA meal reimbursement for a child in the filing group is excluded.¶

(74) Veteran's Benefits¶

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

(b) Other payments are counted as periodic or lump sum income.¶

(c) Educational benefits from the United States Veterans Administration are treated in accordance with subsection (24) of this rule.¶

(d) A subsistence allowance from a training and rehabilitation program of the United States Veterans Administration is treated as unearned income. ¶

(e) The following payments are excluded:¶

(A) Payments under 38 USC 1805 to biological children of Vietnam veterans who are born with spina bifida.¶

(B) Payments under 38 USC 1815 to children with birth defects born to female Vietnam veterans.¶

(75) Victim's Assistance¶

(a) Payments to victims of Nazi persecution covered by Public Law 103 286 and payments to victims of crime under 42 U.S.C. 10602 (The Crime Act of 1984) are excluded as income, and amounts retained are excluded as a resource as long as the amounts are not commingled with other funds.¶

(b) For other types of victims' assistance:¶

(A) Payments that are considered a reimbursement for a lost item are treated as provided in subsection (60) of this rule.¶

(B) Payments for pain and suffering are treated in the same manner as personal injury settlements under subsection (60) of this rule.¶

(76) Virtual Currency or Cryptocurrency¶

(a) As used in section (77):¶

(A) "Cryptocurrency" is a type of currency available in virtual or digital form that functions as a medium of exchange with no central banking or regulating authority.¶

(B) "Day trading" is the buying and selling of cryptocurrency within the virtual market. The cryptocurrency market continuously runs because it is a worldwide market.¶

(C) "Mining" is a way to receive cryptocurrency (see subsection (a) of this section) through solving a series of mathematical problems. "Mining" requires a computer, an external hardware setup, and a special computer software program. To receive cryptocurrency through "mining", multiple people worldwide are attempting to solve a series of complicated mathematical problems via the "mining" software, and each receipt of cryptocurrency could require millions or billions of guesses at mathematical problems. The person to solve the final mathematical problem is the one to receive the cryptocurrency.¶

(D) "Wallet" is a way to store records of cryptocurrency transactions. Each cryptocurrency is assigned a public address, and when stored in a "wallet" the cryptocurrency is assigned a private key for protection. The cryptocurrency public address and private key are stored on a computer, mobile device, internal or external computer hardware, or a piece of paper and protected by private keys.¶

(b) Cryptocurrency is treated as follows:¶

(A) Cryptocurrency received as a payment from an employer is considered earned income.¶

(B) Cryptocurrency received in exchange for services or products provided may be either considered income from self-employment if the individual meets the self-employed criteria in subsection (81) of this rule or considered earned income.¶

(C) Cryptocurrency received as a gift is treated in the same manner as a gift in the form of money.¶

(D) Cryptocurrency received through mining is considered unearned income.¶

(E) Cryptocurrency received through an online casino is considered winnings (excluded).¶

(c) The day trading value of cryptocurrency is counted as a resource.¶

(A) After the month of receipt, cryptocurrency stored in a wallet is counted as a resource.¶

(B) Cryptocurrency stored in a wallet can be converted to liquid assets and follows the availability of resources rule.¶

(77) Vocational Rehabilitation Payment¶

(a) Vocational rehabilitation maintenance payments for food, shelter and clothing are counted as unearned income.¶

(b) A training allowance or stipend is treated as unearned income.¶

(c) Educational income not covered under subsection (b) of section (78), above, is treated as provided in subsection (24) of this rule.¶

(d) Vocational rehabilitation payments for special itemized needs connected with the evaluation, planning or placement activity are treated as a reimbursement. These payments include payments for:¶

(A) Child care.¶

(B) Clothing.¶

(C) Second residence.¶

(D) Special diet.¶

(E) Transportation.¶

(e) Benefits from the United States Veterans Administration are treated as provided in section (75) of this rule.¶

(78) Workers Compensation¶

(a) For workers compensation payments received monthly or more frequently, income from workers compensation is counted as earned income if paid to a individual who is still employed while recuperating from an illness or injury.¶

(b) For payments received less than monthly, income from workers compensation payments is counted as periodic or lump sum income.¶

(79) Work-Related Capital Assets, Equipment, and Inventory¶

(a) As used in this rule:¶

(A) "Inventory" means goods that are in stock and available for sale to prospective customers.¶

(B) "Work-related equipment" means property essential to the employment or self-employment of a financial group member. Examples are a tradesman's tools, a farmer's machinery, and equipment used to maintain an income-producing vehicle.¶

(b) A capital asset, other than work-related equipment and inventory, is treated as follows: the equity value of a capital asset is treated according to the rules for the asset.¶

(c) The equity value of work-related equipment is excluded.¶

(d) Inventory is excluded as long as the individual is engaged in self-employment activities.¶

(80) Self-Employment Income¶

(a) Self-employment income is income resulting from an individual's business, trade, or profession, rather than from a salary or wage paid by an employer. An individual is considered self-employed if the individual meets the criteria in sections (81)(b) or (c) of this rule. Except as noted in section (c) of section (81) when an individual has established a corporation, determine if the individual is self-employed according to section (b) of section 81. If the individual has more than one self-employment business, trade, or profession, the income from each is determined separately.¶

(b) Except as provided ins section (35) of this rule, an individual is self-employed for the purposes of this division of rules if the individual meets the requirements of one or more of the below conditions:¶

(A) Files taxes as self-employed for their business on their personal taxes.¶

(B) Is considered an independent contractor by the business.¶

(C) Meets all the following criteria:¶

(i) Is not required by the business to complete an IRS W-4 form;¶

(ii) Is not required to pay federal income tax or FICA payments from their paycheck(s);¶

(iii) Liability or worker's compensation insurance for the individual is not paid by the business;¶

(iv) Meets at least one of the following:¶

(I) Creates or provides the products or services they sell, or¶

(II) Sets the price for the products or services they sell;¶

(v) Is responsible for the business expense and losses; and¶

(vi) Receives profits from the business.

(c) Notwithstanding section (b) of section (81):

(A) Homecare Workers paid by the Oregon Department of Human Services are not self-employed.

(B) Providers considered an employee of an Aging and People with Disabilities, Office of Developmental Disabilities Services, or Oregon Health Authority benefit recipient, such as Independent Choices Program (see OAR 411-030-0100) providers, Personal Support Workers (see OAR 411-375-0000), and Personal Care Attendants (see OAR 410-172-0810) are not self-employed.

(C) Specific self-employment income types and professionals:

(i) All of the following individuals are considered self-employed:

a. Child care providers for the ERDC program;

b. Adult foster home providers (see OAR 411-050-0602) paid by the Oregon Department of Human Services

c. Realty agent.

(ii) The following income types are considered self-employment.

a. Selling plasma.

b. Redeeming beverage containers.

c. Foraging items to sell, or

d. Engage in similar enterprises are considered to be self-employed.

(d) Self-employment income is counted prospectively to determine eligibility as follows:

(A) Self-employment income is annualized when it is:

(i) Received during less than a 12-month period but is intended as a full year's income.

(ii) From a business that has operated for a full year and the previous year is representative of what the income and costs will be during the budget month.

(e) When determining the amount of countable self-employment income, use gross receipts and sales, including mileage reimbursements, before costs.

(f) If no member of the financial group has been self-employed for a sufficiently long period to ascertain the costs of self-employment, the costs may be estimated.

(g) In the ERDC program, no costs are deducted or excluded from self-employment gross sales and receipts to determine countable income from self-employment.

(81) Paid Leave Oregon Benefits

(a) Payments from Paid Leave Oregon are counted as unearned income.

(b) Retroactive payments from Paid Leave Oregon are counted as periodic or lump-sum income (see 414-175-0002).

(82) Youth Experiencing Homelessness Program Direct Cash Transfer (DCT) Payments

(a) Youth Experiencing Homelessness Program DCT payments are provided to youth 18 to 24 years of age by the Oregon Department of Human Services. The payments help youth who are experiencing homelessness to establish housing stability and support successful independent living.

(b) The payments are excluded to determine countable assets.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0040 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines how the agency determines the prospective eligibility and budgeting. The client's anticipated income, household composition, and other relevant factors are used to determine the client's eligibility and benefit level. This rule also covers ongoing variable income, and annualizing and prorating contracting and self-employment income.

CHANGES TO RULE:

414-175-0040

Prospective Eligibility and Budgeting

(1) For prospective eligibility and budgeting:

(a) The budget month and payment month are the same.

(b) The individual's anticipated income, household composition, and other relevant factors are used to determine the individual's eligibility and benefit level. The individual and Department jointly anticipate the individual's income based on the income already received and the income the individual expects to receive.

(c) Prospective budgeting is used for annualized income and prorated educational income.

(d) When prospective budgeting is used and the actual income differs from the amount determined under section (1)(b) of this rule:

(A) If the anticipated income exceeds the actual income, a individual is not entitled to a benefit supplement.

(B) If the actual income exceeds the anticipated income, there may be a individual-error overpayment under OAR 414-175-0099 and 461-195-0521.

(2) Income is budgeted so that the anticipated amount is the same for each month.

(3) Income that must be annualized is calculated under section (9) of this rule.

(4) For the initial month, income is budgeted so the anticipated amount is the same for each month, including the initial month.

(a) No supplement is issued based on incorrectly anticipated information.

(5) For an ongoing month:

(a) For a benefit group, the Department uses prospective eligibility and budgeting. The type of income is determined and calculated under sections (6) through (10) of this rule.

(6) Educational income is assigned to the months it is intended to cover, regardless of when it is received. The income is prorated over these months.

(7) Ongoing stable income in prospective budgeting and eligibility is treated so that the monthly amount is used to anticipate the income of the financial group. The amount of stable income for each month is determined as follows:

(a) If paid once per month, that amount is used.

(b) If paid twice per month or semi-monthly, that amount is converted to a monthly amount by multiplying it by two.

(c) If paid once every other week or biweekly, that amount is converted to a monthly amount by multiplying it by 2.15.

(d) If paid once per week, that amount is converted to a monthly amount by multiplying it by 4.3.

(8) Ongoing variable income is used as follows in prospective budgeting and eligibility so that the anticipated amount is the same for each month, unless otherwise stated in this rule.

(a) For income paid more than once per month, determine an average amount per pay period in accordance with sections (8)(b) to (8)(d) of this rule. The average amount is then converted to a monthly amount as follows, if paid --

(A) Twice per month, multiply by 2;

(B) Every other week, multiply by 2.15; or

(C) Once per week, multiply by 4.3.

(b) For variable earned income based on an hourly wage when the past is representative, monthly income is determined by calculating an average number of hours per pay period, then these hours are multiplied by the hourly wage and converted to a monthly amount under section (8)(a) of this rule.

(c) For variable earned income involving various rates of pay (overtime, shift differential, tips) when the past is representative, monthly income is determined by calculating the average income per pay period, then the average income is converted to a monthly amount under section (8)(a) of this rule.

(d) For variable earned or unearned income when the past is representative and income cannot be calculated under section (8)(b) or (c) of this rule, monthly income is determined by averaging the income over:

(A) A representative period of months by totaling the income for those months and dividing by the number of

months used; or¶¶

(B) A representative number of pay periods and converting to a monthly amount under section (8)(a) of this rule.¶¶

(e) For variable earned and unearned income when the past is not representative of the income the financial group will receive during the eligibility period, the individual and the Department jointly determine the anticipated income.¶¶

(9) Annualizing and Prorating Contracted or Self-Employment Income¶¶

(a) Income from self-employment, including contract income while self-employed, is treated in accordance with OAR 414-175-0035 (81) unless the income meets the provisions of section (8)(b) of this rule.¶¶

(b) If past contract income is not representative of future income or when a substantial increase or decrease is expected in countable self-employment income in the next year, costs as allowed under OAR 414-175-0035 (81) and anticipated income are used to determine the countable income.¶¶

(c) Contract income that does not meet the criteria of self-employment income is treated as follows:¶¶

(A) Income received during a less than 12-month period but intended as a full year's income is annualized.¶¶

(B) Income received on an hourly or piecework basis or monthly over the term of the contract period is not annualized. It is treated as stable income under or variable income.¶¶

(d) Contract income that is not the annual income of the financial group and not paid on an hourly or piecework basis is prorated over the period the income is intended to cover.¶¶

(10) Periodic income is averaged over the applicable period.¶¶

(11) If the budgeting method changes from prospective to retrospective, the Department treats income from a terminated source that was counted prospectively as follows:¶¶

(a) If the actual amount received was less than or equal to the anticipated amount, the income is excluded.¶¶

(b) If the actual amount received was greater than the anticipated amount, the Department counts the difference between actual and anticipated amounts.¶¶

(12) When an individual is added to an ongoing filing group, income is budgeted in accordance with applicable sections of this rule to determine eligibility and benefit level.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0041

RULE SUMMARY: OAR 414-175-0041 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines how costs incurred by the Filing Group that the filing group has a legal responsibility to pay are deductible from income in accordance with the rules in this division of rules.

CHANGES TO RULE:

414-175-0041

Calculating Costs

(1) Costs incurred by the Filing Group that the filing group has a legal responsibility to pay are deductible from income in accordance with the rules in this division of rules.¶

(2) The following costs are not deductible:¶

(a) A cost paid by someone outside the filing group through a reimbursement, vendor payment, or in-kind benefit.¶

(b) A cost that is paid by a person or company outside the filing group or that is written off by a medical facility. These are referred to as third-party payments.¶

(c) The cost for a service provided by someone in the filing group, such as child care provided by one caretaker while another caretaker works.¶

(d) A cost used as an income deduction in one budget month or averaged over several months cannot be used again.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0050 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines how the Department determines the copay benefit level. The monthly countable gross income of the financial group is determined in accordance with OAR 414-175-0040. The Department may exclude at least 50 percent of gross self-employment income when a need group has countable self-employment income and permitted cost.

CHANGES TO RULE:

414-175-0050

Income Limits and Copay Amounts

The Department determines financial eligibility for ERDC and the copay benefit level as follows:

(1) ERDC financial eligibility:

(a) A need group is not eligible for benefits if the financial group has countable resources above \$1,000,000.

(b) The monthly countable gross income of the financial group is determined in accordance with OAR 414-175-0040. If monthly countable income equals or exceeds the eligibility standards, the need group is ineligible for ERDC.

(A) At initial certification, the ERDC eligibility standard is met for a need group of eight or less if monthly countable income for the need group is less than 200 percent of the federal poverty level (FPL). The eligibility standard for a need group of eight applies to any need group larger than eight.

(i) A monthly income standard set at 200 percent of the 2023 federal poverty level, and updated every March, is set at the following amounts:

Size of Group&&&&Standard

1&&&&&&&\$ 2,430

2&&&&&&& 3,287

3&&&&&&& 4,144

4&&&&&&& 5,000

5&&&&&&& 5,857

6&&&&&&& 6,714

7&&&&&&& 7,570

8 or more&&&&&&& 8,427

(B) During the certification period and at recertification the ERDC eligibility standard is met for a need group of eight or less if monthly countable income for the need group during the 12 month period is less than 250 percent FPL or 85 percent state median income (SMI), whichever is higher. The eligibility standard for a need group of eight applies to any need group larger than eight.

(ii) A monthly income standard set at 85 percent of the 2023 state median income, and updated every March, is set at the following amounts:

Size of Group&&&&&&&...Standard

2&&&&&&&.&&&&&.& \$4,827

3 &&&&&&&&&&&.&&...\$5,963

4 &&&&&&&&&.&&&&&.\$7,099

5 &&&&&&&&&.&&&&&.\$8,234

6 &&&&&&&&&.&&&&&.\$9,370

7 &&&&&&&&&.&&&&.\$9,583

8 or more&&&&&&.&&&&&&&..\$9,796

(iii) A monthly income standard set at 250 percent of the 2023 federal poverty level, and updated every March, is set at the following amounts:

Size of Group&&&&&Standard

1&&&&&&&.....&&\$ 3,038

2&&&&&&&.....4,109

3&&&&&&&.....5,180

4&&&&&&&.....6,250

5&&&&&&&.....7,321

6&&&&&&&.....8,392

7&&&&&&&.....9,463

8 or more&&&&&&10,534

(c) The copay calculated under section (3) of this rule is compared to the allowable child care cost under section (2) of this rule. If the copay is equal to or greater than the allowable child care cost, the client is not eligible for

## ERDC.¶

(2) Allowable Child Care Cost. For an individual found eligible under section (1) of this rule, the allowable child care cost is set under this section.¶

(a) The child care costs for which the individual has been billed are compared to the amount provided in the appropriate child care chart in OAR 414-175-0075. The allowable child care cost is the lesser of the two amounts.¶

(b) The need group's copay is determined in accordance with section (3) of this rule.¶

(c) The copay is subtracted from the allowable child care cost, and the remainder is the payment the Department makes to the provider.¶

### (3) Copay Calculation.¶

(a) When determining the copay, upon the applicant's request, the Department may exclude at least 50 percent of gross self-employment income when a need group has countable self-employment income and permitted costs. The maximum exclusion is the total of all actual costs permitted under OAR 414-175-0035 (81).¶

(b) The monthly copay shall be as follows, using the countable income, or countable self-employment income minus permitted costs:¶

#### Need group size of 2¶

##### Income&&&&&&&&&..Monthly Copay¶

\$0 - \$1643.99 &&&&&&&...\$0¶

\$1644 - \$2464.99 &&&&&&&.\$5¶

\$2465 - \$3286.99 &&&&&&&.\$10¶

\$3287 - \$3697.99 &&&&&&&.\$40¶

\$3698 - \$4826.99 &&&&&&&.\$100¶

#### Need group size of 3¶

##### Income&&&&&&&&&..Monthly Copay¶

\$0 - \$2071.99 &&&&&&&...\$0¶

\$2072 - 3107.99 &&&&&&&.\$5¶

\$3108 - \$3625.99 &&&&&&&.\$10¶

\$3626 - \$4143.99 &&&&&&&.\$15¶

\$4144 - \$4661.99 &&&&&&&.\$50¶

\$4662 - \$5962.99 &&&&&&&.\$110¶

#### Need group size of 4¶

##### Income&&&&&&&&&..Monthly Copay¶

\$0 - \$2499.99 &&&&&&&.....\$0¶

\$2500 - \$3749.99&&&&&&&.\$5¶

\$3750 - \$4374.99&&&&&&&.\$10¶

\$4375 - \$4999.99&&&&&&&.\$20¶

\$5000 - \$5624.99&&&&&&&.\$60¶

\$5625 - \$7098.99&&&&&&&.\$120¶

#### Need group size of 5¶

##### Income&&&&&&&&&..Monthly Copay¶

\$0 - \$2928.99&&&&&&&...\$0¶

\$2929 - \$4392.99&&&&&&&.\$5¶

\$4393 - \$5124.99&&&&&&&.\$10¶

\$5125 - \$5856.99&&&&&&&.\$25¶

\$5857 - \$6588.99&&&&&&&.\$70¶

\$6589 - \$8233.99&&&&&&&.\$130¶

#### Need group size of 6¶

##### Income&&&&&&&&&..Monthly Copay¶

\$0 - \$3356.99&&&&&&&...\$0¶

\$3357 - \$5034.99&&&&&&&.\$5¶

\$5035 - \$5874.99&&&&&&&.\$10¶

\$5875 - \$6713.99&&&&&&&.\$25¶

\$6714 - \$7552.99&&&&&&&.\$70¶

\$7553 - \$9369.99&&&&&&&.\$130¶

#### Need group size of 7¶

##### Income&&&&&&&&&..Monthly Copay¶

\$0 - \$3784.99&&&&&&&...\$0¶

\$3785 - \$5677.99&&&&&&&.\$5¶

\$5678 - \$6623.99&&&&&&&.\$10¶

\$6624 - \$7569.99&&&&&&&.\$25¶

\$7570 - \$8516.99&&&&&&&.\$70¶

\$8517 - \$9582.99&&&&&&&.\$130¶

Need group size of 8 or more¶

Income&&&&&&&&&..Monthly Copay¶

\$0 - \$4213.99&&&&&&&...\$0¶

\$4214 - \$6319.99&&&&&&&.\$5¶

\$6320 - \$7373.99&&&&&&&.\$10¶

\$7374 - \$8426.99&&&&&&&.\$25¶

\$8427 - \$9479.99&&&&&&&.\$70¶

\$9480 - \$10533.99&&&&&&&.....\$130¶

(4) Notwithstanding the provisions of this rule section, the ERDC copay may be reduced or temporarily waived as follows:¶

(a) Reduced to \$0 for no more than three months after closure of TANF benefits when:¶

(A) The closure is because an individual in the need group had earned income that led to the TANF closure:¶

(B) An ERDC date of request is established within 90 days of closure; and¶

(C) The individual is eligible for ERDC at initial certification.¶

(b) As described in OAR 414-175-0023.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0051

RULE SUMMARY: OAR 414-175-0051 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines the requirements to make copayments. A caretaker is responsible for paying the copayment to the primary provider of child care unless the Child Care Billing form was sent to the provider showing no copayment. A client who fails to pay a copayment to or to make satisfactory arrangements with the primary provider may become ineligible for future participation in the ERDC program.

CHANGES TO RULE:

414-175-0051

Requirement to Make Copay or Satisfactory Arrangements

(1) The Need Group must use a child care provider who meets the requirements in OAR 414-175-0080 and 414-175-0085.

(2) The caretaker is responsible for paying the copayment to the primary provider of child care unless the Child Care Billing form was sent to the provider showing no copayment.

(3) If the caretaker has only one provider during a month, that provider is the primary provider. If the caretaker uses more than one provider, the caretaker must designate one as the primary provider. Notwithstanding any designation by the caretaker, the Department considers a provider having the copayment amount (not to exceed the caretaker's established copayment amount) deducted from its valid billing statement the primary provider for that period.

(4) If the copayment exceeds the amount billed by the primary provider, the Department may treat a different provider as the primary provider or split the copayment among the providers who bill for care.

(5) The copayment amount due from the caretaker to the provider is the lesser of:

(a) The copayment amount determined by the Department based on family size and income.

(b) The total amount allowed by the Department on a provider claim.

(6) A provider must notify the Department of an overdue copayment within 60 days after the Department issues payment for the month at issue. A caretaker who fails to pay a copayment to or to make satisfactory arrangements with the primary provider will be ineligible for ERDC benefits upon recertification. A copayment is considered paid under any of the following circumstances:

a. On the first day of the month in which the caretaker makes the copayment or makes satisfactory arrangements with the provider.

b. On the first day of the month after three years have lapsed from the date the caretaker failed to make the copayment.

c. On the first day of the month in which the caretaker provides verification that the copayment debt was discharged by a bankruptcy filing.

(7) The Department will make the payment to a provider if a Child Care Billing form is mailed to the provider prior to the notification described in section (6) of this rule.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0052

RULE SUMMARY: OAR 414-175-0052 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines that an individual may not receive concurrent ERDC benefits in two or more Need Groups in the same period unless that individual is a child.

CHANGES TO RULE:

414-175-0052

Concurrent and Duplicate Program Benefits

An individual receiving ERDC benefits may not receive benefits for the same period as a member of two or more different Need Groups unless that individual is a child residing in two different households or also a member of an OSIP-AB Benefit Group.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0055 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines what information is included in a decision notice and the notice period to determine effective date for taking action. The rule also outlines when a decision notice is required to be sent and can be amended by the Department.

CHANGES TO RULE:

414-175-0055

Decision Notices

(1) A decision notice:¶

- (a) Specifies the date the notice is mailed, which is the effective date for a basic decision notice.¶
- (b) Except as provided in section (2) of this rule, specifies the action the Department intends to take and the effective date of the action.¶
- (c) Specifies the reasons for the action.¶
- (d) Informs the individual of the extent to which the individual has a right to a hearing before an impartial person.¶
- (e) Specifies the method and deadline for requesting a hearing.¶
- (f) Informs the individual of the right to representation, including legal counsel, and the right to have witnesses testify on his or her behalf.¶
- (g) Provides information about the availability of free legal help.¶
- (h) Cites the rules that support the action, or includes a notification of the rules that support the action.¶

(2) If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or any other mass change under a program operated by a federal agency or to reflect a mass change to payments in a program operated by the Department:¶

(a) The requirements in subsection (1)(b) of this rule are optional. Instead of specifying the action the Department intends to take and the effective date of the action, the decision notice may state all of the following:¶

- (A) The general nature of the change.¶
- (B) Examples of how the change affects a individual's benefits.¶
- (C) The month in which the change will take place.¶

(b) The decision notice must also state the individual's right to continue receiving benefits.¶

(3) The notice period is used to determine the effective date for taking action when a decision notice is sent to the filing group:¶

- (a) For a basic decision notice, the notice period is the month in which the notice is mailed.¶
- (b) For a continuing benefit decision notice, the notice period is the budget month from which information is used to initiate the decision notice.¶
- (c) For a timely continuing benefit decision notice, the notice period is the month in which the mailing requirement ends.¶

(d) Except as provided under section (3)(e) of this rule, the timely continuing benefit decision notice mailing requirement is no later than the 15th day of the month. ¶

(e) If the basis for a decision to reduce, suspend, or close a grant ERDC benefits is a change to a benefit standard, the timely continuing benefit decision notice mailing requirement is:¶

(A) At least 30 calendar days before the effective date of the action, or¶

(B) If the Department has fewer than 60 days before the effective date to implement a change to a benefit standard, the mailing requirement is as provided under section (4) of this rule.¶

(i) For purposes of this section, the term "change to a benefit standard" means a change to the applicable inflation-adjusted contribution, income, or payment standard. It does not include the annual adjustment to a standard based on a federal or state inflation rate.¶

(4) Each household must receive a notice of expiration prior to the last month of the certification period containing:¶

- (a) The date the certification period expires.¶
- (b) A statement that to receive benefits, the individual must reapply and be found eligible for a new benefit amount.¶
- (c) The household's right to request a contested case hearing if the reapplication is denied or if the household objects to the benefit amount.¶

(5) Notwithstanding any rule in Chapter 414, to the extent permitted by OAR 137-003-0530, the Department may take any of the following actions:¶

- (a) Amend a decision notice with another decision notice or a contested case notice including to clarify the rules that support the decision.¶

- (b) Amend a contested case notice.
- (c) Delay a reduction or closure of benefits as a result of an individual's request for hearing.
- (d) Extend the effective date on a decision notice or contested case notice.
- (6) Except as provided in section (5) or when a delay results from the individual's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice. If the notice is void, a new notice is sent to inform the financial group of a new date on which their benefits will be reduced or closed.
- (7) No decision notice is required in each of the following situations:
  - (a) Benefits are ended because there is no living person in the benefit group.
  - (b) A notice was sent, the individual requested a hearing, and either the hearing request is dismissed or a final order is issued.
  - (c) The individual has signed a voluntary agreement that qualifies as a final order under ORS 183.417(3)(b) except as provided otherwise in this rule.
  - (d) No decision notice is required based on prior notice.
- (8) When the Department amends a decision notice with another decision notice under subsection (4) of this section, the date of the amended notice restarts the individual's deadlines to request a hearing or continuing benefits, or both.
- (9) When a contested case notice extends an effective date or delays a reduction or closure, the date of the amended notice restarts a individual's timeline to request continuing benefits.
- (10) When an individual has a pending hearing request or is receiving continuing benefits, and the Department amends a notice under this section, the individual need not re-file the hearing request or renew the request for continuing benefits.
- (11) To end benefits if an individual receives them for less than 30 days, a basic decision notice is sent.
- (12) The Department sends a continuing benefit decision notice when:
  - (a) Benefits are calculated in accordance with OAR 414-175-0075.
  - (b) To remove an individual from the need group.
- (13) To end benefits for an individual who has moved out of Oregon and no longer meets residency requirements under OAR 414-175-0020, the Department sends the following decision notice:
  - (a) The Department sends a timely continuing benefit decision notice to the individual who has moved out of Oregon.
  - (b) The Department sends a basic decision notice if the individual becomes eligible for benefits in another state.
- (14) The Department does not send a notice of termination to an individual disqualified for an IPV after a court order, a final order from an administrative hearing, or a signed waiver (see section (7)(c) and OAR 461-195-0621(2)) that imposes the disqualification.
- (15) If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or other mass change under a program operated by a federal agency or to reflect a mass change to payments in a program operated by the Department, the type of decision notice used is the same as otherwise applies to the reduction or closure of benefits under the rules of this division.
  - (a) Section 2 of this rule modifies the content requirements for a decision notice sent because of a cost-of-living adjustment or mass change that apply to other decision notices under Section 1.
- (16) When the Department takes action on information reported on the Periodic Report form, the Department sends a continuing benefit decision notice. The notice includes the amount of income used to determine the benefits or ineligibility.
  - (a) For all changes not reported on the Periodic Report form, which result in a closure or reduction in benefits, the Department sends a timely continuing benefit decision notice.
  - (b) When the Department changes the reporting system from one reporting system to another reporting system, the Department provides a continuing benefit decision notice if the change occurs at a time other than at the start of a certification period.
- (17) The Department sends a continuing benefit decision notice to close benefits when the benefit group fails to return the reapplication form. The case is closed on the last day of the last month of the certification period.
- (18) When benefits are reduced for recovery of an overpayment (see OAR 414-175-0097 and 461-195-0551) a timely continuing benefit decision notice is sent for the first month of the reduction.
- (19) Except as provided in section (22) of this rule, when benefits will end or be reduced after a specific period of time, the Department may issue a decision notice informing the benefit group of the date benefits will end or be reduced, and no further decision notice is required.
- (20) Except as provided in section (22) of this rule, if the benefit group was informed in writing when the benefits began that the benefit group would receive benefits only for a specific period of time a basic decision notice may be used to-
  - (a) Deny an application to start or continue benefits after the completion of a certification period or to approve

benefits at a level lower than the prior certification period.¶

(b) Indicate that benefits have been ended or reduced when no timely application is submitted.¶

(21) A basic decision notice is used when a special need allowance granted for a specific period of time is removed at the end of the specified period and the benefit group was informed of this in writing when the allowance began. A timely continuing benefit decision notice is required if stopping the special need allowance results in benefit closure.¶

(22) Relating to sections (19), (20), and (21) of this rule, no additional decision notice is required when:¶

(a) Notwithstanding OAR 414-175-0005, when a benefit group submits an application for a program from which they currently are receiving benefits.¶

(b) When a filing group is receiving priority processing but does not return postponed verification to the Department by the last day of the month in which the application period ends.¶

(c) A decision notice that included the eligibility begin and end dates was given for the reduced ERDC copay described in OAR 414-175-0050 and the three-month eligibility period ends.¶

(23) If the caregiver, another adult member of the need group, or the authorized representative:¶

(a) Makes an oral request to end or reduce benefits, a timely continuing benefit decision notice is sent.¶

(b) Makes a signed, written request to withdraw, end, or reduce benefits, a basic decision notice is sent.¶

(c) Makes an oral request to withdraw an application for benefits, a basic decision notice is sent.¶

(A) The Department may reduce or terminate benefits to an individual when the individual completes a voluntary agreement on a Department form used for this purpose.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0060 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines when an individual is required to report a change in circumstances for their continued participation in the ERDC program. The participant may make the report by telephone, office visit, report form, or other written notice.

CHANGES TO RULE:

414-175-0060

Reporting Changes

- (1) An individual is required to report a change in circumstances in accordance with the reporting system in which the individual participates.¶
  - (2) The Department determines the appropriate reporting system.¶
  - (3) In addition to any required report form, when an individual is required by this division of rules to report a change in circumstances, the report may be made by telephone, office visit, report form, or other written notice.¶
  - (4) A change is considered reported effective the date an individual or authorized representative reports the information to an Oregon Department of Human Services branch office or within the ONE Applicant Portal.¶
  - (5) When multiple changes are reported at the same time, they will have the same effective date.¶
  - (6) A change reported by an individual or authorized representative for one program supported by the ONE Eligibility System is considered reported for all programs in which that individual participates.¶
  - (7) A change in employment status is considered to occur as follows:¶
    - (a) For a new job, the change occurs the first day of the new job.¶
    - (b) For a job separation, the change occurs on the last day of employment.¶
  - (8) A change in source of income is considered to occur as follows:¶
    - (a) For earned income, the change occurs upon the receipt by the individual of the first paycheck from a new job or the first paycheck reflecting a new rate of pay.¶
    - (b) For unearned income, the change occurs the day the individual receives the new or changed payment.¶
  - (9) An individual must report, orally or in writing, to the Oregon Department of Human Services the following changes within 10 days of occurrence:¶
    - (a) A change in employment status.¶
    - (b) A change in mailing address or residence.¶
    - (c) A change in membership of the filing group.¶
    - (d) A member of the filing group is discharged from the U.S. military and returning from active duty in a military war zone.¶
    - (e) A change in income above the 250 percent federal poverty level (FPL) or 85 percent state median income (SMI), whichever is higher, as described in OAR 414-175-0050, that is expected to continue.¶
  - (10) An individual must report to the Direct Pay Unit of the Department, orally, or in writing, a change in child care provider. ¶
  - (11) An individual is not required to report any of the following changes:¶
    - (a) Periodic cost-of-living adjustments to the federal Black Lung Program, SSB (Social Security Benefits), SSDI, SSI, and veterans assistance under Title 38 of the United States Code.¶
    - (b) Periodic cost-of-living adjustments to ERDC, GA, OSIP, REF, SFPSS, and TANF standards.¶
    - (c) Other changes in eligibility criteria based on legislative or regulatory actions.
- Statutory/Other Authority: ORS 329A.500
- Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0065

RULE SUMMARY: OAR 414-175-0065 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines the reapplication process for the ERDC program. At end of the certification, authorized work search, medical leave, or military transition period, whichever is later, a client must complete and return the application to the Department to determine eligibility for continued participation.

CHANGES TO RULE:

414-175-0065

Reapplication for ERDC

(1) At the end of the certification, authorized work search, medical leave, or military transition period, whichever is later, an individual must complete and return to an Oregon Department of Human Services (ODHS) branch office or within the ONE Applicant Portal a reapplication form before a new certification period may be established under OAR 414-175-0011.

(2) A reapplication form is considered complete when it is received by a ODHS branch office or submitted within the ONE Applicant Portal by the 10th day of the last month of the certification, authorized work search, medical leave, or military transition period, whichever is later, and:

(a) The individual answers, completely and accurately, all questions necessary to determine a copay amount for the following certification period;

(b) The individual provides all required verification; and

(c) The form contains the signature of the primary person or the authorized representative.

(3) When a ODHS branch office receives a completed reapplication form by the deadline in section (2) of this rule, the form is used to:

(a) Determine eligibility for ERDC benefits;

(b) Establish the ERDC benefit copay amount for the next certification period; and

(c) Establish the next certification period as beginning on the first day of the month following the last month of the previous certification, authorized work search, medical leave, or military transition period, whichever is later.

(4) When a ODHS branch office does not receive a completed reapplication form on or before the deadline in section (2) of this rule, the case is closed effective the last day of the last month of the certification, authorized work search, medical leave, or military transition period, whichever is later.

(5) If the reapplication form is received after the deadline in section (2) of this rule, it is treated as a new application in accordance with OAR 414-175-0005.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0070 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). The rule outlines when the effective dates for benefits begins or effective dates for changes begins. Effective dates may depend on the circumstances of the action taken.

CHANGES TO RULE:

414-175-0070

Effective Dates

(1) The effective date for starting benefits is one of the following:¶

(a) The first day of the month in which the request for benefits is made if: ¶

(A) All eligibility requirements are met in that month; and¶

(B) Verification is provided within the application processing timeframes.¶

(b) If all eligibility requirements are not met in the month of request, the effective date is the first day of the month in which they are met, if verification is provided within the application processing timeframes.¶

(2) The effective date for a change in an ERDC case will be:¶

(a) For changes reported on the reapplication form:¶

(A) The first day of the next certification period; or¶

(B) If changes will end benefits, the last day of the current certification period.¶

(b) For changes not reported on the reapplication form:¶

(A) For changes that require the certification period to be shortened, the effective date for the end of the certification period becomes the last day of the month in which the notice period ends. If the notice period ends the month after the change is reported, and the information results in an increase in benefits, adjust benefits for the last month of the shortened certification period.¶

(B) For all other changes that will cause:¶

(i) An increase in benefits, the effective date is the first of the month after the filing group reports the change.¶

(ii) A decrease in benefits, the effective date is the first of the month after the notice period ends.¶

(C) For changes that will end benefits, the effective date is the last day of the month in which the notice period ends.¶

(3) The effective date for adding an individual to the need group or benefit group is as follows:¶

(a) If adding the individual to the need group will decrease the copay, the effective date is the first of the month after the client reports the person has joined the household.¶

(b) If adding the individual to the need group increases the copay, for instance, because the individual receives income, the effective date is the first of the month following the end of the decision notice period.¶

(c) The effective date for adding a child to the benefit group, that is, covering the cost of the child's care, is the earliest of the following:¶

(A) For newborns, the date of birth, if all eligibility requirements are met and verified within 45 days after the birth.¶

(B) For all other children, the first of the month in which the change is reported, if all eligibility requirements are met and verified within 45 days.¶

(C) For newborns and other children, if eligibility cannot be verified within 45 days, the effective date is the first of the month in which all eligibility factors are met and verified.¶

(4) The effective date for removing an individual from a benefit group is as follows:¶

(a) If the individual has left the benefit group in the current budget month because they are ineligible, disqualified, or have left the household, the effective date is:¶

(A) The first of the month after the notice period ends, if the change will reduce benefits.¶

(B) The last day of the month in which the notice period ends, if the change will end benefits.¶

(b) If the individual is reasonably expected to leave the household next month, the effective date is the later of the following:¶

(A) The first of the month following the month in which the individual leaves the household group, if the change will reduce benefits.¶

(B) The end of the month in which the individual is expected to leave the household group, if the change will end benefits.¶

(c) When an individual dies and is not the only individual in the benefit group, the effective date of the closure or reduction in benefits is the last day of the month in which the timely continuing benefit decision notice period ends under OAR 414-175-0055.¶

(5) The effective date for denying benefits is the date the decision is made that the client is not eligible.¶

(6) For an Intentional Program Violation (IPV) disqualification (see OAR 414-175-0099), the disqualification ends

the day after the minimum disqualification period ends, if there is no additional IPV disqualification to be served and all eligibility requirements are met.<sup>¶</sup>

(7) In the event of a new effective date of eligibility following closure of benefits or following the end of a certification period, eligibility starts the first day of the month of the date of request.<sup>¶</sup>

(8) If a proposed reduction or closure of benefits is delayed because the individual requested a hearing, the reduction or closure is effective in accordance with the notice that precipitated the appeal.<sup>¶</sup>

(9) The effective date for restoring benefits that were underpaid (including erroneous collections of overpayments) or denied or closed in error is set as follows:<sup>¶</sup>

(a) For underpayments resulting from administrative error, the effective date is the date the error was made.<sup>¶</sup>

(A) Benefits may be restored only for a period of time within the preceding 12 months.<sup>¶</sup>

(b) For underpayments resulting from client error, the effective date is the earliest of the following:<sup>¶</sup>

(A) The month the benefit group notifies the Oregon Department of Human Services (ODHS) branch office of the possible loss.<sup>¶</sup>

(B) The month the ODHS branch office discovers the loss.<sup>¶</sup>

(C) The date a hearing is requested.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0075 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines child care provider eligibility standards, payment rates, payment limits and payable hours. This rule amends how payment rates will be informed. Payment Rates will be informed by a cost estimation model and may include financial incentives as outlined in ORS 329A.500(4)(c)(A)-(G).

CHANGES TO RULE:

414-175-0075

Child Care Provider Eligibility Standards, Payments Rates, Payment Limits, and Payable Hours

(1) The following definitions apply to the rules governing child care rates:¶

(a) Infant: For all providers other than licensed (registered or certified) care, a child aged newborn to 1 year. For licensed care, an infant is a child aged newborn to 2 years.¶

(b) Toddler: For all providers other than licensed (registered or certified) care, a child aged 1 year to 3 years. For licensed care, a toddler is a child aged 2 years to 3 years.¶

(c) Preschool: A child aged 3 years to 6 years.¶

(d) School: A child aged 6 years or older.¶

(e) Special Needs: A child who meets the age requirement of the program and who requires a level of care over and above the norm for their age due to a physical, behavioral, or mental disability. The disability must be verified by one of the following:¶

(A) A physician, nurse practitioner, clinical social worker, or any additional sources in OAR 414-175-0024.¶

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.¶

(C) Eligibility for SSI.¶

(2) The following definitions apply to the types of care specified in the child care rate charts in subsections (4)(a) through (4)(c) of this rule:¶

(a) The Standard Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.¶

(b) The Enhanced Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider meets the training requirements of the Oregon Registry, established by the Oregon Center for Career Development in Childhood Care and Education.¶

(c) The Registered Family Rate applies to child care provided in the provider's own home when the provider meets criteria established by the Office of Child Care.¶

(d) The Certified Family Rate applies to child care provided in a residential dwelling that is certified by the Office of Child Care as a Certified Family Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.¶

(e) The Standard Center Rate applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Office of Child Care Certification rules.¶

(f) The Enhanced Center Rate applies to child care provided in an exempt center whose staff meet the training requirements of the Oregon Registry established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:¶

(A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry training requirements noted in subsection (b) of this section.¶

(B) New staff must meet the Oregon Registry training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (f)(i) of this subsection.¶

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.¶

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (b) or (f) of this section.¶

(h) The Certified Center Rate applies to child care provided in a center that is certified by the Office of Child Care or participating in the Alternative Pathway program through the Office of Child Care.¶

(3) The following provisions apply to child care payments:¶

(a) Providers not eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.¶

(b) Providers eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 136 hours a month, unless the provider customarily bills all families at a part-time monthly rate subject to the

maximum full-time monthly rate and is designated as the primary provider for the case.¶

(c) At their request, providers eligible for the enhanced or licensed rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month, customarily bill all families at a part-time monthly rate, and are designated as the primary provider for the case.¶

(d) Unless required by the circumstances of the caretaker or child, the Department will not pay for care at a part-time monthly or a full-time monthly rate to more than one provider for the same child for the same month.¶

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.¶

(f) The Department will pay for absent days each month the child is absent. Absent days can be billed if:¶

(A) It is the provider's policy to bill all families for absent days; and¶

(B) The child was scheduled to be in care, the provider bills for the amount of time the child was scheduled to be in care, and the child has not been absent for a calendar month.¶

(g) Child care providers are eligible to receive an incentive payment upon achieving and maintaining a three star or higher rating with the Quality Rating Improvement System (QRIS), or SPARK program, subject to all of the following provisions.¶

i. The incentive payment is in addition to the Department maximum rate.¶

ii. A provider may receive an incentive payment for any ERDC child that the Department paid the provider for full-time care (136 hours or more).¶

iii. Providers who are contracted for child care services through the ERDC program are not eligible to receive incentive payments, with the exception of Early Head Start providers.¶

iv. Eligibility for the incentive payment is effective the month after the QRIS rating has been achieved.¶

v. The incentive payment amount is based on the provider's star QRIS rating as follows: ¶

1. Star Rating&&&&&.Amount¶

2. 3&&&&&&&&&&&\$54¶

3. 4&&&&&&&&&&&\$72¶

4. 5&&&&&&&&&&&\$90¶

(h) Child care providers eligible for the licensed rate may receive payment from the Department for registration and other fees if they are required by the facility for a child to begin or continue care and the fees are also required of the general public. Fees related to penalties, fines, charges exceeding approved ERDC hours or rates (see section (4) of this rule), or advance payment for cost of care are not eligible for payment. ¶

(4) Effective June 1, 2022, the following are the child care rates based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (hourly or monthly):¶

(a) [see attached table]¶

(b) [see attached table]¶

(c) [see attached table]¶

(5) OAR 414-175-0050 establishes ERDC allowable child care cost, and the copay calculation, except for child care under a contract between a Head Start agency and the Department, which is covered under OAR 414-175-0105.¶

(6) Subject to the provisions in section (9) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:¶

(a) The monthly rate provided in section (4) of this rule.¶

(b) The product of the hours of care, limited by section (8) of this rule, multiplied by the hourly rate provided in section (4) of this rule.¶

(7) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:¶

(a) The amount billed by the provider or providers.¶

(b) The monthly rate established in this rule for 215 hours of care.¶

(8) The number of payable billed hours of care for a child is limited as follows:¶

(a) The total payable hours of care in a month may not exceed the amounts in paragraphs (a)(A) or (B) of this subsection:¶

(A) 125 percent of the number of child care hours authorized under OAR 414-175-0050; or¶

(B) The monthly rate established in section (4) of this rule multiplied by a factor of not more than 1.5, determined by dividing the number of hours billed by 215, when the caretaker meets the criteria for extra hours under section (10) of this rule.¶

(b) For a caretaker who earns less than the Oregon minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time).¶

(9) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (10) of this rule, is the lesser of one of the following:¶

(a) The amount billed by the provider or providers; or¶¶

(b) The monthly rate established in section (4) of this rule multiplied by a factor, of not more than 1.5, determined by dividing the number of hours billed by 215.¶¶

(10) The limit allowed by section (9) of this rule is authorized once the Department has determined the caretaker has special circumstances. For the purposes of this section, a caretaker has special circumstances when it is necessary for the caretaker to obtain child care in excess of 215 hours in a month to perform the requirements of their employment or training required to keep current employment, not including self-employment. This is limited to the following situations:¶¶

(a) The commute time to and from work or education settings exceeds two hours per day.¶¶

(b) The caretaker has an overnight shift and care is necessary for both shift hours and sleep hours.¶¶

(c) Retroactively effective January 1, 2023, multiple caretakers need care for both shift hours and sleep hours when:¶¶

(A) There is overlap in the caretakers' reported hours, and¶¶

(B) At least one caretaker works an overnight shift.¶¶

(d) The caretaker has a split shift and it is not feasible to care for the child between shifts.¶¶

(e) The caretaker consistently works, participates in education hours, or both, more than 40 hours per week.¶¶

(11) The payment available for care of a child who meets the special needs criteria described in section (1)(e) of this rule is increased in accordance with OAR 414-175-0076 if the requirements of both of the following subsections are met:¶¶

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age.¶¶

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.¶¶

(12) Provider payment rates are informed by a cost estimation model and may include financial incentives as outlined in ORS 329A.500(4)(c)(A)-(G).

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

NOTE: Attachments referenced are not included in this document. You may view the attachments at the following link:

<https://secure.sos.state.or.us/oard/view.action?ruleNumber=414-175-0075>

RULE SUMMARY: OAR 414-175-0076 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines how high needs child care payments are calculated in consideration of the additional cost to a child care provider for the additional care and supervision required because of a child's physical, mental or behavioral condition.

CHANGES TO RULE:

414-175-0076

High Needs Child Care Payments

(1) The payment authorized by OAR 414-175-0075(11) is calculated by adding the applicable high need payment established by section (4) of that rule to the additional amount determined by this rule.¶

(2) The additional amount determined by this rule is allowed in consideration of the additional cost to a child care provider for the additional care and supervision required because of a child's physical, mental or behavioral condition. To determine the additional amount, a factor ranging from 0 to 2, determined by this rule is multiplied by:¶

(a) \$5.00 for a payment calculated on an hourly basis; or¶

(b) \$840 for a payment calculated on a monthly basis.¶

(3) The factor used to make the calculation described in section (2) of this rule is determined by first establishing a score for each category listed in section (5) of this rule. The score is established by multiplying a rating and the weight for each category. The weight is given in section (5). The rating is determined as follows:¶

(a) The child's need for care and supervision is assessed and is compared with the needs of other children of the same age, and a rating is determined for each category. The rating is a whole number from zero to ten.¶

(b) Benchmark scores are given in section (5) of this rule for each category using several descriptions of need. The child's level is matched with the benchmark descriptions, and a rating is assigned based on a comparison of the child's needs and the benchmark descriptions. If a child's level of need falls between - or is described in part by - two benchmarks in the rule, an appropriate intermediate rating is assigned based on the benchmarks scores.¶

(4) After a score is determined for each category, the scores are added. The sum of the scores is changed to 100 if it is less than 110 and is reduced to 300 if it exceeds 300. The adjusted score is decreased by 100, and the remainder is divided by 100. The result is the factor used in section (2) of this rule.¶

(5) The categories, their weights, and standards for their ratings are as follows:¶

(a) Level of medical care - weight is 7:¶

(A) Child requires on-site medical attention by a licensed medical or mental health professional and the child care provider must have specialized training related to the child's medical or mental health needs - rating of 10.¶

(B) The provider must have specialized training related to the child's medical or mental health needs and consults frequently with a medical or mental health professional - rating of 8.¶

(C) Child requires medical attention by an individual who has received some specialized training related to the child's medical or mental health needs - rating of 4.¶

(D) Child requires medical attention or monitoring by an individual who has received special instructions from the parent or a service provider related to the child's medical or mental health needs - rating of 1.¶

(E) Child's needs can be met by staff with general knowledge - rating of zero.¶

(b) Self-sufficiency with daily tasks - weight is 5:¶

(A) Child requires total assistance with eating or toileting, such as requiring tube feedings or with special toileting needs, such as ostomy care - rating of 10.¶

(B) Child requires considerable assistance in eating or toileting - rating of 5.¶

(C) Child requires only minor assistance with eating or toileting - rating of 1.¶

(D) Child can take care of daily tasks with very little assistance - rating of zero.¶

(c) Mobility - weight is 5:¶

(A) Child is unable to help with positioning or movement, needs frequent repositioning, and the child is difficult to move - rating of 10.¶

(B) Child can help with transfers, pivoting and position - rating of 5.¶

(C) Child is able to move independently with minor support - rating of 1.¶

(D) Child's mobility is similar to other children of the same age - rating of zero.¶

(d) Communication skills - weight is 6:¶

(A) Child is unable to communicate needs and wants, and is unable to use alternative communication methods - rating of 10.¶

(B) Child relies entirely upon alternative methods such as sign language, picture boards, gestures, or facial expressions, to communicate the child's needs or to understand requests made of the child - rating of 8.¶

(C) Child has limited verbal skills. The child may require one-on-one communication to gain the child's attention, simplify instructions, or to understand the child's speech or gestures. Child may use alternative methods, mentioned in paragraph (B) of this sub-section, as a supplement to verbal skills - rating of 4.¶

(D) Child's communication skills are roughly similar to other children of the same age - rating of zero.¶

(e) Need for monitoring and intervention - weight is 11:¶

(A) The child must remain within the child care provider's direct view at all times and needs frequent intervention to prevent harm to self or other children - rating of 10.¶

(B) The child must remain within the provider's direct view at all times but does not need frequent intervention - rating of 7.¶

(C) Child has behaviors that frequently require adult intervention but are not a threat to the child's or other children's safety - rating of 4.¶

(D) Child needs assistance to initiate, respond to, or engage in peer interactions that are safe, positive, and appropriate - rating of 2.¶

(E) Child needs some assistance but generally does well if the assistance is provided - rating of zero.¶

(f) Cognition and comprehension - weight is 7:¶

(A) Child is unable to recognize danger, is unable to follow instructions without one-on-one assistance, and has difficulty processing basic sensory information about the environment. This does not include vision or hearing as the primary difficulty - rating of 10.¶

(B) Child needs to be given one instruction at a time and may need reminders of what was asked in order to complete instruction - rating of 5.¶

(C) Child is able to understand and solve problems with some special attention - rating of zero.¶

(g) Other special considerations - weight is 5. There are other considerations relating to the level of supervision required for the child that are not included in the above categories. A rating is determined based on how much more supervision the child needs - because of the other consideration - than other children of the same age.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0077

RULE SUMMARY: OAR 414-175-0077 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines how Oregon Department of Human Services (ODHS) paid one-time supplemental payments to child care providers in response to COVID-19.

CHANGES TO RULE:

414-175-0077

COVID-19 Provider Payments

The Oregon Department of Human Services (ODHS) shall pay for one-time supplemental payments as follows:

(1) A provider may only receive one of the payments listed in this subsection.

(a) In the amount of \$2,312.00 to child care providers who, at the time ODHS completed the data pull on November 13, 2020, met the following criteria:

(A) Eligible for payment under OAR 414-175-0080,

(B) Designation of a license-exempt standard family or enhanced family provider as identified by a Standard Family Rate provider type or an Enhanced Family Rate provider type, and

(C) Received a payment from the ODHS for child care provided during April, May, June, July, August, September, October, or November 2020.

(b) In the amount of \$2,842.00 to child care providers who, at the time the ODHS completed the data pull on November 13, 2020, met the following criteria:

(A) Met all criteria in paragraph (A)(i) through (iii) of this subsection, and

(B) Have not received an Emergency Child Care grant from the Oregon Department of Education, Early Learning Division or ODHS for either phase one or phase two.

(2) In the amount of \$735.00 to child care providers who, at the time the ODHS completed the data pull on June 30, 2021, met the following criteria:

(a) Eligible for payment under OAR 414-175-0080,

(b) Designation of a license-exempt standard family or enhanced family provider as identified by a Standard Family Rate provider type or an Enhanced Family Rate provider type, and

(c) Received a payment from ODHS on or after November 13th, 2020, for child care provided during any month from April 2020 through June 2021.

(3) In the amount of \$1508; funded by Coronavirus Aid, Relief, and Economic Security Act (2020) funds allotted to ODHS in the amount of \$1,740,000; to providers who, at the time ODHS completed the data pull on August 1, 2022, met the following criteria:

(a) Eligible for payment under OAR 414-175-0080,

(b) Designation of a license-exempt standard family or enhanced family provider as identified by a Standard Family Rate provider type or an Enhanced Family Rate provider types, and

(c) Did not receive a stabilization grant payment from the Department of Education, Early Learning Division or ODHS.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0080 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines all of the application, orientation, training, CBR, and other applicable requirements a child care provider must meet to be eligible to participate in the ERDC program.

CHANGES TO RULE:

414-175-0080

Eligibility of Child Care Providers

(1) The Department must approve a child care provider if information available to the Department provides no basis for denying eligibility unless it is determined that the provider or other subject individual (see OAR 125-007-0210, 407-007-0210(12)(a)(K), and 414-061-0030) is not eligible to provide care.¶

(2) The Department may approve a child care provider who is legally exempt (see section (11) of this rule) as a child care provider for a child (see OAR 461-001-0000) in their household, if all members of the household have an enrollment (see OAR 414-061-0020(18)), conditional enrollment (see OAR 414-061-0020(9)), or limited enrollment (see OAR 414-061-0020(25)(b)) in the Central Background Registry (see OAR 414-061-0000) and all of the following requirements are met:¶

(a) There is no criminal history consisting of a disqualifying crime listed in 45 CFR 98.43(c).¶

(b) The household member with the criminal or child abuse and neglect history is a parent (see OAR 461-001-0000) or caretaker relative (see OAR 461-001-0000) of the child needing child care.¶

(c) The child care is necessary pursuant to OAR 414-175-0023.¶

(d) The approval for Department payments only applies for the child of the household member, or a child for whom the household member is a caretaker relative.¶

(3) Ineligibility for payment may result from any of the following and begins on the date of occurrence:¶

(a) A violation of a requirement under section (7) of this rule. When a provider fails to keep daily attendance records as required under subsection (7)(e) of this rule, the "date of occurrence" begins on the day for which there is no required record.¶

(b) A finding of "denied".¶

(A) A provider may be "denied" if they are not enrolled in or are suspended from the Central Background Registry, if they have submitted an application for enrollment in the Central Background Registry that has been denied for cause, or if they have been removed for cause from the Central Background Registry by final order of the Office of Child Care (OCC) and have not been re-enrolled. A subject individual who has been denied enrollment in the Central Background Registry due to a determination of unsuitability shall not be eligible for enrollment in the Central Background Registry for five years from the date of denial.¶

(B) A subject individual may appeal OCC's determination not to enroll the subject individual in the Central Background Registry, for an enrollment, conditional enrollment, or limited enrollment as defined in OAR 414-061-0020(25), pursuant to OAR 414-061-0120.¶

(c) A finding of "failed".¶

(A) A provider may be "failed" if the Department determines, based on a specific eligibility requirement and evidence, that a provider does not meet an eligibility requirement of this rule not covered in paragraph (c)(A) of this section.¶

(B) While the provider is in "failed" status:¶

(i) The Department does not pay any other child care provider for child care at the "failed" provider's site.¶

(ii) The Department does not pay a child care provider at another site if the "failed" provider is involved in the child care operation unless the Department determines that the reasons the provider is in "failed" status are not relevant to the new site.¶

(C) A provider with a status of "failed" may reapply at any time by providing the required documents and information to the Department for review.¶

(d) A finding of "suspended".¶

(A) A provider may be "suspended" if the Department determines and provides notice that the provider does not meet an eligibility requirement in the following subsections and paragraphs of section (7) of this rule: (b), (d), (e), (h), (i), (j), (k), (l), (p)(H), (p)(I), (p)(L), (u), or in section (10) of this rule. A provider who has been "suspended" may challenge this status by requesting a contested case hearing.¶

(B) While the provider is in "suspended" status:¶

(i) The provider is ineligible for payment for at least six months.¶

(ii) The Department does not pay any other child care provider for child care at the "suspended" provider's site.¶

(iii) The Department does not pay a child care provider at another site if the "suspended" provider is involved in the child care operation unless the Department determines that the reasons the provider is in "suspended" status

are not relevant to the new site.

(C) A provider with a status of "suspended" may be eligible for payments after the six month ineligibility period ends when the provider has been approved following reapplication, including providing the required documents and information to the Department for review.

(e) The Department has referred an overpayment against the provider for collection and the claim is unsatisfied.

(4) The provider must submit a completed Child Care Provider Listing Form (Form 7494) to the Department within 30 calendar days from the date the Department issues the listing form to the client.

(5) To receive payment or authorization for payment, the provider must comply with at least one of the following subsections:

(a) If the provider is not legally exempt:

(A) Be currently certified or registered with OCC under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, 414-310-0100 to 414-310-0720, or 414-350-0000 to 414-350-0250 and be in compliance with the applicable rules;

(B) Complete the Department's listing process; and

(C) Be approved by the Department.

(b) If the provider is legally exempt and a legally exempt relative (see section (11) of this rule):

(A) Complete the Central Background Registry enrollment under OAR 414-061-0090;

(B) Complete the Department's listing process; and

(C) Be approved by the Department.

(c) If the provider is legally exempt and not a legally exempt relative for all children in care:

(A) Meet all OCC Regulated Subsidy Provider requirements under OAR 414-180-0005 through 414-180-0100;

(B) Submit to and pass a site visit at the location where care will be provided;

(C) Complete the Central Background Registry enrollment under OAR 414-061-0090;

i. For center-based care, a minimum of one individual must be enrolled in the Central Background Registry. All other subject individuals must be enrolled or conditionally enrolled in the Central Background Registry.

(D) Complete the Department's listing process; and

(E) Be approved by the Department.

(d) In the case of a child care facility licensed by a sovereign tribal nation:

(A) Must receive annual health and safety inspections from the Indian Health Services;

(B) Each individual who may have unsupervised access to a child in care must be enrolled in the Central Background Registry;

(C) Complete the Department's listing process; and

(D) Be approved by the Department.

(6) Each provider and each subject individual must have a history of behavior that indicates no substantial risk to the health or safety of a child in the care of the provider.

(7) Each provider must:

(a) Obtain written approval from their certifier or certifier's supervisor if the provider is also certified as a foster parent.

(b) Be 18 years of age or older and meet all of the following:

(A) Be enrolled in and not suspended from the Central Background Registry or be in an approved status by the Department;

(B) Have competence, sound judgment and self-control when working with children; and

(C) Be mentally, physically and emotionally capable of performing duties related to child care.

(c) Not be in the same ERDC or TANF filing group (see OAR 461-110-0330 and 461-110-0350) as the child cared for the parent (see OAR 461-001-0000) of a child in the filing group; or a sibling living in the home of the child.

(d) Allow the Department to visit or inspect the site of care while child care is provided.

(e) Keep and provide daily records as follows:

(A) Attendance records must accurately record the arrival and departure times for each child in care.

(B) Written attendance and billing records for each child receiving child care benefits from the Department must be retained for a minimum of 12 months.

(C) All records of attendance and billing must be provided to the Department upon request.

(D) Records for absent days billed to the Department under OAR 461-155-0150 must record the hours the child was scheduled to be in care and indicate the child was absent.

(f) Be the individual or facility listed as providing the child care.

(g) Only use someone else to supervise a child on a temporary basis if all of the following are met:

(A) The person was included on the most current listing form;

(B) The person is enrolled in the Central Background Registry; and

(C) The provider notified the Direct Pay Unit (DPU).

(h) Not bill a Department client for an amount collected by the Department to recover an overpayment or an

amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.<sup>¶</sup>

(i) Report to DPU within five days of occurrence.<sup>¶</sup>

(A) Any arrest, indictment, or conviction of any subject individual or individual described in section (5) of this rule.<sup>¶</sup>

(B) Any involvement of any subject individual or individual described in section (5) of this rule with CPS; the Office of Training, Investigations and Safety (OTIS); or any other agencies providing child or adult protective services.<sup>¶</sup>

(C) Any change to the provider's name or address including any location where care is provided.<sup>¶</sup>

(D) The addition of any subject individual.<sup>¶</sup>

(E) Any reason the provider no longer meets the requirements under this rule.<sup>¶</sup>

(i) Report suspected child abuse of any child in the provider's care to the child abuse and neglect hotline or a law enforcement agency.<sup>¶</sup>

(k) Supervise each child in care at all times. This includes being within sight or sound of all children; being aware of what each child is doing; being near enough to children to respond when needed; and being physically present when kindergarten-age or younger children are playing outside, unless the play area is fully fenced and hazard free.<sup>¶</sup>

(l) Prevent any individual who behaves in a manner that may harm children from having access to a child in the care of the provider. This includes anyone under the influence (see section (12) of this rule).<sup>¶</sup>

(m) Allow the custodial parent of a child in the provider's care to have immediate access to the child at all times.<sup>¶</sup>

(n) Inform a parent of the need to obtain immunizations for a child and have a completed, up-to-date Oregon shot record called the "Certification of Immunization Status" (CIS) form, or a non-medical or medical Exemption form, on file for each child in care.<sup>¶</sup>

(o) Take reasonable steps to protect a child in the provider's care from the spread of infectious diseases.<sup>¶</sup>

(p) Ensure that the home or facility where care is provided meets all of the following standards:<sup>¶</sup>

(A) Each floor level used by a child has two usable exits to the outdoors (a sliding door or window that can be used to evacuate a child is considered a usable exit). If a second floor is used for child care, the provider must have a written plan for evacuating occupants in the event of an emergency.<sup>¶</sup>

(B) The home or facility has water that is safe for drinking and preparing food (see section (14) of this rule).<sup>¶</sup>

(C) The home or facility has a working smoke detector on each floor level and in any area where a child naps.<sup>¶</sup>

(D) Each fireplace, space heater, electrical outlet, wood stove, stairway, pool, pond, and any other hazard has a barrier to protect a child. Any gate or barrier may not pose a risk or hazard to any child in care.<sup>¶</sup>

(E) Any firearm, ammunition, and other items that may be dangerous to children, including but not limited to alcohol, inhalants, tobacco and e-cigarette products, matches and lighters, any legally prescribed or over-the-counter medicine, cleaning supplies, paint, plastic bags, and poisonous and toxic materials are kept in a secure place out of a child's reach.<sup>¶</sup>

(F) The building, grounds, any toy, equipment, and furniture are maintained in a clean, sanitary, and hazard-free condition.<sup>¶</sup>

(G) The home or facility has a telephone in operating condition.<sup>¶</sup>

(H) No one may smoke or carry any lighted smoking instrument, including e-cigarettes or vaporizers, in the home or facility or within ten feet of any entrance, exit, window that opens, or any ventilation intake that serves an enclosed area, during child care operational hours or anytime child care children are present. No one may use smokeless tobacco in the home or facility during child care operational hours or anytime child care children are present. No one may smoke or carry any lighted smoking instrument, including e-cigarettes and vaporizers, or use smokeless tobacco in motor vehicles while child care children are passengers.<sup>¶</sup>

(I) No one may consume alcohol or use controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) on the premises (see section (12) of this rule) during child care operational hours or anytime child care children are present. No one under the influence of alcohol, controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) may be on the premises during child care operational hours or anytime child care children are present. No one may consume alcohol or use controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) in motor vehicles while child care children are passengers.<sup>¶</sup>

(J) Is not a half-way house, hotel, motel, shelter, or other temporary housing such as a tent, trailer, or motor home. The restriction in this paragraph does not apply to licensed (registered or certified) care approved in a hotel, motel, or shelter.<sup>¶</sup>

(K) Is not a structure -<sup>¶</sup>

(i) Designed to be transportable; and<sup>¶</sup>

(ii) Not attached to the ground, another structure, or to any utilities system on the same premises.<sup>¶</sup>

(L) Controlled substances (except lawfully prescribed and over-the-counter medications), marijuana (including

medical marijuana, marijuana edibles, and other products containing marijuana), marijuana plants, derivatives, and associated paraphernalia may not be on the premises during child care operational hours or anytime child care children are present.

(q) Complete and submit a new listing form every two years, or sooner at the request of the Department, so that the Department may review the provider's eligibility.

(r) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.

(s) Comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, and crib standards under 16 CFR 1219 and 1220.

(t) Place infants to sleep on their backs.

(u) Not hold a medical marijuana card; or distribute, grow, or use marijuana (including medical marijuana) or any controlled substance (except lawfully prescribed and over-the-counter medications).

(v) Develop and communicate expulsion and suspension policies to parents and caretakers.

(w) Provide care at a location within the state of Oregon.

(8) Legally exempt providers must complete the "Introduction to Child Care Health and Safety" two-hour, web-based training prior to Department approval.

(9) Legally exempt providers must complete the two part orientation provided by the Department or a Child Care Resource and Referral agency within 90 days of being approved by the Department if the provider begins providing child care services after June 30, 2010, or resumes providing child care services, after a break of more than one year that began after June 30, 2010.

(10) Child care providers and any individual supervising, transporting, preparing meals, or otherwise working in the proximity of child care children and those completing daily attendance and billing records shall not be under the influence.

(11) For purposes of these rules:

(a) "Premises" means the home or facility structure and grounds, including indoors and outdoors and space not directly used for child care.

(b) "Under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the individual has used alcohol, any controlled substances (including lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana), or inhalants that impairs their performance of essential job function or creates a direct threat to child care children or others. Examples of abnormal behaviors include, but are not limited to hallucinations, paranoia, or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech as well as difficulty walking or performing job activities.

(c) "Legally exempt" means the child care provider is exempt from licensing with the OCC because the provider is not subject to the licensing requirements under OAR 414-205-0000 to 414-205-0170, OAR 414-350-000 to 414-350-0405, and OAR 414-300-0000 to 414-300-0415.

(d) "Legally exempt relative" means a legally exempt provider who is a relative to all children in care including a great-grandparent, grandparent, aunt, uncle, or sibling not living in the home of any child in care.

(12) Legally exempt providers that are not a legally exempt relative to all children in care must meet all of the requirements in this section:

(a) Before approval by the Department:

(A) Have an up-to-date, in-person infant and child CPR and first aid certification or have a currently valid waiver of this requirement from the Child Care Resource and Referral program.

(B) Complete the Recognizing and Reporting Child Abuse and Neglect (RRCAN) web-based or classroom training.

(b) After approval by the Department:

(A) Complete six hours of ongoing education in each two-year listing period as provided in this subsection. All trainings must be accepted by the Oregon Center for Career Development (OCCD) and be part of the OCCD's 10 Core Knowledge Categories recognized by Oregon Registry Online to count toward the six hours.

(i) Two of the six hours must fall under the "Human Growth and Development" category; and

(ii) Two of the six hours must cover "Understanding & Guiding Behavior".

(B) Complete a Health and Safety training offered by OCCD annually.

(C) Complete the Child Development training offered by OCCD, as follows:

(i) Providers approved on or after October 1, 2022 must complete the training within 90 days of ODHS approval.

(ii) Providers approved before October 1, 2022 must complete the training by December 31, 2022 to remain approved.

(13) Child care centers or programs that are legally exempt from certification or registration with OCC, are located in a commercial or institutional facility, and receive payment from the Department on behalf of a family receiving a child care subsidy, must comply with the following minimum staff to children in care ratios:

(a) Six weeks through 23 months of age, the minimum number of staff to children is one to four. The maximum number of children in a group is eight.

(b) 24 months through 35 months of age, the minimum number of staff to children is one to five. The maximum number of children in a group is 10.

(c) 36 months of age to attending kindergarten, minimum number of staff to children is one to 10. The maximum number of children in a group is 20.

(d) Attending kindergarten and older, the minimum number of staff to children is one to 15. The maximum number of children in a group is 30.

(e) In a mixed-age group of children, the number of staff and group size shall be determined by the age of the youngest child in the group.

(14) As used in this section, "drinking water faucet or fixture" means any plumbing fixture on the premises used to obtain water for drinking, cooking, preparing infant formula or preparing food. This section only applies to a provider who is legally exempt and not a legally exempt relative. This section applies to legally exempt providers approved to receive Department subsidy payments and who submit a completed Child Care Provider Listing form for Department-approval. This section does not apply to care provided in the child's home when the legally exempt provider lives somewhere else.

(a) In locations where care is provided, lead testing is required for each drinking water faucet or fixture.

(b) Providers must test each drinking water faucet or fixture at least once every six years from the date of the last test. Providers who have had a drinking water faucets or fixture tested within six years prior to the effective date of this rule will need to submit the results to OCC.

(c) If a home or facility does not use any of the on-site plumbing fixtures to obtain water for drinking, cooking, preparing infant formula, or preparing food, the provider must:

(A) Submit a written statement to the Department or OCC identifying the alternative source of water and confirming that the provider does not use any on-site plumbing fixtures for drinking, cooking, preparing infant formula, or preparing food; and

(B) Notify the Department or OCC in writing if the alternative source of water changes.

(d) All sample collection and testing must be in accordance with the Environmental Protection Agency (EPA)'s 3Ts for Reducing Lead in Drinking Water in Schools and Child Care Facilities, Revised Manual from October 2018, adopted by this reference.

(A) If test results show water from any drinking water faucet or fixture has 15 parts per billion (ppb) or more of lead, the provider must:

(i) Prevent access to that drinking water faucet or fixture immediately after receiving the test results; and

(ii) Continue to prevent access to that drinking water faucet or fixture until mitigation is completed in accordance with paragraph (B) of this subsection.

(B) Following receipt of test results showing that water from any drinking water faucet or fixture has 15 parts per billion (ppb) or more of lead, the provider must comply with all of the following sub-paragraphs:

(i) Submit a corrective action plan to the Department or OCC for approval within 60 days of receiving the test results. The corrective action plan must identify an appropriate mitigation strategy in accordance with Module 6 of the EPA's 3Ts for Reducing Lead in Drinking Water in Schools and Child Care Facilities, Revised Manual from October 2018, adopted by this reference.

(ii) Implement the mitigation method within 30 days of approval by OCC.

(C) A provider who fails to submit a corrective action or a mitigation method is no longer eligible to receive child care subsidy payments.

(e) The provider must keep a copy of the most recent test results on-site at all times.

(f) Providers must follow the routine practices identified in Module 6 of the EPA's 3Ts for Reducing Lead in Drinking Water in Schools and Child Care Facilities, Revised Manual from October 2018.

(15) A child care provider approved to receive payment may become retroactively ineligible for payment starting on the date the provider violates a requirement under this rule, regardless of the date of the finding.

(16) The Oregon Department of Human Services Background Check Unit (BCU) shall retain their authority to determine eligibility for any child care providers whose applications, including incomplete applications, were submitted before September 1, 2022.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0081

RULE SUMMARY: OAR 414-175-0081 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule explains the grounds upon which the Department denies the request by a child care provider to receive child care payments based on the records of a subject individual.

CHANGES TO RULE:

#### 414-175-0081

##### Disqualifying Child Protective Service History for Providers

(1) This rule explains the grounds upon which the Department denies the request by a child care provider to receive child care payments from a self-sufficiency program of the Department based on the records of a subject individual. For the purposes of this rule, the provider and any individual identified under OAR 414-175-0080(4) is considered a subject individual under OAR 125-007-0210 and 407-007-0210(8)(a)(J). ¶

(2) The Department may find a child care provider ineligible for payment when the Child Protective Service (CPS) history of a subject individual, based on prior conduct, indicates that a subject individual is likely to engage in conduct that would jeopardize the safety of or have a detrimental effect on a child while in the care of the provider. ¶

(3) To make its determination, the Department may use any available information including the CPS records of the Department, an investigation of a complaint, or information provided by another agency. A single incident may be sufficient history for denial of eligibility. ¶

(4) If the Department obtains information of a potentially disqualifying nature with respect to a subject individual, as described in OAR 414-175-0080(4), the Department may request additional information to determine the provider's ability to provide care and must conduct a weighing test under OAR 125-007-0260, 407-007-0300, and 407-007-0320. Any additional information obtained must be reviewed by the Criminal Records Unit (CRU) for determination of eligibility. ¶

(5) Failure to respond to a request for information results in a finding of "failed." The provider or subject individual must disclose fully all requested information as part of the records check. ¶

(6) The Department may pay for the services of a child care provider even if a subject individual has a potentially disqualifying history of behavior if the Department determines, based on a fitness determination made under OAR 125-007-0260 and 407-007-0320, that repeated behavior is unlikely and that the presence of the individual likely would not jeopardize the safety of a child in the provider's care based on: ¶

(a) The content and source of the reports, the time elapsed since the reports, and the number of reports and referrals; ¶

(b) The individual's participation in rehabilitation, training, or counseling; ¶

(c) The likelihood of the individual's abuse of drugs or alcohol; and ¶

(d) Any other relevant eligibility requirements or supplemental information under OAR 407-007-0300 or 414-175-0080.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0082 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule explains the grounds upon which the Department denies a request by a child care provider to receive child care payments when the criminal history of a subject individual indicates behavior that may jeopardize the safety of a child or have a detrimental effect on a child while in the care of the provider, taking into account other applicable Oregon Administrative Rules.

CHANGES TO RULE:

414-175-0082

Disqualifying Criminal History of Provider

(1) This rule explains the grounds upon which the Department denies a request by a child care provider to receive child care payments from a self-sufficiency program of the Department based on the records of a subject individual. For the purposes of this rule, the provider and any individual identified under OAR 414-175-0080(4) is considered a subject individual under OAR 125-007-0210 and 407-007-0210(8)(a)(J). ¶

(2) The Department may find a child care provider ineligible for payment when the criminal history of a subject individual indicates behavior that may jeopardize the safety of a child or have a detrimental effect on a child while in the care of the provider, in the following circumstances, the subject individual has: ¶

(a) Been charged with or arrested for a drug-related, sexual, or violent crime listed in OAR 407-007-0270(1). There is a rebuttable presumption that such a subject individual is likely to engage in conduct that would pose a significant risk to a client, the Department, or a vulnerable individual. ¶

(b) Been convicted of two or more crimes listed in OAR 125-007-0270 at any time. ¶

(c) Been found in violation of probation for a crime listed in OAR 125-007-0270, at any time that relates to the person's qualification or duties as a child care provider. ¶

(d) Been charged with two or more crimes listed in OAR 125-007-0270 within the past five years. ¶

(e) Three or more arrests, at any time, for crimes listed in OAR 125-007-0270. ¶

(3) The Department may pay for the services of a child care provider even if a subject individual has a potentially disqualifying criminal or abuse history, defined by OAR 125-007-0270 and 407-007-0290, only if the Department has determined, based on a weighing test as described in OAR 125-007-0260, 407-007-0300, and 407-007-0320 and consideration of the information listed in OAR 407-007-0280, 407-007-0290, and this rule, that repeated criminal behavior is unlikely and that the provider does not present a danger to a child in the provider's care.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0085

RULE SUMMARY: OAR 414-175-0085 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines how the Department makes payments on behalf of eligible clients to the providers they select to care for their children and updates references to other applicable rules in Chapter 414.

CHANGES TO RULE:

#### 414-175-0085

##### Direct Provider Payments

(1) The Department makes payments on behalf of eligible individuals to the providers they select to care for their children. The payments are made directly to the provider. To be eligible for payment, a provider must:

(a) Charge individuals receiving ERDC benefits at a rate no higher than the rate charged other customers;

(b) Provide the Department their social security number (SSN) or IRS identification number; and

(c) Meet the requirements of OAR 414-175-0080.

(2) Payments to a provider of an individual receiving ERDC benefits are subject to each of the following limitations:

(a) Before August 1, 2021, payment is made for child care already provided in the ERDC program for all providers except Certified Centers certified by the Office of Child Care who receive payment in advance for anticipated hours a child is in care for the month.

(b) Payment is made for the amount charged to the individual but may not exceed the rate authorized in OAR 414-175-0075.

(c) No payment will be authorized unless the individual has designated a primary provider.

(d) No payment will be made for less than one dollar.

(e) Except as provided otherwise in subsection (f) of this section, a payment is made only for child care provided on or after the date the designated provider has met the requirements to be listed and paid through the Department.

(f) A designated child care provider who the Department approves to be listed and paid through the Department may receive payment for child care provided prior to obtaining Department approval if the provider met the other Department requirements and was licensed under OAR 414-205-0000 to 414-205-0170, 414-350-0000 to 414-350-0405, 414-300-0000 to 414-300-0415, or 414-310-0100 to 414-310-0720.

(g) A caretaker signature is not required on child care billing forms.

(h) A provider caring for an eligible child may receive payment in advance for hours the child is scheduled to be in care for the month.

(3) The Department may issue a payment to an eligible provider during a month for which child care is being provided to meet an unexpected need of the provider related to the care of a covered child. The payment may be made if, without the payment, continued care by the same provider would be jeopardized and the client could not immediately obtain child care from another provider.

(4) Child care providers must submit claims for child care on the appropriate form designated by the Department.

(a) The provider is responsible to obtain the appropriate payment form from the Department and to return the completed form to the Direct Pay Unit of the Department; or

(b) If using the Department tracking system, the provider is responsible to ensure children are checked in and out appropriately and payment requests are submitted through the system.

(5) No payment will be made for:

(a) A paper claim not received by the Department by the last day of the third month after the form was issued unless the Department determines the provider had good cause for not returning the form timely.

(b) An electronic claim if the request is not submitted by the 10th of the month following the month care is provided unless the Department determines the provider has good cause for not submitting the electronic claim timely.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0090

RULE SUMMARY: OAR 414-175-0090 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines how supplemental and restorative benefits are calculated and paid in the ERDC program and the situations in which an individual is entitled to these benefits.

CHANGES TO RULE:

414-175-0090

Restored and Supplemental Benefits

(1) Supplemental and restorative benefits are calculated and paid as follows:¶

(a) The effective date of the lost benefits is determined.¶

(b) The benefit group is not eligible for restored benefits in any month that eligibility for the benefits cannot be established. The benefit group has an opportunity to prove eligibility for any months in question.¶

(c) The correct benefits for the months in question are calculated.¶

(d) The amount the benefit group actually received is subtracted from the amount they should have received.¶

(e) The group with the largest number of people who were in the benefit group at the time the loss occurred is entitled to the restored benefit. If the location of that group is unknown, the benefit is restored to the benefit group containing the primary person at the time the loss occurred.¶

(2) An individual is entitled to a supplemental payment of benefits for the current month or restoration of benefits lost in a previous month if the individual received a lower benefit than the individual was entitled to for the reasons given in this rule. An individual may receive a restoration of lost benefits even if no longer eligible.¶

(3) An individual may receive a supplemental benefit if there was a change in the individual's circumstances that would cause an increase in benefits, if the report of change was made before the first day of the benefit month but too late for the Department to adjust the next month's benefits.¶

(4) An individual may receive a supplemental or restorative benefit if the Department caused an administrative underpayment. An administrative underpayment includes, but is not limited to, an underpayment caused by any of the following:¶

(a) Failure to take action on information reported to the Department.¶

(b) Use of an incorrect effective date.¶

(c) Denial, closure or reduction of benefits in error.¶

(d) Failure to send the individual a required decision notice when benefits are closed or reduced.¶

(e) Making a calculation error.¶

(5) An individual is entitled to a restoration of lost benefits if:¶

(a) The restoration results from a final order in a contested case.¶

(b) The restoration results from a court order.¶

(6) An individual who moves from Oregon remains eligible for a restoration of benefits.¶

(7) Restoration of benefits is limited to the extent provided for in OAR 414-175-0070.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0091

RULE SUMMARY: OAR 414-175-0091 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines the procedure for how replacement checks are issued to the payee and how claims need to be made.

CHANGES TO RULE:

414-175-0091

Replacement Checks

(1) Replacement checks are issued in compliance with ORS 293.475 and this rule.¶

(2) A replacement check is issued if the original check remains outstanding and the payee claims any of the following:¶

(a) The original check was not received. Five postal service working days must pass from the date the original check was issued before a replacement is issued.¶

(b) The original check was received but lost, stolen or destroyed without being endorsed. A replacement check is issued without a waiting period.¶

(c) The original check was endorsed but not cashed before it was lost, stolen or destroyed. A replacement check is issued if:¶

(A) The check was destroyed and remnants of the check are provided to the Department; or¶

(B) The check was endorsed "for deposit only" before it was lost, stolen or destroyed.¶

(3) A check may be issued to replace a check that has been processed by the State Treasurer for payment only after the individual has provided the Direct Pay Unit of the Department or the Oregon Department of Human Services with the information and documents needed to conduct an investigation into the loss.¶

(4) A replacement check is not issued if a check has been deposited directly to an account specified.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0092

RULE SUMMARY: OAR 414-175-0092 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule describes when a benefits are considered issued and any associated parameters on spending.

CHANGES TO RULE:

414-175-0092

Legal Status of Benefits Payments

(1) The Department considers a benefit issued if the check has been handed to the recipient, or mailed to the recipient. The Department considers a benefit issued, and received by the individual, when a direct check deposit is made to the recipient's bank account.¶

(2) Benefits, once issued, are unrestricted and do not require accountability for individual expenditures or amounts, unless limited elsewhere in rule.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0095 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines the hearings process and defines the terms used in the hearings process for ERDC, including identifying certain delegations of authority to the ODHS to conduct hearings on behalf of DELC.

CHANGES TO RULE:

414-175-0095

Hearings

(1) Definitions. For the purposes of this rule, the following definitions apply unless the context clearly indicates otherwise:¶

(a) "Claimant" means a person who has requested a hearing or who is scheduled for an Intentional Program Violation (IPV) hearing.¶

(b) "Department" means the Department of Early Learning and Care. References in this rule to Department include the Oregon Department of Human Services performing functions delegated to it by the Department pursuant to ORS XXX.XXX. ¶

(c) "Department representative" means a person authorized by section (4) of this rule to represent the Department in the hearing, including the Oregon Department of Human Services performing functions delegated to it by the Department pursuant to ORS XXX.XXX.¶

(d) "Good cause" means a circumstance beyond the control of the claimant and claimant's representative.¶

(e) "Oregon Department of Human Services" or "ODHS" means the Oregon Department of Human Services performing functions delegated to it by the Department pursuant to ORS 329A.XXX.¶

(f) "Request for hearing" is a clear written expression by an individual or representative that the person wishes to appeal a Department decision or action.¶

(2) Hearings Requests ¶

(a) A claimant has the right to a contested case hearing in the following situations upon the timely completion of a request for hearing:¶

(A) The Department has not approved or denied a request or application within 45 days of the application.¶

(B) The Department acts to deny, reduce, or close ERDC benefits.¶

(C) The Department has sent a decision notice that the claimant is liable for an overpayment (see OAR 414-175-0098 and 461-195-0501).¶

(D) The claimant asks for a hearing to determine if the waiver of an Intentional Program Violation hearing was signed under duress.¶

(E) The right to a hearing is otherwise provided by statute or rule.¶

(b) A request for hearing is complete for a caretaker when:¶

(A) An Administrative Hearing Request form (form DHS 443) is:¶

(i) Completed;¶

(ii) Signed by the claimant, the claimant's attorney, or the claimant's authorized representative; and¶

(iii) Received by the Oregon Department of Human Services. OAR 137-003-0528(1)(a) (which allows hearing requests to be treated as timely based on the date of the postmark) does not apply to hearing requests contesting a decision notice (see OAR 461-001-0000). The Department has adopted the exception to the Attorney General's model rules set out in this paragraph due to operational conflicts.¶

(c) In the case of a provider of child care challenging an overpayment or intentional program violation, when a written request for hearing from the provider is received by the Oregon Department of Human Services.¶

(d) In the event a request for hearing is not timely, the Oregon Department of Human Services may issue an order of dismissal if there is no factual dispute about whether subsections (2)(g) and (i) of this section provide a right to a hearing. The Oregon Department of Human Services may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.¶

(e) In the event the claimant has no right to a contested case hearing on an issue, the Oregon Department of Human Services may enter an order accordingly, subject to appeal pursuant to ORS 183.484, or may refer the hearing request to the Office of Administrative Hearings for a hearing on the question of whether the claimant has the right to a contested case hearing.¶

(f) To be timely, a completed hearing request with respect to eligibility for ERDC benefits, an IPV, or an overpayment, must be received by the Oregon Department of Human Services not later than the 45th day following the date of the decision notice. In a case described in subsection (2)(a)(D) of this rule, the request must be made within 90 days of the date the waiver was signed.¶

(g) When the Oregon Department of Human Services receives a completed hearing request that is not filed within

the timeframe required by subsection (2)(f) of this section but is filed no later than 120 days after a decision notice became a final order:¶

(A) The Oregon Department of Human Services refers the hearing request to the Office of Administrative Hearings for a contested case hearing on the merits of the Department's action described in the notice:¶

(i) If the Oregon Department of Human Services finds that the claimant and claimant's representative did not receive the decision notice and did not have actual knowledge of the notice; or¶

(ii) If the Oregon Department of Human Services finds that the claimant did not meet the timeframe required by subsection (2)(f) of this section due to excusable mistake, surprise, excusable neglect (which may include neglect due to significant cognitive or health issues), good cause, reasonable reliance on the statement of a Department or Oregon Department of Human Services employee relating to procedural requirements, or due to fraud, misrepresentation, or other misconduct of the Department or Oregon Department of Human Services.¶

(B) The Oregon Department of Human Services refers the request for a hearing to the Office of Administrative Hearings for a contested case proceeding to determine whether the claimant is entitled to a hearing on the merits if there is a dispute between the claimant and the Oregon Department of Human Services about either of the following paragraphs.¶

(i) The claimant or claimant's representative received the decision notice or had actual knowledge of the decision notice. At the hearing, the Oregon Department of Human Services or Department must show that the claimant or claimant's representative had actual knowledge of the notice or that the Oregon Department of Human Services or Department mailed or electronically mailed the notice to the correct address of the claimant or claimant's representative, as provided to the Oregon Department of Human Services.¶

(ii) The claimant qualifies for a contested case hearing on the merits under paragraph (2)(g)(A)(ii) of this section.¶

(C) The Oregon Department of Human Services may only dismiss such a request for hearing as untimely without a referral to the Office of Administrative Hearings if the following requirements are met:¶

(i) The undisputed facts show that the claimant does not qualify for a hearing under this section; and¶

(ii) The decision notice was served personally or by registered or certified mail.¶

(h) The time periods provided by this rule are computed in part pursuant to OAR 414-175-0050.¶

(i) If the Oregon Department of Human Services receives a hearing request more than 120 days after an overpayment notice became a final order by default:¶

(A) The Oregon Department of Human Services verifies whether its records indicate that the liable adult requesting the hearing was sent the overpayment notice.¶

(B) If no overpayment notice was sent to that liable adult, the overpayment hearing request is timely. The Oregon Department of Human Services will send the claimant a decision notice or a contested case notice.¶

(C) If the Oregon Department of Human Services determines that an overpayment notice was sent to the liable adult, there is no hearing right based on the issue of whether or not the overpayment notice was received.¶

(D) Any hearing request is treated as timely when required under the Servicemembers Civil Relief Act.¶

(E) The Oregon Department of Human Services may dismiss a request for hearing as untimely if the claimant or liable adult does not qualify for a hearing under this section.¶

(j) If the Oregon Department of Human Services receives a hearing request more than 120 days after a decision notice (other than an overpayment notice) became a final order by default:¶

(A) Any hearing request is treated as timely when required under the Servicemembers Civil Relief Act.¶

(B) The Oregon Department of Human Services may dismiss a request for hearing as untimely if the claimant or liable adult does not qualify for a hearing under subsection (2)(i) above.¶

### (3) Contested Case Hearings¶

(a) This rule applies to contested case hearings of the Department authorized by section (2)(a) of this rule. The hearings are conducted in accordance with the Attorney General's model rules at 137-003-0501 and following, except to the extent that Department rules are permitted to and provide for different procedures.¶

(A) The method described in OAR 137-003-0520(11) is used in computing any period of time prescribed in this division of rules.¶

(B) In any contested case to which this division of rules applies:¶

(i) When a party or claimant is not represented by an attorney:¶

(I) Upon request of the party or claimant, the Department or Oregon Department of Human Services provides work contact information - telephone number and address - for any Department or Oregon Department of Human Services employees expected to testify at the hearing as witnesses, except rebuttal witnesses.¶

(II) Except as provided in subparagraph (a)(B)(i) of this paragraph, the Department or the Oregon Department of Human Services and any party or claimant in the contested case are not required to provide the telephone numbers and addresses of witnesses prior to the hearing.¶

(ii) The Oregon Department of Human Services does not provide the telephone number and addresses of a witness if the Oregon Department of Human Services has concerns that the release of the information may affect the safety of the witness.¶

(b) When a Department or Oregon Department of Human Services employee represents the Department in a contested case to which this division of rules applies, requests for admission and written interrogatories are not permitted.¶¶

(c) The Oregon Department of Human Services' contested case hearings governed by this division of rules are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the parties' consent and applicable confidentiality laws.¶¶

(d) The Department has adopted the exceptions to the Attorney General's model rules set out in subsection (3)(b) and section (2) due to its caseload volume and because these discovery procedures would unduly complicate or interfere with the hearing process.¶¶

(4) Lay Representation in Contested Case Hearings¶¶

(a) Subject to the approval of the Attorney General, an officer or employee of the Department is authorized to appear on behalf of the Department, and an officer or employee of the Oregon Department of Human Services is authorized to appear on behalf of the Oregon Department of Human Services performing functions delegated to it by the Department pursuant to ORS 329A.500, for hearings related to:¶¶

(A) the Employment Related Day Care, including child care provider overpayments and intentional program violations.¶¶

(B) Client overpayments and intentional program violations, related to public assistance, including ERDC child care assistance.¶¶

(b) The State's representative may not make legal argument on behalf of the Department.¶¶

(A) "Legal argument" includes arguments on:¶¶

(i) The jurisdiction of the Department to hear the contested case;¶¶

(ii) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and¶¶

(iii) The application of court precedent to the facts of the particular contested case proceeding.¶¶

(B) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:¶¶

(i) The application of the statutes or rules to the facts in the contested case;¶¶

(ii) Comparison of prior actions of the Department in handling similar situations;¶¶

(iii) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;¶¶

(iv) The admissibility of evidence; and¶¶

(v) The correctness of procedures being followed in the contested case hearing.¶¶

(c) When an officer or employee appears on behalf of the Department or Oregon Department of Human Services performing functions delegated to it by the Department, the administrative law judge shall advise the State's representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection.¶¶

(d) If the administrative law judge determines that statements or objections made by the Department representative appearing under section (4)(a) of this rule involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the Department representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.¶¶

(e) The Department is subject to the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>. A Department representative appearing under section (4)(a) of this rule must read and be familiar with it.¶¶

(5) Continuation of Benefits¶¶

(a) This rule explains who may receive continuing benefits until a final order is issued in a contested case.¶¶

(b) Except as provided otherwise in this rule, a caretaker who is entitled to a continuing benefit decision notice under a rule in OAR 414-175-0055, at the option of the caretaker, receive continuing benefits, in the same manner and same amount, until a final order resolves the contested case. To be entitled to continuing benefits, the client must complete a hearing request not later than the later of:¶¶

(A) The tenth day following the date of the notice; and¶¶

(B) The effective date of the action proposed in the notice.¶¶

(c) The continuing benefits are subject to modification based on additional changes affecting the client's eligibility or level of benefits.¶¶

(d) In determining timeliness under section (5)(b) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.¶¶

(e) If benefits are reduced or closed to reflect a mass change, continuing benefits are not available.¶¶

(6) Intentional Program Violation (IPV) Hearings¶¶

(a) Notwithstanding the other rules in this division of rules and the rules at OAR 137-003-0501 and following, this

rule governs intentional program violation hearings for the ERDC program.<sup>¶</sup>

(b) An individual accused of an Intentional Program Violation may waive the right to an IPV hearing by signing a waiver on a form prescribed by the Oregon Department of Human Services. There is no further administrative appeal after the individual signs the waiver unless the individual asserts that the signature on the waiver was obtained by fraud or under duress and, within 90 days from the date the waiver was signed, requests a hearing to prove this. The individual has the burden of proving fraud or duress. If an Administrative Law Judge determines that the signature on the waiver was obtained by fraud or under duress, the waiver may be nullified and the Department may thereafter initiate an Intentional Program Violation hearing.<sup>¶</sup>

(c) If an IPV is not established by waiver or in court, the Oregon Department of Human Services may initiate the IPV hearing. The individual is entitled to an Advanced Notice of Intentional Program Violation Hearing at least 30 days in advance of the scheduled hearing. The notice includes the specific charge(s) alleged by the Oregon Department of Human Services.<sup>¶</sup>

(d) Within 90 days of the date the individual is notified in writing of the disqualification hearing, the Office of Administrative Hearings will conduct the hearing and serve a final order on the individual.<sup>¶</sup>

(e) The individual is entitled to a postponement of the scheduled hearing, if the request for postponement is made at least 10 days before the date of the scheduled hearing. The hearing will not be postponed for more than a total of 30 days, and the Office of Administrative Hearings may limit the postponements to one.<sup>¶</sup>

(f) When the individual fails to appear for the scheduled IPV hearing, the hearing may be conducted without the individual if:<sup>¶</sup>

(A) The individual refused the notice of hearing;<sup>¶</sup>

(B) The individual refused to claim the notice of hearing;<sup>¶</sup>

(C) The individual received the notice of hearing; or<sup>¶</sup>

(D) The notice of hearing was sent to the address last reported by the individual to the Oregon Department of Human Services and was returned as undeliverable.<sup>¶</sup>

(g) An individual who received notice of the scheduled IPV hearing has 10 days from the date of the scheduled hearing to present reasons indicating a "good cause" for failure to appear. An individual who did not receive notice of the scheduled IPV hearing must present reasons indicating "good cause" for failure to appear as part of a petition for reconsideration or rehearing of the final order within 30 days of the date of the final order.<sup>¶</sup>

(A) For purposes of this section, "good cause" means the individual was unable to attend the hearing and unable to request a postponement for reasons beyond his or her control.<sup>¶</sup>

(B) "Good cause" will be determined on the record by the Office of Administrative Hearings. If the individual shows "good cause", the Office of Administrative Hearings will schedule another IPV hearing for the individual.<sup>¶</sup>

(h) The officer or employee of the Oregon Department of Human services will request that the Administrative Law Judge advise the individual that the individual may refuse to answer questions during the hearing.<sup>¶</sup>

(i) The standard for proving that an individual has committed an Intentional Program Violation is clear and convincing evidence.<sup>¶</sup>

(j) There is no administrative appeal of a final order, except as provided in section (g) of section (6). A final order may be appealed to the Court of Appeals as provided in ORS 183.482.<sup>¶</sup>

(7) Informal Conference<sup>¶</sup>

(a) The State representative and the claimant may have an informal conference to discuss any of the matters listed in OAR 137-003-0575(4). The informal conference may also be used to:<sup>¶</sup>

(A) Provide an opportunity to settle the matter;<sup>¶</sup>

(B) Ensure the claimant understands the reason for the action that is the subject of the hearing request;<sup>¶</sup>

(C) Give the claimant an opportunity to review the information that is the basis for that action;<sup>¶</sup>

(D) Inform the claimant of the rules that serve as the basis for the contested action;<sup>¶</sup>

(E) Give the claimant and the Department representative the chance to correct any misunderstanding of the facts;<sup>¶</sup>

(F) Determine if the claimant wishes to have any witness subpoenas issued; and<sup>¶</sup>

(G) Give the Oregon Department of Human Services an opportunity to review its action.<sup>¶</sup>

(b) The claimant may, at any time prior to the hearing date, request an additional conference with the Department representative.<sup>¶</sup>

(c) The Department may provide to the claimant the relief sought at any time before the Final Order is served.<sup>¶</sup>

(d) Notwithstanding any rule in this chapter of rules, prehearing conferences are governed by OAR 137-003-0575.<sup>¶</sup>

(8) Burden of Proof<sup>¶</sup>

(a) Except in an IPV case, the claimant has the burden of proof.<sup>¶</sup>

(9) Withdrawals of Hearing Requests<sup>¶</sup>

(a) A claimant may withdraw a request for hearing at any time before a final order has been issued on the contested case orally or in writing.<sup>¶</sup>

(b) The Oregon Department of Human Services will send an order confirming the withdrawal of a hearing request to the claimant's last known address. The claimant may cancel the withdrawal in writing if received by the Department hearing representative up to the tenth work day following the date such an order is served.¶¶

(10) Dismissal for Failure to Appear¶¶

(a) Except in an IPV case, a hearing request is dismissed by order when neither the party nor the party's representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing. The Oregon Department of Human Services will cancel the dismissal order on request of the party on a showing that the party was unable to attend the hearing and unable to request a postponement for reasons beyond his or her control.¶¶

(11) Proposed and Final Orders¶¶

(a) When the Oregon Department of Human Services refers a contested case under this division of rules to the Office of Administrative Hearings (OAH), the Oregon Department of Human Services indicates on the referral:¶¶

(A) Whether the Oregon Department of Human Services is authorizing a proposed order, a proposed and final order (OAR 137-003-0645(4)), or a final order.¶¶

(B) If the Oregon Department of Human Services is establishing an earlier deadline for written exceptions and argument because the contested case is being referred for an expedited hearing.¶¶

(b) When the Oregon Department of Human Services authorizes either a proposed order or a proposed and final order:¶¶

(A) The claimant (see OAR 461-025-0305) or party may file written exceptions and written argument to be considered by the Oregon Department of Human Services. The exceptions and argument must be received at the location indicated in the Office of Administrative Hearings order not later than the 20th day after service of the proposed order or proposed and final order, unless subsection (1)(b) of this rule applies.¶¶

(B) Proposed Orders. After Office of Administrative Hearings issues a proposed order, the Oregon Department of Human Services issues the final order, unless the Oregon Department of Human Services requests that Office of Administrative Hearings issue the final order under OAR 137-003-0655.¶¶

(C) Proposed and Final Orders. If the claimant or party does not submit timely exceptions or argument following a proposed and final order, the proposed and final order becomes a final order on the 21st day after service of the proposed and final order unless the Oregon Department of Human Services has issued a revised order or has notified the claimant or party and Office of Administrative Hearings that the Department will issue the final order. When the Oregon Department of Human Services receives timely exceptions or argument, the Oregon Department of Human Services issues the final order, unless the Oregon Department of Human Services requests that Office of Administrative Hearings issue the final order under OAR 137-003-0655.¶¶

(c) If in a contested case hearing the Office of Administrative Hearings is authorized to issue a final order on behalf of the Oregon Department of Human Services, the Oregon Department of Human Services may issue the final order in the case of default.¶¶

(d) A petition by a claimant or party for reconsideration or rehearing must be filed with the individual who signed the final order, unless stated otherwise on the final order.¶¶

(12) Final Order; Timeliness and Effective Date¶¶

(a) A Final Order will be issued or the case otherwise resolved not later than 90 days following the request for hearing, except for IPV cases which will be issued within 90 days of the date the claimant was notified in writing that a hearing had been scheduled.¶¶

(b) Delay due to a postponement or continuance granted at claimant's request shall not be counted in computing the time limits specified in section (12)(a) of this rule.¶¶

(c) The final order is effective immediately upon being signed or as otherwise provided in the order.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0096

RULE SUMMARY: OAR 414-175-0096 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines when a child care provider has a right to a contested case hearing. It intends to outline the process by which provider hearings are carried out.

CHANGES TO RULE:

414-175-0096

Provider Hearings

(1) A child care provider has a right to a contested case hearing only to contest a fitness determination that results in a denial of eligibility for payment, dispute an allegation of an overpayment of child care, or dispute a finding of "suspended." Hearings to contest a fitness determination that results in a denial are governed by OAR 407-007-0330. Other hearings under this section are governed by OAR 414-175-0095. ¶

(2) In the case of an alleged overpayment, the child care provider may delay repayment on an overpayment until a final order is served by completing a request for hearing not later than the 45th day following the date of the overpayment notice. ¶

(3) A child care provider whose application for listing is denied and who fails to request a hearing within the 45-day hearing request period is not eligible to reapply for listing until 180 days following the date of the denial notice. ¶

(4) If a child care provider requests a hearing to contest a fitness determination resulting in a denial of eligibility for payment, the child care provider remains ineligible for payment pending the hearing unless the decision to deny eligibility was based on a mistake in identifying the person with the CH or CPS record.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0097 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines the rights and responsibilities of individuals regulated by Division 175 of Chapter 414 and their right to be informed of them.

CHANGES TO RULE:

414-175-0097

Rights and Responsibilities

(1) Individuals regulated by Division 175 of Chapter 414 have the following rights and the right to be informed of them:¶

(a) The right to information about the ERDC program administered by the Department.¶

(b) The right to confidentiality for individually identifiable information to the extent provided under federal and state law, including the administrative rules of the Department.¶

(c) The right, at any time, to obtain the standard form for requesting a hearing.¶

(d) The right to request a hearing to the extent provided in OAR 414-175-0095 or OAR 414-175-0096.¶

(e) The right to request and receive an application to apply for the ERDC program in paper or electronic format.¶

(f) The right to have a decision on eligibility made within the timelines set forth in OAR 414-175-0005.¶

(g) The right to apply for and receive benefits and services from the Department and its contractors, grantees, agents, and providers of services who receive payments from the Department without discrimination on the basis of race, color, national origin, religion, gender, sexual orientation, disability, or political beliefs.¶

(h) The right to courteous, fair, and dignified treatment by Department personnel, including personnel carrying out functions on behalf of the Department, and to file a complaint with the Department about such personnel conduct or customer service to the extent provided in OAR 407-005-0100 to 407-005-0120.¶

(i) The right to file a complaint with the Department about discrimination or unfair treatment as provided in Procedure DHS-010-005-01, "Filing a Individual Complaint or Report of Discrimination" or OAR 407-005-0030.¶

(2) To be eligible for benefits, individuals must do all of the following:¶

(a) Provide true, complete, and accurate information required to determine eligibility and verify that information, to the extent permitted by their physical and mental condition, or authorize the branch office to obtain verification.¶

(b) Comply with the eligibility requirements of the program for which they are requesting or receiving benefits.¶

(c) Report within 10 calendar days any changes that could affect their eligibility for benefits.¶

(d) Accept social services that are court-ordered or related to a case plan.¶

(e) Cooperate with case reviews by providing requested information and verification.¶

(f) Complete the application process or inform the branch office of their decision to withdraw the application for program benefits.¶

(g) Share these responsibilities with a spouse who resides in the same household.¶

(3) Release of Information to the Individual¶

(a) The Department must make the information in a case record of an individual available to the following people within the limits described in this rule:¶

(A) Anyone in the filing group.¶

(B) Anyone authorized by the primary person or by a person in the filing group.¶

(b) The primary person and filing group members may have access only to an individual's information that is related to the time during which they had that position in the case. The person can appoint an authorized representative whose access to an individual's information covers only that same period.¶

(c) The "minimum necessary" standard as described in OAR 410-014-0040 is extended to limit the sharing of individually identifying information by the Department about one member of a filing group with either another member of the filing group or anyone authorized by another member of the filing group.¶

(d) Except for HIV information, case record information may be requested by the individual and released to the individual by telephone. The individual must satisfy the Oregon Department of Human Services branch office as to the individual's identity.¶

(e) Except as provided in this section (3) and in OAR 410-014-0030(6), information obtained from a third party that is part of the case record of the individual is available to the individual.¶

(f) The Department may withhold from an individual information obtained from a confidential informant, including the identity of the informant, if all of the following are true:¶

(A) The information was submitted to the Oregon Department of Human Services in confidence.¶

(B) The information was not required by law to be submitted.¶

(C) The information can reasonably be considered confidential.¶

(D) The Oregon Department of Human Services has obliged itself not to disclose the information.¶

(E) The Oregon Department of Human Services is not using the withheld information in a contested case hearing in which the individual is a party.¶

(F) The public interest would suffer if the information were disclosed.¶

(g) Subject to OAR 407-003-0010:¶

(A) A individual, an authorized representative, or a personal representative (as defined at 410-014-0000(32), including an attorney who represents the individual on a matter before the Oregon Department of Human Services) may request a copy of information from the individual file at no cost once every 12 months. If the individual, authorized representative, or personal representative requests another copy of the same information already provided more frequently than once every 12 months, the Oregon Department of Human Services branch office may impose a reasonable, cost-based fee.¶

(B) If an authorized third party who is not an authorized representative or personal representative requests an individual's records, fees may be assessed for accessing stored records, extracting filed matter, duplication of records, or other costs necessary to releasing requested information.¶

(C) A branch office may establish additional, reasonable fees to cover extraordinary costs of duplicating records, making extensive searches, or preparing written summaries of records.¶

(D) At the option of the Oregon Department of Human Services branch office, fee assessment may be waived.¶

(h) An individual designated by the manager must be present while the individual or the authorized third party has access to the case record. No one except an Oregon Department of Human Services employee is allowed to remove any material from the case record. Subject to payment of any cost-based fee assessed by an Oregon Department of Human Services branch office, consistent with OAR 407-003-0010 and this section (3), the branch office will provide the individual examining the case record a copy of any portion of the case record that the individual is entitled to examine.¶

(4) Except for health, treatment, and domestic violence information, a verbal authorization from the individual is permitted to allow verbal release of case record information specified by the individual to third parties. Any such verbal authorization to release information to a third party is valid for a period of 30 days from the date the authorization is given verbally, unless a shorter time period is given.¶

(5) Release of Information to Law Enforcement Officers¶

(a) The Department may provide an individual's information to a law enforcement officer in any of the following situations:¶

(A) The law enforcement officer is involved in carrying out public assistance or medical assistance laws, or any investigation, criminal or civil proceedings connected with administering the ERDC program. ¶

(B) A Department employee, including non-Department employees performing functions delegated by the Department, may disclose information from personal knowledge that does not come from the individual's interaction with ODHS or the Department.¶

(C) The disclosure is authorized by statute or administrative rule.¶

(b) Except as provided in subsection (c) of this rule, the Department, including Department employees and non-Department employees performing functions delegated by the Department, may give an individual's current address, Social Security number, and photo to a law enforcement officer if the law enforcement officer makes the request in the course of official duty, supplies the individual's name, and states that the individual:¶

(A) Is a fugitive felon or is violating parole or probation; or¶

(B) Has information that is necessary for the officer to conduct official duties of the officer, and the location or apprehension of the individual is within the officer's official duties. ¶

(c) If domestic violence has been identified in the household, subsection (b) of this rule does not authorize the release of information about a victim of domestic violence unless a member of the household is either wanted as a fugitive felon or is violating probation or parole.¶

(d) For purposes of this rule, a fugitive felon is a person fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony¶

(e) For purposes of this rule, a law enforcement officer is an employee of the Oregon State Police, a county sheriff's department, or a municipal police department, whose job duties include arrest authority.¶

(6) In the absence of a specific and current individual's authorization that covers the applicable information and identifies the recipient, the release of an individual's information to Service Providers and Legal Bodies is allowable as follows:¶

(a) The Department employees, including non-Department employees performing functions delegated by the Department, may release to service providers information necessary for accurate billing of services provided to individuals.¶

(b) The following individual information may be released to the individual's child care providers:¶

(A) The program for which the individual is eligible.¶

(B) The amount of the Department child care payment.¶

(C) The individual's copayment amount.¶¶

(D) Reasons for a delay in payment, but only information that is specific to the reason for the delay.¶¶

(c) The Department may not disclose any information identifying any individual by name or address to any committee, advisory board, legislative body, or individual member of such committee, board, or body.¶¶

(d) Except for social security numbers, health, treatment, and domestic violence information, the Department may disclose the minimum necessary information about an individual to a staff member in the office of a member of the Oregon state legislature or United States Congress who has been asked by the individual to review an action taken by the Department.¶¶

(e) Court-appointed special advocate (CASA) volunteers who have been appointed to a specific child are authorized to view information about the child. All other information must be removed from the case file.¶¶

(f) The Department may release an individual's information in a judicial proceeding if at least one of the following is true:¶¶

(A) The proceedings are directly connected with administering the ERDC program.¶¶

(B) A judge orders the release of the information.¶¶

(g) When appearing before the court in a judicial proceeding where the proceeding is not directly connected with administering the ERDC program, a Department employee, including non-Department employees performing functions delegated by the Department, provides the presiding judge with copies of the state statutes relating to confidentiality of an individual's records (such as ORS 411.117, 411.320, and 412.074). The employee requests the court's guidance about testifying under the statutes.¶¶

(7) Release of Information on Child Support and Paternity Cases¶¶

(a) In the absence of a specific and current individual's authorization that covers the applicable information and identifies the recipient, the Department may release to the Department of Justice, Division of Child Support, the names of the alleged father, the obligor, and the obligee, the amount of support ordered, and the amount of current and past due support owed at any given time from its electronic files.¶¶

(A) "Alleged father" means any male who has been named as a possible father of a child for whom paternity has not been established or has been contested.¶¶

(B) "Obligee" means a caretaker parent or custodian, spouse, former spouse or other dependent person for whose benefit a court or hearing officer has ordered payment of support.¶¶

(C) "Obligor" means any person who has been ordered by a court or hearing officer to make payments for the support of a child or a caretaker parent or custodian, spouse, former spouse or other dependent person.¶¶

(8) Disclosure of an Individual's Information¶¶

(a) The Department may disclose the minimum necessary information without the individual's authorization for purposes directly connected with:¶¶

(A) Administering the public assistance, medical assistance, and SNAP program laws, except for social security numbers, health, treatment, and domestic violence information.¶¶

(B) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with administering the ERDC program.¶¶

(C) Any legally authorized audit or review by a governmental entity conducted in connection with administering the ERDC program.¶¶

(b) An individual's information, other than health or treatment information, may be exchanged with other governmental or private, non-profit agencies to only the extent necessary to assist applicants or recipients of public assistance, medical assistance, or SNAP benefits to access and receive other governmental or private, non-profit services that will benefit or serve the applicant or recipient. Reasonable efforts must be made to obtain applicant or recipient authorization in advance.¶¶

(c) An individual's information may be disclosed without the individual's authorization for purposes directly connected with foster care and adoption assistance programs under Title IV-E of the Social Security Act.¶¶

(d) Notwithstanding any rule in this division, individual information-- other than health or treatment information - may be disclosed to an Oregon attorney who represents that the individual if both of the following requirements are met:¶¶

(A) The attorney states that he or she currently is representing the individual.¶¶

(B) The attorney states that the individual has authorized disclosure of the individual's information to the attorney.¶¶

(9) Nondiscrimination in Determining Eligibility¶¶

(a) The Department will determine eligibility without discrimination on the basis of race, color, sex, national origin, disability, political beliefs, age, or religious creed.¶¶

(b) The following acts of discrimination on grounds of race, color, sex, political beliefs, age, religious creed or national origin are specifically prohibited:¶¶

(A) Denying an individual any service, financial aid, or other benefit provided under any program.¶¶

(B) Providing any service, financial aid, or other benefit to an individual that is different, or is provided in a

different way, from that provided to others under the program, unless such action is necessary to provide individuals with disabilities with aids, benefits or services that are as effective as those provided to others.¶

(C) Subjecting an individual to segregation or separate treatment in any way related to receipt of any service, financial aid, or other program benefit.¶

(D) Restricting an individual in any way from any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under any program.¶

(E) Treating an individual differently from others in determining whether they satisfy any admission, enrollment, quota, eligibility, membership or other requirement or condition individuals must meet to be provided any service, financial aid, or other benefit provided under any program.¶

(F) Denying an individual an opportunity to participate in any program or afford them an opportunity to do so that is different from that afforded others under the program.¶

(G) Denying a person the opportunity to participate as a member of a planning or advisory body that is an integral part of the program.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0098

RULE SUMMARY: OAR 414-175-0098 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule describes the Department's rules related to assessing and recovering overpayments.

CHANGES TO RULE:

414-175-0098

Overpayments

(1) Overpayments are a benefit or service received by or on behalf of the individual, or a payment made by the Department on behalf of an individual that exceeds the amount for which the individual is eligible. ¶

(2) All overpayments for the ERDC program will be established and recovered in accordance with division 195 of chapter 461 of the Oregon Administrative Rules by the Oregon Department of Human Services. ¶

(3) Any individual or any child care provider that may be subject to the overpayment rules must cooperate fully with the Oregon Department of Human Services.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

RULE SUMMARY: OAR 414-175-0099 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule outlines that an intentional program violation is when a provider makes a false or misleading statement or misrepresenting, concealing, or withholding information related to his or her request to be eligible for a child care payment under OAR 414-175-0080 or a claim for a child care payment and outlines the disqualification that may occur as a result.

CHANGES TO RULE:

414-175-0099

Intentional Program Violations

(1) In the child care programs, a provider commits an intentional program violation (IPV) by intentionally making a false or misleading statement or misrepresenting, concealing, or withholding information related to their request to be eligible for a child care payment under OAR 414-175-0080 or a claim for a child care payment.¶

(2) An IPV is established by a state or federal court, by an administrative agency in a contested case, or by an individual signing the designated form acknowledging the IPV and waiving the right to an administrative hearing. If the IPV will be established in a contested case, the Department initiates the IPV hearing.¶

(3) Except as provided in section (4) of this rule, there is no administrative appeal after an individual waives the right to an IPV hearing and the penalty may not be changed by subsequent administrative action.¶

(4) An individual who waives the right to an IPV hearing may seek relief in court or request a contested case hearing on the sole issue of whether the waiver was signed under duress. If there is a determination that the waiver was signed under duress, the initial IPV penalty is void, and:¶

(a) If a court determines that a waiver was signed under duress, the court may determine whether an IPV occurred and the amount of the penalty.¶

(b) If an administrative law judge determines that a waiver was signed under duress, the state may initiate an IPV hearing to determine whether an IPV occurred and the amount of the penalty.¶

(5) An individual may be subject to disqualification for an intentional program violation (IPV) only if the individual was advised of the disqualification penalties prior to committing the IPV. ¶

(6) If an IPV is established against an individual through a contested case hearing, a waiver of the right to hearing, or by a state or federal court, that individual is liable for repayment to the Department of the full amount of overpayment (see OAR 461-195-0501) the Department has established. The amount of restitution to the Department ordered by a court as part of a criminal proceeding does not lower the amount owed to the Department. Payments of restitution to the Department are credited against the amount owed. A client is not subject to an IPV disqualification but is still required to repay overpayment amounts.¶

(7) A child care provider who has incurred an overpayment established as an IPV claim is ineligible for payment:¶

(a) For six months and until the full amount of the overpayment is paid; or¶

(b) Permanently, if the Department finds that such ineligibility is in the public interest. The following is a non-exclusive list of reasons that support a determination of permanent ineligibility: safety concerns; or, the likelihood of future violations; or, the degree of egregiousness of any of the established IPV's; or, the degree of primary involvement in the violation by the provider.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0100

RULE SUMMARY: OAR 414-175-0100 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule requires individuals participating in the ERDC program to cooperate with any quality control review processes.

CHANGES TO RULE:

414-175-0100

Quality Control Review

(1) Individuals are required to cooperate in the Department's or Oregon Department of Human Service's quality control review process.¶

(2) An individual who refuses to cooperate is ineligible for the program in which the review takes place until the individual cooperates.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500

ADOPT: 414-175-0105

RULE SUMMARY: OAR 414-175-0105 is being adopted to transfer the ERDC program from ODHS to DELC as required by House Bill 3073 (2021 regular session). This rule establishes criteria for individuals that participate in a Head Start program in addition to being eligible for ERDC and aligns the Head Start rules with broader ERDC policy..

CHANGES TO RULE:

414-175-0105

Children in the Head Start Program

(1) Initial eligibility for the ERDC program must be met prior to receiving child care under a contract between a Head Start agency and the Department.<sup>¶</sup>

(2) The following subsections apply when a child in the ERDC program receives child care under a contract between a Head Start agency and the Department.<sup>¶</sup>

(a) The Head Start agency is considered the provider of child care.<sup>¶</sup>

(b) If the Head Start agency uses another provider for the child care, that provider must meet the requirements in OAR 414-175-0085 and following.<sup>¶</sup>

(c) The payment made by the Department on behalf of the child is made only to the Head Start agency. The child is ineligible for child care payments for care not provided under the contract between the Head Start agency and the Department.<sup>¶</sup>

(d) Once the Department makes a child care payment for the child under the contract, the child may not lose child care benefits until the next August 31, unless any of the following paragraphs apply:<sup>¶</sup>

(A) The caretaker was found ineligible because of inaccurate information provided to the Department or because information was withheld from the Department when eligibility was determined.<sup>¶</sup>

(B) The caretaker fails to meet the requirements of the locally-prepared agreement among the client and the Head Start program.<sup>¶</sup>

(C) The child is no longer attending a Head Start contracted program.<sup>¶</sup>

(D) The filing group no longer meets Oregon residency requirements under OAR 414-175-0020.<sup>¶</sup>

(e) For any month in which the child is eligible to be served under a contract covered by this rule, the copayment is \$0.

Statutory/Other Authority: ORS 329A.500

Statutes/Other Implemented: ORS 329A.500