Secretary of State

NOTICE OF PROPOSED RULEMAKING

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division)	410
Agency and Division	Administrative Rules Chapter Number

Sandy Cafourek	500 Summer St. NE, Salem, OR 97301	503-945-6430
Rules Coordinator	Address	Telephone

RULE CAPTION

Align with Department of Human Services OAR Chapter 461 Rules

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

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND: OAR 410-120-0006

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 413.042

Other Auth.:

Stats. Implemented: ORS 413.042, 414.065

RULE SUMMARY

In coordination with the Department of Human Services' (Department) revision of rules established in OAR chapter 461 for all overpayment, personal injury liens, and estate administration, the Division is amending OAR 410-120-0006 to assure that the Division's rule aligns with and reflects information found in the Department's amended rules. In OAR 410-120-0006, the Division adopts and incorporates Department rules and must update OAR 410-120-0006 accordingly. The Division is amending this rule that incorporates rules established in OAR Chapter 461 for all overpayment, personal injury liens, and estate administration for Authority programs covered under OAR 410-200. References to OAR Chapter 461 in contracts of the Authority are deemed to be references to the requirements of this rule.

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

Sept. 19 SC

~~August 18,~~ 2016 by 5 p.m. Send comments to: dmap.rules@state.or.us

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Karen Wheeler	Karen Wheeler	8/5/16
Signature	Printed name	Date

Note: Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin.* A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

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

Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division) 410

Agency and Division — Administrative Rules Chapter Number

Align with Department of Human Services OAR Chapter 461 Rules

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

In the Matter of: The amendment of OAR 410-120-0006

Statutory Authority: ORS 413.042

Other Authority:

Stats. Implemented: ORS 413.042, 414.065

Need for the Rule(s): Need for the Rule(s): In coordination with the Department of Human Services' (Department) revision of rules established in OAR chapter 461 for all overpayment, personal injury liens, and estate administration, the Division is amending OAR 410-120-0006 to assure that the Division's rule aligns with and reflects information found in the Department's amended rules. In OAR 410-120-0006, the Division adopts and incorporates Department rules and must update OAR 410-120-0006 accordingly. The Division is amending this rule that incorporates rules established in OAR Chapter 461 for all overpayment, personal injury liens, and estate administration for Authority programs covered under OAR 410-200. References to OAR Chapter 461 in contracts of the Authority are deemed to be references to the requirements of this rule.

Documents Relied Upon, and where they are available: ORS 413.042

Fiscal and Economic Impact: None

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): None

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: None

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: None

c. Equipment, supplies, labor and increased administration required for compliance: None

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

Administrative Rule Advisory Committee consulted?: N/A If not, why?: Aligning with the Department of Human Services OAR Chapter 461.

Karen Wheeler — Karen Wheeler — 8/5/16

Signature — Printed Name — Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

410-120-0006

Medical Eligibility Standards

As the state Medicaid and CHIP agency, the Oregon Health Authority (Authority) is responsible for establishing and implementing eligibility policies and procedures consistent with applicable law. As outlined in OAR 943-001-0020, the Authority and the Department of Human Services (Department) work together to adopt rules to assure that medical assistance eligibility procedures and determinations are consistent across both agencies.

(1) The Authority adopts and incorporates by reference the rules established in OAR Chapter 461 for all overpayment, personal injury liens and estates administration for Authority programs covered under OAR chapter 410, division 200.

(2) Any reference to OAR chapter 461 in contracts of the Authority are deemed to be references to the requirements of this rule and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority.

(3) For purposes of this rule, references in OAR chapter 461 to the Department or to the Authority shall be construed to be references to both agencies.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 413.042 & 414.065

Oregon Secretary of State

Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact

Department of Human Services, Office of Self-Sufficiency Programs			461
Agency and Division			Chapter Number
Kris Skaro	Human Services Building 500 Summer St NE, E-48 Salem, OR 97301	503-945-6067	kris.a.skaro@state.or.us
Rules Coordinator	Address	Telephone	Email Address

Rule Caption: *Amending rules relating to public and medical assistance programs*

In the Matter of: *The amendment of OAR 461-120-0030, 461-135-0010, 461-135-0835, 461-160-0015, and 461-180-0040*

Submit Comments: Written comments may be submitted until Friday, August 26, 2016 at 5:00 p.m. via email to kris.a.skaro@state.or.us, faxed to 503-373-7032, or mailed to Kris Skaro, Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon, 97301.

Public Hearing: Monday, August 22, 2016 at 1 p.m.
500 Summer St. NE, room 255
Salem, OR 97301

This location is accessible for people with mobility impairments and auxiliary aids are available upon request.

RULEMAKING ACTION

AMEND: 461-120-0030, 461-135-0010, 461-135-0835, 461-160-0015, 461-180-0040

ORS 409.050, 411.060, 411.070, 411.404, 411.706, 413.042, 413.085, 414.231, 416.340, 416.350
Stat. Auth.

42 CFR 435.403, Social Security Act 1902e(12)
Other Auth.

ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 413.042, 413.085, 414.231, 416.340, 416.350
Stats. Implemented

Rule Summary

OAR 461-120-0030 about the state of residence for an individual in a medical facility is being amended to change the criteria for determining the state of residence in the Oregon Supplemental Income Program Medical (OSIPM), the Qualified Medicare Beneficiary (QMB) program, and the Refugee Medical (REFM) program to align with federal policy. It is also being amended to remove a reference to General Assistance Medical (GAM).

OAR 461-135-0010 about assumed eligibility for medical programs is being amended to clarify that in the OSIPM program, continuous eligibility for children can apply at initial eligibility and at redetermination. It is also being amended to state that continuous eligibility does not apply if the child is eligible for any other

Medicaid program that provides OHP Plus benefits. Previously there was no requirement that other programs be evaluated prior to providing continuous coverage under OSIPM.

OAR 461-135-0835 about limits on estate claims is being amended to clarify which Department personnel are authorized to present, file, and resolve estate recovery claims. It is also amended to authorize Estate Administration Unit managers to designate additional personnel with the authority to present, file, or resolve estate recovery claims. The rule is also amended to exclude, consistent with ORS 411.795 as amended by HB 4042 (2016), a claim against an estate for benefits correctly paid under HB 4042.

OAR 461-160-0015 about resource limits is being amended to align the Department with federal policy regarding the resource limits for QMB-DW and eliminate an outdated reference to OSIP resource limits.

OAR 461-180-0040 about effective dates for special or service needs is being amended to clarify that eligibility for special needs and services is contingent on OSIPM and OHP Plus eligibility. Specifically, the rule is amended to state that the effective date for a special need is either the date of request for the special need item or the effective date for OSIPM, whichever is later, and that the effective date for long-term care is the date for Department authorizes the service plan, except that the service plan may not be authorized prior to the effective date for Medicaid OHP Plus benefit package.

In addition, non-substantive edits may be made to these rules to: ensure consistent terminology throughout self-sufficiency program rules and policies; make general updates consistent with current Department practices; update statutory and rule references; correct formatting and punctuation; improve ease of reading; and clarify Department rules and processes.

The Department requests public comment on whether other options should be considered for achieving the substantive goals of the rules while reducing the negative economic impact of the rules on business. Rule text showing edits for the rules described above is available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm.

Need for the Rules

OAR 461-120-0030 needs to be amended to align with federal regulations regarding the state of residence for an individual in a medical facility. This change meets the need by incorporating the appropriate federal requirements. The rule also needs to be amended to remove an obsolete reference to GAM.

OAR 461-135-00100 needs to be amended to correct and clarify current policy regarding continuous eligibility for children. This change clarifies and incorporates federal requirements related to continuous eligibility for children.

OAR 461-135-0835 needs to be amended because frequently financial institutions demand documentation showing that Estate Administration Unit personnel are authorized to present, file, or resolve claims. The rule is amended to clarify which personnel are authorized. The rule also needs to be amended to comply with section 7 of HB 4042 which excludes an estate claim for benefits correctly paid under HB 4042. The amendment clarifies that those benefits are excluded from an estate claim.

OAR 461-160-0015 needs to be amended because the current rule is inconsistent with federal policy. The amendment ensures Department policy is aligned with federal policy.

OAR 461-180-0040 needs to be amended because the current rule does not account for the fact that OSIPM eligibility may not be established until after the date of request for special needs. The rule also does not specify that services cannot take effect until OHP Plus coverage (OSIPM or MAGI) is in place; rather, the rule requires

one to assume or extrapolate using OAR 411-015-0015. The amendment addresses these issues and supports the current practice of eligibility determinations.

Documents Relied Upon

None.

Fiscal and Economic Impact

The Department is unable to estimate the fiscal impact on the Department of amending OAR 461-120-0030 on the Department and clients. Residency is an eligibility requirement to receive OSIPM, QMB, and REFM. Some clients who previously met the residency requirement may no longer meet the requirement, and some clients who previously did not meet the requirement may now meet it. Clients not meeting Oregon residency may still meet eligibility requirements in the state they are determined to reside. It is not anticipated that this change will impact a significant number of clients or that it will have a significant fiscal impact on the Department or clients. The Department estimates no fiscal impact on other state agencies, providers, local government, or business, including small business. No small businesses are subject to this rule. There is no cost of compliance for small business.

The Department is unable to estimate the fiscal impact of amending OAR 461-135-0010 on the Department and clients. Some children may receive benefits for a longer period of time if they are ineligible for other Medicaid OHP Plus benefits. It is not anticipated that this change will impact a significant number of clients or that it will have a significant fiscal impact on the Department or clients. The Department estimates no fiscal impact on other state agencies, providers, local government, or business, including small business. No small businesses are subject to this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-160-0015 as it relates to the resource limit for QMB-DW will have no fiscal impact on the Department or clients because Oregon has no QMB-DW clients. The Department estimates that amending OAR 461-160-0015 as it relates to the OSIP resource limit will have no fiscal impact on the Department or clients because the change is consistent with current practice. The Department estimates no fiscal impact on other state agencies, providers, local government, or business, including small business. No small businesses are subject to this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-135-0835 will have no fiscal impact on state agencies, including the Department, clients, providers, the public, local government, or business, including small business. No small businesses are subject to this rule. There is no cost of compliance for small business.

The Department estimates that amending OAR 461-180-0040 will have no fiscal impact on the Department or clients or providers because it is amended to support current practice. The Department estimates no fiscal impact on other state agencies, the public, local government, or business, including small business. No small businesses are subject to this rule. There is no cost of compliance for small business.

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

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

Administrative Rule Advisory Committee Consulted? If no, why not?

Yes, except a RAC exception was granted for OAR 461-180-0040 because it is a clarification of current practice.

461-135-0835 ~~Tech. Eff. 2-1-16~~ Eff. 10-1-16
Limits on Estate Claims

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

(2) For the OSIP program (see OAR 461-101-0010):

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

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

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

(d) The claim for correctly paid payments or benefits under OSIP may not be enforced if the deceased recipient is survived by a *child under age 21* (see OAR 461-135-0832), a *child with a disability* (see OAR 461-135-0832), or a *child with a visual impairment* (see OAR 461-135-0832); and the child survives to the closing of the *probate estate*.

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

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

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

(a) The amounts of any payments or benefits, including overpayments, are a claim against the *probate estate* of any deceased recipient. The amount includes the state's monthly contribution, paid prior to January 1, 2014, to the federal

government for the recipient's Medicare Part D prescription drug coverage. Effective July 1, 2016, excluding any correctly paid benefits under Oregon Laws 2016, chapter 93, section 1. Any *overpayment* of benefits under Oregon Laws 2016, chapter 93, section 1 is included in a claim against the *probate estate*.

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

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

(d) The claim for correctly paid payments or benefits under the ~~OSIP~~ *General Assistance* program may not be enforced if the deceased recipient is survived by a *child under age 21*, a *child with a disability*, or a *child with a visual impairment*; and the child survives to the closing of the *probate estate*.

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

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

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

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

(c) The amount of any incorrectly paid payments or benefits, excluding an administrative error *overpayment* ~~(see OAR 461-195-0501)~~, are a claim, against the *probate estate* of any deceased recipient.

(d) The claim for correctly paid payments or benefits under MA is deferred until the death of the surviving *spouse*, if any, of the deceased recipient. After the death of a surviving *spouse*, the deferred claim of the deceased recipient is a claim against the following *assets* (see OAR 461-135-0832) or their proceeds in the *probate estate* of the *spouse*.

(A) For a recipient who died prior to October 1, 2008, the Department has a claim against the *probate estate* of the *spouse* for *medical assistance* (see OAR 461-135-0832) paid to the recipient, but only to the extent that the *spouse* received property or other *assets* from the recipient through any of the following:

(i) Probate.

(ii) Operation of law.

(B) For a recipient who dies on or after October 1, 2008, the Department has a claim against the *probate estate* of the recipient's *spouse* for *medical assistance* paid to the recipient, but only to the extent that the recipient's *spouse* received property or other *assets* from the recipient through any of the following:

(i) Probate.

(ii) Operation of law.

(iii) An *interspousal transfer* (see OAR 461-135-0832), including one facilitated by a court order, which occurs:

(I) Before, on, or after October 1, 2008; and

(II) No earlier than 60 months prior to the first *date of request* (see OAR 461-135-0832) established from the applications for MA of the recipient and the recipient's *spouse*, or at any time thereafter, whether approved, withdrawn, or denied.

(e) The claim for correctly paid payments or benefits under MA may not be enforced if the deceased recipient is survived by a *child under age 21*, a *child with a disability*, or a *child with a visual impairment*.

(f) For recipients who are not *permanently institutionalized* (see OAR 461-135-0832):

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

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

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

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

(g) For *permanently institutionalized* individuals, a claim includes amounts calculated according to subsection (f) of this section and the following:

(A) The amount of any payments or benefits before July 18, 1995 to or on behalf of a recipient who was *permanently institutionalized* is a claim against the *probate estate* of the deceased recipient.

(B) The amount of any payments or benefits paid between July 19, 1995 through September 30, 2013 to or on behalf of a recipient who was *permanently institutionalized* is a claim against the *estate* of the deceased recipient.

(C) The amount of any payment for services provided in a nursing facility, an intermediate care facility for an individual with intellectual or developmental disabilities, a psychiatric institution, or other *medical institution* (see OAR 461-135-0832) paid after September 30, 2013 to or on behalf of a recipient who was *permanently institutionalized* is a claim against the *estate* of the deceased recipient.

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

(6) For trusts that comply with OAR 461-145-0540(10) and (11), the maximum distribution to the Department is the total of all MA payments or benefits paid to or on behalf of the deceased recipient. Subsections (4)(d) and (4)(e) of this rule do not apply to this section.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 413.042, 413.085, 416.340, 416.350
Stats. Implemented: ORS 93.969, 125.495, 411.404, 411.620, 411.630, 411.708, 411.795, 413.085, 416.310, 416.350, Or Laws 2016, ch 93, § 1 and 9