SS RULE WORKSHEET

Rule #: 461-115-0430
Program Analyst: **Janell White**
Effective Date: 07/01/2019

Use this worksheet for permanent and temporary rules. For permanent rules, skip question 6 (justification). For temporary rules, skip question 5 (fiscal impact). Send the worksheet and rule text to Robert Trachtenberg.

1. List any federal statutes, regulations, or waivers that these rules implement or that authorize the Department to adopt policies on this subject, if any. 42 CFR 435.916(b)

2. Summarize the rule change in an objective, simple, and understandable statement. **461-115-0430 Periodic Redeterminations states that eligibility determinations of OSIP, OSIPM, and QMB must be completed once every 12 months. This is being revised to state eligibility determinations must be completed at least once every 12 months.**

3. Need for the rule change: What problem currently exists that the change seeks to solve? How does the change fix that problem? **The current rule is not in alignment with federal policy. This change aligns with federal policy in allowing redeterminations to be done earlier than 12 months.**

4. Documents Relied Upon: Please list any specific documents you have used in preparing these rules and where they can be located including letters of approval or communication from federal agencies, state plans, rules from other states, federal manuals, federal transmittals, correspondence, e-mail, etc.

5. Fiscal Impact (Read this link for guidance): ***(TEMPORARY RULES SKIP THIS SECTION)***

   a. Identify any state agencies, including the Department, likely to be economically affected, positively or negatively, by the rule change and describe what the impact will be. **No agencies will be impacted**

   b. Identify the types of clients and providers likely to be economically affected, positively or negatively, by the rule change and describe what the impact will be. **No client or provider impact**

   c. Identify any units of local government (e.g. county-operated AAAs) likely to be economically affected, positively or negatively, by the rule change and describe what the impact will be. **No local government impact**

   d. Small Business (50 or fewer employees)

      A. Identify the types of small businesses and industries subject to the rule change (if any) and summarize the likely economic impact on each type. **No small business impact**

      B. Estimate the number of small businesses subject to the proposed rule. **None**

      C. Identify the cost of compliance (if any) for small business. Include projected equipment, supplies, reporting, recordkeeping, and employee time and training required for

compliance. What types of employees will be doing the compliance or training and what is their average compensation. **No fiscal impact**

D. Is the fiscal impact on small business combined with the cost of compliance significantly adverse? **No fiscal impact**

e. Identify any other likely economic impact on small or large business (if any). **No fiscal impact**

f. Is the economic effect on business significant? **No fiscal impact**

g. Identify any other members of the public likely to be economically affected by the rule change and summarize the impact. **No fiscal impact**

6. Justification: ***(TEMPORARY RULES ONLY)***

Briefly explain the following:

- The specific consequences that would result from failure to make this change immediately
- Who would suffer those consequences
- Why or how not making this change would cause these consequences
- How making this change immediately will avoid or mitigate these consequences

7. If this change is the result of legislation passed in the last 24 months, list the bill number and year it passed.

Program Analysts, this is just a reminder for you: Does the rule change affect Client Notices/Agency Forms/Systems etc.?

(Revised 08/24/17)

461-115-0430 Eff. 9-1-16
Periodic Redeterminations; Not EA, ERDC, SNAP, or TA-DVS

The Department periodically redetermines the *eligibility* (see OAR 461-001-0000) of clients for benefits and assigns a redetermination date by which the next determination is required. The Department selects the redetermination date based on the client's circumstances and according to the following requirements:

(1) In the GA program, the Department redetermines *eligibility* at least once every 12 months.

(2) In the OSIP and OSIPM programs, the Department determines *eligibility* at least once every ~~each~~ 12 months for clients who are not eligible for SSI. No redetermination is required for clients who are eligible for SSI.

(3) In the QMB program, the Department determines *eligibility* at least once every ~~each~~ 12 months for clients who are not eligible for SSI. For QMB recipients who are also eligible for OSIPM, a redetermination for QMB is completed with the redetermination of OSIPM.

(4) The REF and REFM programs are time limited programs; therefore, no periodic redeterminations are made.

(5) In the SFPSS program, the Department redetermines *eligibility* at least once every 12 months. The Department redetermines program *eligibility* by redetermining *eligibility* for the TANF program.

(6) In the TANF program, benefits will end the last day of the *certification period* (see OAR 461-001-0000). The Department redetermines *eligibility* according to the following schedule:

(a) At least once every six months for each of the following:

(A) Clients not participating in an *activity* (see OAR 461-001-0025) of an open *case plan* (see OAR 461-001-0025).

(B) Clients who are currently serving a JOBS disqualification.

(b) At least once every 12 months for all other clients.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 412.014, 412.049, 413.085, 414.685, 414.826, 414.839
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 412.014, 412.049, 413.085, 414.685, 414.826, 414.839

RAC Worksheet

Rule: 461-135-0750

Your Name: Heather Williams

What does your change do?
OAR 461-135-0750 about individuals applying for or receiving long-term care or home and community-based care is being amended to remove effective date language that already exists in 461-180-0090, replace "mentally retard" with "intellectually disabled" and make other minor changes for clarity.

What problem is the change intended to address?
The OSIPM effective date language already exists in OAR 461-180-0090 and the Department has not used the term mentally retarded for some years now (and it doesn't match the acronym).

RAC's Draft Fiscal Impact Information

Will these rule changes cause any anticipated fiscal impact (**either negative or positive**) on the following groups.

a. Identify any state agencies (**including DHS**) likely to be economically affected by the rule change and summarize the impact. **There will be no fiscal impact associated with this change.**

b. Identify the types of clients and providers likely to be economically affected by the rule change and summarize the impact. **None.**

c. Identify any units of local government (e.g. county-operated AAAs) likely to be economically affected by the rule change and summarize the impact. **None.**

d. Small Business (50 or fewer employees)

   A. Identify the types of small businesses and industries subject to the rule change (if any) and summarize the likely economic impact on each type. **None.**

   B. Identify the cost of compliance (if any) for small business. Describe the projected reporting, recordkeeping, and other administrative activities required for compliance. How much employee time is required to comply and be trained, what types of employees will be doing the compliance or training, what is their average compensation expense for the business for that time. Does equipment or supplies need to be purchased or rented? What is the estimated cost of professional services. Estimate fixed and out-of-pocket expenses. **None.**

   C. Is the fiscal impact on small business combined with the cost of compliance significantly adverse? **No fiscal impact.**

e. Identify any other likely economic impact on small or large business. **None.**

f. Consider d - e above. Is the economic effect on business significant? **No effect.**

g. Identify any other members of the public likely to be economically affected by the rule change and summarize the impact. **None.**

461-135-0750 Eff. ~~10-1-17~~04/01/19

Individuals Applying for or Receiving Long-Term Care or Home and Community-Based Care

~~(1)~~ An individual who does not meet the income requirements for OSIPM under sections (3) or (5) of OAR 461-155-0250 and who meets the following requirements ~~of subsections (a) and (b) of this section~~ is subject to the OSIPM income limit specified in OAR 461-155-0250(2):

~~(a)~~(1) The individual meets at least one of the following eligibility standards:

(~~A~~a) The criteria in OAR 411-015-0100 (except subsection (1)(b)) regarding eligibility for nursing facility care or *home and community-based care* (see OAR 461-001-0030).

(~~B~~b) The level-of-need criteria for an ICF-ID.

(~~C~~c) The service eligibility standards for medically fragile children in OAR 411-350-0010.

(~~D~~d) The service eligibility standards for the CIIS (Children's Intensive In-Home Services) behavioral program in OAR 411-300-0100 to 411-300-0220.

(~~E~~e) The service eligibility standards for the Medically Involved Children's Waiver in OAR chapter 411, division 355.

(~~b~~2) The individual resides in or will reside in one of the following locations for a *continuous period of care* (see OAR 461-001-0030) and is applying for or receiving long-term care services authorized by the Department ~~(eligibility for OSIPM is not effective prior to the first day of the month that includes the effective date for long-term care under OAR 461-180-0040)~~:

(~~A~~a) A Medicaid-certified nursing facility.

(~~B~~b) An intermediate care facility for the ~~mentally retarded~~intellectually disabled (ICF-ID).

(~~C~~c) A *home and community-based care* setting.

(~~2~~3) An individual who resides or will reside in a *home and community-based care* setting must receive Title 1915(c) waivered services.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 413.085, 414.685
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404

RAC Worksheet

Rule: 461-135-0845

Your Name: Richard "Rick" Mills

What does your change do?

1. Many non-substantive formatting changes.
2. Establishes a rebuttable presumption that multi-party financial accounts are the property of the medical assistance recipient for estate recovery purposes. The presumption may be overcome by convincing evidence under the consideration furnished test.
3. Establishes that personal property or financial accounts that are transferred on death or payable on death are presumed to be the property of the deceased medical assistance recipient for estate recovery purposes.
4. Moved a portion of Section (7)(b) into its own Section (9).
5. Deleted all of current Section (9), that established the value of assets in a probate estate as listed on the probate inventory or estate tax return. Experience shows that often the value listed on the inventory is not the true fair market value. Individuals receiving public assistance or medical assistance don't file estate tax returns.
6. Added a new Section (10) for establishing the value of assets subject to an estate recovery claim when recovery has been deferred, typically during the lifetime of a surviving spouse.

What problem is the change intended to address?

1. Non-substantive edits bring the rule in alignment with current formatting practice.
2. The rule does not currently have criteria for determining the medical recipient's interest in a multi-party financial account for estate recovery purposes. This is necessary, so the estate recovery program knows what portion of a multi-account is subject to an estate recovery claim for medical assistance. It also establishes a rebuttable presumption that all of a multi-party financial account belonged to the medical assistance recipient. The rule also establishes the burden of proof and criteria to overcome the presumption.
3. The rule does not currently have criteria for determining the interest in a payable on death account or personal property of a medical assistance recipient for purposes of estate recovery. This change establishes a presumption that the full value of the asset is subject to an estate recovery claim on the death of the medical assistance recipient.
4. Provisions in Section (7)(b) were applicable only to that subsection but should have been applicable to all of Section (7), renumbered as Section (8). The provision in Section (7)(b) was moved into its own new Section (9) and made applicable to all of Section (7), renumbered as Section (8).
5. Section (9) established the value of an asset in a probate estate as the amount listed in the probate inventory or estate tax return. Experience shows that public assistance and medical assistance recipients do not have to prepare estate tax returns. Experience also shows that often times the value listed in an inventory is not the true fair market value. The existing Section (9) has been deleted and any dispute as to the true fair market value of a probate asset will be adjudicated in the probate court.
6 The current rule does not have a way to value assets subject to estate recovery when estate recovery is deferred for an extended time, usually when the public assistance or medical assistance recipient is survived by a spouse. The new Section (10) establishes criteria for establishing the value of such assets.

RAC's Draft Fiscal Impact Information

Will these rule changes cause any anticipated fiscal impact (**either negative or positive**) on the following groups.

a. Identify any state agencies (**including DHS**) likely to be economically affected by the rule change and summarize the impact.

This change is unlikely to have any effect on a state agency, including DHS or OHA. The changes are specific to the estate recovery program for DHS and OHA. The changes are consistent with current practices so should not result in a material change in revenue recovered.

b. Identify the types of clients and providers likely to be economically affected by the rule change and summarize the impact.

These rules are applied after the death of a recipient, so will have no economic effect on recipients. The changes are limited to estate recovery of public assistance and medical assistance, which has no effect on providers.

c. Identify any units of local government (e.g. county-operated AAAs) likely to be economically affected by the rule change and summarize the impact.

The changes are limited to estate recovery of public assistance and medical assistance and will have no effect on local government.

d. Small Business (50 or fewer employees)

A. Identify the types of small businesses and industries subject to the rule change (if any) and summarize the likely economic impact on each type.

The changes are limited to estate recovery of public assistance and medical assistance and will not have a direct effect on small businesses. It may have indirect effect on small businesses that are owed money by the deceased since estate recovery claims have priority over most other creditor claims in the deceased recipient's estate.

B. Identify the cost of compliance (if any) for small business. Describe the projected reporting, recordkeeping, and other administrative activities required for compliance. How much employee time is required to comply and be trained, what types of employees will be doing the compliance or training, what is their average compensation expense for the business for that time. Does equipment or supplies need to be purchased or rented? What is the estimated cost of professional services. Estimate fixed and out-of-pocket expenses.

The changes are limited to estate recovery of public assistance and medical assistance and will have no compliance cost on small business.

C. Is the fiscal impact on small business combined with the cost of compliance significantly adverse?

No. The changes are limited to estate recovery of public assistance and medical assistance provided to deceased recipients.

e. Identify any other likely economic impact on small or large business.

None is known or predicted.

f. Consider d - e above. Is the economic effect on business significant?

No.

g. Identify any other members of the public likely to be economically affected by the rule change and summarize the impact.

The heirs and devisees of the deceased public assistance or medical assistance recipient may have their inheritance or distribution reduced or eliminated because the estate recovery claim has to be paid before an inheritance or distribution. Probate attorneys may receive larger fees if an recipient’s estate decides to litigate the validity of an estate recovery claim under this rule.

461-135-0845 ~~Eff. 1-1-14~~

Valuation of Life Estate, Transfer on Death Deeds, Reversionary Interest and Property

(1) Effective July 18, 1995, the ~~value~~*value* (See OAR 461-135-0832) of a~~n expressly created life estate~~*life estate* (See OAR 461-135-0832) or other ~~interest~~*interest* (See OAR 461-135-0832) in ~~real~~*real property* (See OAR 461-135-0832)~~, or personal property~~*personal property* (See OAR 461-135-0832) or other ~~asset~~*assets* (See OAR 461-135-0832) measured by or valued with respect to a life span, including that of the relevant recipient of *assistance* (See OAR 461-135-0832), is established by reference to the ~~life estate~~*life estate* valuation tables ~~set forth~~ in this ~~rule~~section and is valued as of the ~~time of death~~*time of death* (See OAR 461-135-0832) of the recipient of *assistance* irrespective of the actual life span of the measuring life.

Age	Life Estate	Remainder
0	.97188	.02812
1	.98988	.01012
2	.99017	.00983
3	.99008	.00992
4	.98981	.01019
5	.98938	.01062
6	.98884	.01116
7	.98822	.01178
8	.98748	.01252
9	.98663	.01337
10	.98565	.01435
11	.98453	.01547
12	.98329	.01671
13	.98198	.01802
14	.98066	.01934
15	.97937	.02063
16	.97815	.02185
17	.97700	.02300
18	.97590	.02410
19	.97480	.02520
20	.97365	.02635

Age	Life Estate	Remainder
21	.97245	.02755
22	.97120	.02880
23	.96986	.03014
24	.96841	.03159
25	.96678	.03322
26	.96495	.03505
27	.96290	.03710
28	.96062	.03938
29	.95813	.04187
30	.95543	.04457
31	.95254	.04746
32	.94942	.05058
33	.94608	.05392
34	.94250	.05750
35	.93868	.06132
36	.93460	.06540
37	.93026	.06974
38	.92567	.07433
39	.92083	.07917
40	.91571	.08429
41	.91030	.08970
42	.90457	.09543
43	.89855	.10145
44	.89221	.10779
45	.88558	.11442
46	.87863	.12137
47	.87137	.12863
48	.86374	.13626
49	.85578	.14422
50	.84743	.15257

Age	Life Estate	Remainder
51	.83874	.16126
52	.82969	.17031
53	.82028	.17972
54	.81054	.18946
55	.80046	.19954
56	.79006	.20994
57	.77931	.22069
58	.76822	.23178
59	.75675	.24325
60	.74491	.25509
61	.73267	.26733
62	.72002	.27998
63	.70696	.29304
64	.69352	.30648
65	.67970	.32030
66	.66551	.33449
67	.65098	.34902
68	.63610	.36390
69	.62086	.37914
70	.60522	.39478
71	.58914	.41086
72	.57261	.42739
73	.55571	.44429
74	.53862	.46138
75	.52149	.47851
76	.50441	.49559
77	.48742	.51258
78	.47049	.52951
79	.45357	.54643
80	.43659	.56341

Age	Life Estate	Remainder
81	.41967	.58033
82	.40295	.59705
83	.38642	.61358
84	.36998	.63002
85	.35359	.64641
86	.33764	.66236
87	.32262	.67738
88	.30859	.69141
89	.29526	.70474
90	.28221	.71779
91	.26955	.73045
92	.25771	.74229
93	.24692	.75308
94	.23728	.76272
95	.22887	.77113
96	.22181	.77819
97	.21550	.78450
98	.21000	.79000
99	.20486	.79514
100	.19975	.80025
101	.19532	.80468
102	.19054	.80946
103	.18437	.81563
104	.17856	.82144
105	.16962	.83038
106	.15488	.84512
107	.13409	.86591
108	.10068	.89932
109	.04545	.95455

(2) Excluding joint accounts under section (3), ~~F~~for *assistance* recovery purposes, the ~~interest~~*interest* of a ~~person~~*person* (See OAR 461-135-0832) in ~~real~~*real property*, ~~or personal property~~*personal property* or other ~~asset~~*assets* held in ~~joint tenancy~~*joint tenancy* (See OAR 461-135-0832) ~~with right of survivorship~~ (including transfers with right of survivorship covered by ORS 93.180), tenancy in common or other form of concurrent ownership with one or more other persons with right of survivorship, other than a ~~spouse~~*spouse* (461-001-0000) or a *transfer on death deed* (see OAR 461-135-0832), is presumed to be the ~~value~~*value* of the fractional share held by the ~~person~~*person*. The fractional share of a ~~person~~*person* is presumed to be the share reflected in the ~~ownership documents~~*ownership documents* (See OAR 461-135-0832). Such presumption may be rebutted under the ~~Consideration Furnished Test~~*consideration furnished* or by ~~Convincing Evidence~~*convincing evidence* (See OAR 461-135-0832) of the actual consideration contributed by another co-owner of the property or ~~asset~~*assets*. In the absence of any stated fractional share on the ~~Ownership Documents~~*ownership documents*, each co-owner is presumed to have an equal fractional share of ownership of the whole, unless rebutted by the ~~Consideration Furnished Test~~*consideration furnished test* (See OAR 461-135-0832) ~~or as otherwise established~~ by ~~Convincing Evidence~~*convincing evidence*.

(3) For *assistance* recovery purposes, the *interest* of recipient in multi-party accounts with an insured institution or credit union is presumed to be the full *value* of the account on the date of death. The presumption may be rebutted by the *consideration furnished test* using *convincing evidence.*

(4) With respect to ~~Real~~*real property*, ~~or Personal Property~~*personal property* or ~~an Asset~~*assets* held jointly by spouses, as ~~T~~tenants in ~~C~~common, tenants by the entirety, with right of survivorship or otherwise, such property or ~~asset~~*assets* is conclusively deemed to be owned one-half by each ~~spouse~~*spouse*; provided, however, that in the event the ~~Ownership Documents~~*ownership documents* expressly set forth a different fractional share of ownership, and such fractional share is lawful in the appropriate jurisdiction, then the fractional share set forth in such ~~Ownership Documents~~*ownership documents* is presumed to be the fractional share owned by each ~~spouse~~*spouse*. Such presumption may be rebutted by ~~Convincing Evidence~~*convincing evidence*.

(~~4~~5) With respect to a *transfer on death deed*, or other similar *personal property*, including, but not limited to, payable on death accounts with financial institutions for *assistance* recovery purposes, the transferor is presumed to own the full ~~value~~*value* of the ~~real property~~*real property*. If there is more than one transferor their respective interests are determined in accordance with sections (2) and (3) of this rule.

(~~5~~6) The ~~Value~~*value* of ~~Real Property~~*real property* at, or prior to, the ~~Time of Death~~*time of death* is determined by establishing the ~~fair market value~~*value* of the property to the satisfaction of the ~~Department~~*department* (See OAR 461-135-0832). The burden of proof for establishing the ~~Real Property's~~real property's ~~fair market value~~*value*, to the satisfaction of the ~~Department~~*department*, lies with the ~~person~~*person* or, after the ~~Time of Death~~*time of death* of the ~~person~~*person*, with the person's representative, and may be

Commented [MR1]: Need to reference domestic partner?

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established by any methodology, including ~~the provision of~~ an appraisal performed by an appraiser certified or licensed in the applicable jurisdiction, that the ~~Department~~*department* determines most accurately reflects the ~~Value~~*value* of the ~~Real Property~~*real property*. The ~~Value~~amount of liens and other encumbrances against the ~~Real Property~~*real property* that is established by ~~Convincing Evidence~~*convincing evidence*, if appropriate, is subtracted from the ~~fair market value~~*value* of the ~~Real Property~~*real property* in order to derive a net ~~fair market value~~*value* of the ~~Real Property~~*real property*.

(~~6~~7) The ~~Value~~*value* of ~~Personal Property~~*personal property* consisting of shares of stock or other securities traded on an exchange is evidenced by the average of the bid and ask prices on the date of the ~~Time of Death~~*time of death*, or the next trading day thereafter. If such bid and ask prices are unavailable for certain stocks or securities, the ~~Value~~*value* may be established by a written estimate from the corporation or other entity issuing such shares or securities of the ~~Value~~*value*, or if such estimate is unobtainable, an estimate from a broker, trader or other ~~Person~~*person* with knowledge in the field. ~~of the Value.~~ Liens and encumbrances established by ~~Convincing Evidence~~*convincing evidence* against shares of stock or other securities is subtracted from the ~~value~~*value* of such stock or securities ~~established by the foregoing procedure~~.

(~~7~~8) Subject to Section (9) ~~T~~the ~~Value~~*value* of tangible ~~Personal Property~~*personal property*, including, but not limited to, livestock, furniture, vehicles and other tangible items may be established—

(a) By a written estimate from a ~~Person~~*person* knowledgeable in the field of appraising such items of ~~Personal Property~~*personal property*; or

(b) From published sources such as catalogs of antiques or collectibles, blue books or other ~~Convincing Evidence~~*convincing evidence* that accurately establishes the ~~Value~~*value* of the property. ~~Liens and encumbrances established by Convincing Evidence against tangible personal property is subtracted from the value of such property established by the foregoing procedure.~~

(9) The amount of any liens or encumbrances, established by *convincing evidence*, that are attached to tangible *personal property* are deducted from the *value* of such property in Section (8).

(~~8~~9) The ~~Value~~*value* of intangible ~~Personal Property~~*personal property* not otherwise provided for in this rule, is established by a written estimate from a ~~Person~~*person* knowledgeable in the field of appraising such items of intangible ~~Personal Property~~*personal property*. Liens and encumbrances established by ~~Convincing Evidence~~*convincing evidence* against tangible ~~personal property~~*personal property* is subtracted from the ~~value~~*value* of such property established by the foregoing procedure.

(~~9~~10) Notwithstanding anything to the contrary contained in this rule, ~~in cases where an inventory has been filed with the appropriate court or an estate tax return has been filed~~

~~with the appropriate governmental authority, the Value of any Real or Personal Property or other Asset is presumptively established by the amounts set forth on such inventory or estate tax return. The presumptive Value established by such inventory or return may be rebutted by Convincing Evidence.~~if a claim under OAR 461-135-0835 is deferred until a recipient's *spouse* dies, the *value* of any *real property*, *personal property* or other *assets* (see OAR 461-135-0832), subject to the deferred claim, the *value* (see OAR 461-135-0832) is established as follows:

(a) For *real property*, *personal property* or other *assets* in the deceased spouse's *probate estate* (see OAR 461-135-0832) is determined in accordance with Oregon's probate code; or

(b) For *real property*, *personal property* or other *assets* not in the deceased spouse's *probate estate* is determined on the later of the date of the claim or sale of the *real property*, *personal property* or other *assets*.

Stat. Auth.: ORS 409.050, 411.060, ~~411.070,~~ 413.042, 413.085, 414.685, 416.350~~, Or Laws 2013 Ch 14 Sec 10~~
Stats. Implemented: ORS 93.969, 411.708, 411.795, 413.085, 414.685, 416.310, 416.340, 416.350~~, 2011 Or Laws 212 section 13, 2013 Or Laws Ch 14 Sec 10~~

RAC Worksheet

Rule: 461-145-0210

Your Name: Heather Williams

What does your change do?
OAR 461-145-0210 about gifts and winnings is being amended to reverse a previous change made to the treatment of gift cards completed by the Self Sufficiency Programs.

What problem is the change intended to address?
APD inadvertently approved the previous change for non-MAGI medical; however, it conflicts with Integrated Eligibility current design and the SSI POMS.

RAC's Draft Fiscal Impact Information

Will these rule changes cause any anticipated fiscal impact (**either negative or positive**) on the following groups.

a. Identify any state agencies (**including DHS**) likely to be economically affected by the rule change and summarize the impact. **The Dept. anticipates that fiscal impact associated with this change will be negligible as there are very few individuals who report gift cards.**

b. Identify the types of clients and providers likely to be economically affected by the rule change and summarize the impact. **The Dept. anticipates that fiscal impact associated with this change will be negligible, as there are very few individuals who report gift cards.**

c. Identify any units of local government (e.g. county-operated AAAs) likely to be economically affected by the rule change and summarize the impact. **None.**

d. Small Business (50 or fewer employees)

A. Identify the types of small businesses and industries subject to the rule change (if any) and summarize the likely economic impact on each type. **None.**

B. Identify the cost of compliance (if any) for small business. Describe the projected reporting, recordkeeping, and other administrative activities required for compliance. How much employee time is required to comply and be trained, what types of employees will be doing the compliance or training, what is their average compensation expense for the business for that time. Does equipment or supplies need to be purchased or rented? What is the estimated cost of professional services. Estimate fixed and out-of-pocket expenses. **None.**

C. Is the fiscal impact on small business combined with the cost of compliance significantly adverse? **No fiscal impact.**

e. Identify any other likely economic impact on small or large business. **None.**

f. Consider d - e above. Is the economic effect on business significant? **No effect.**

g. Identify any other members of the public likely to be economically affected by the rule change and summarize the impact. **None.**

461-145-0210 ~~Effective 07/01/18~~
Gifts and Winnings

1. For the purposes of this rule:

    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 periodically (such as monthly) or in a lump-sum.

2. In the ERDC program, *gifts* (see section (1) of this rule) and *winnings* (see section (1) of this rule) are excluded.

3. In all programs except the ERDC program and except as provided otherwise in sections (4) and (5) of this rule:

    a. In-kind *gifts* and *winnings* are treated according to the rule applicable to the specific type of asset. In the OSIP, OSIPM, and QMB programs, if an individual is offered a choice between an in-kind item and cash, the cash amount is considered unearned income, even if the individual chooses the in-kind item and regardless of the value, if any, of the in-kind item.

    b. *Gifts* and *winnings* in the form of money or credit card company gift cards are treated as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120). In the OSIP, OSIPM, and QMB programs, gambling losses are not subtracted from gambling winnings in determining the individual's *countable* (see OAR 461-001-0000) income.

    c. In all programs except the OSIP, OSIPM, and QMB programs, ~~E~~establishment-specific gift cards are excluded as income and not considered a resource.

    ~~c.~~d. In the OSIP, OSIPM, and QMB programs, the value of a gift card or certificate is considered income in the month it is received if the gift card or certificate can be used to purchase food or shelter or can be resold. There is a rebuttable presumption that the gift card or certificate can be resold.

4. For employment-related items, see OAR 461-145-0130.

5. In the OSIP, OSIPM, and QMB programs, monetary gifts given for educational purposes are treated in accordance with OAR 461-145-0145.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685
Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.700, 411.706, 411.816, 412.014, 412.049

SS RULE WORKSHEET

Rule #: 461-140-0220
Program Analyst: **Janell White**
Effective Date: 07/01/2019

Use this worksheet for permanent and temporary rules. For permanent rules, skip question 6 (justification). For temporary rules, skip question 5 (fiscal impact). Send the worksheet and rule text to Robert Trachtenberg.

1. List any federal statutes, regulations, or waivers that these rules implement or that authorize the Department to adopt policies on this subject, if any.

2. Summarize the rule change in an objective, simple, and understandable statement. **461-140-0220 Determining if a Transfer of an Asset is Disqualifying is being amended to state that a transfer of an asset is not disqualifying if the asset was excluded as personal belongings per 461-145-0390.**

3. Need for the rule change: What problem currently exists that the change seeks to solve? How does the change fix that problem? **The current rule states a transfer of any asset considered personal belongings is not disqualifying, but 461-145-0390 Personal Belongings has been updated to exclude some items as personal belongings and make them countable. Therefore, this change will make a transfer of an item no longer considered a personal belonging disqualifying.**

4. Documents Relied Upon: Please list any specific documents you have used in preparing these rules and where they can be located including letters of approval or communication from federal agencies, state plans, rules from other states, federal manuals, federal transmittals, correspondence, e-mail, etc.

5. Fiscal Impact (Read this link for guidance): ***(TEMPORARY RULES SKIP THIS SECTION)***

   a. Identify any state agencies, including the Department, likely to be economically affected, positively or negatively, by the rule change and describe what the impact will be. **There may be a positive affect on the DHS-APD due to the potential for individuals to be disqualified for transferring items that were previously excluded as personal belongings. The fiscal impact cannot be measured as the Department does not track denials for disqualifying transfers.**

   b. Identify the types of clients and providers likely to be economically affected, positively or negatively, by the rule change and describe what the impact will be. **There may be a negative affect on individuals who transfer items that were previously excluded as personal belongings. The fiscal impact cannot be measured as the Department does not track denials for disqualifying transfers.**

   c. Identify any units of local government (e.g. county-operated AAAs) likely to be economically affected, positively or negatively, by the rule change and describe what the impact will be. **No local government impact**

   d. Small Business (50 or fewer employees)

      A. Identify the types of small businesses and industries subject to the rule change (if any) and summarize the likely economic impact on each type. **No small business impact**

B. Estimate the number of small businesses subject to the proposed rule. **None**

C. Identify the cost of compliance (if any) for small business. Include projected equipment, supplies, reporting, recordkeeping, and employee time and training required for compliance. What types of employees will be doing the compliance or training and what is their average compensation. **No fiscal impact**

D. Is the fiscal impact on small business combined with the cost of compliance significantly adverse? **No fiscal impact**

e. Identify any other likely economic impact on small or large business (if any). **No fiscal impact**

f. Is the economic effect on business significant? **No fiscal impact**

g. Identify any other members of the public likely to be economically affected by the rule change and summarize the impact. **No impact**

6. Justification: ***(TEMPORARY RULES ONLY)***

Briefly explain the following:

- The specific consequences that would result from failure to make this change immediately
- Who would suffer those consequences
- Why or how not making this change would cause these consequences
- How making this change immediately will avoid or mitigate these consequences

7. If this change is the result of legislation passed in the last 24 months, list the bill number and year it passed.

Program Analysts, this is just a reminder for you: Does the rule change affect Client Notices/Agency Forms/Systems etc.?

(Revised 08/24/17)

461-140-0220 Eff. ~~1-1-18~~4-1-19

Determining if a Transfer of an Asset is Disqualifying

A transfer of an asset is not disqualifying if the requirements of OAR 461-140-0242 or one of the following sections are met:

(1) The asset was ~~an~~ excluded as personal ~~belongings~~ belongings as described in OAR 461-145-0390.

(2) The asset was sold or traded for compensation equal to or greater than fair market value.

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

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

(5) The amount of the resource was equal to or less than the ~~following amounts excluded under OAR 461-160-0855 due to payments received under a *qualified partnership policy* (see OAR 461-001-0000):~~

~~(a) For new applicants, the amount that the Department determines can be excluded at the *initial month* (see OAR 461-001-0000) of *eligibility* (see OAR 461-001-0000).~~

~~(b) For ongoing recipients, the amount of the current exclusion allowed under OAR 461-160-0855(2).~~ amount that was excluded at the *initial month* (see OAR 461-001-0000) of eligibility under OAR 461-180-0855 due to payments received under a *qualified partnership policy* (see OAR 461-001-0000).

(6) In all programs except the OSIP and OSIPM programs, a court ordered the transfer.

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

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

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

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

(9) In the OSIP and OSIPM programs, for a client in a *nonstandard living arrangement* (see OAR 461-001-0000), the asset is an annuity purchased on or before December 31, 2005, the client or the spouse of the client is the annuitant, and the entire amount of principal and earned interest is paid in equal installments during the actuarial life expectancy of the annuitant. For purposes of this section, the actuarial life expectancy is established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration.

(10) In the OSIP and OSIPM programs, the client is in a *standard living arrangement* (see OAR 461-001-0000).

(11) In the OSIP and OSIPM programs, for a client in a *nonstandard living arrangement* (see OAR 461-001-0000):

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

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

Stat. Auth: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.042, 414.685
Stats. Implemented: ORS 409.010, 410.070, 411.060, 411.070, 411.404, 411.708, 411.816, 412.049, 414.025

RAC Worksheet

Rule: 461-145-0440

Your Name: Heather Williams

What does your change do?
OAR 461-145-0440 about reimbursement is being amended to align APD with SNAP on the treatment of reimbursements from a business entity that benefit a principal. s.

What problem is the change intended to address?
APD notified Deloitte that we would align with SNAP for the purposes of Integrated Eligibility (IE) and treat these types of reimbursements as earned income for SNAP and OSIP, OSIPM, and QMB programs.

RAC's Draft Fiscal Impact Information

Will these rule changes cause any anticipated fiscal impact (**either negative or positive**) on the following groups.

a. Identify any state agencies (**including DHS**) likely to be economically affected by the rule change and summarize the impact. **The Dept. anticipates that fiscal impact associated with this change will be negligible as there are very few individuals who report gift cards.**

b. Identify the types of clients and providers likely to be economically affected by the rule change and summarize the impact. **The Dept. anticipates that fiscal impact associated with this change will be negligible, as there are very few individuals who report gift cards.**

c. Identify any units of local government (e.g. county-operated AAAs) likely to be economically affected by the rule change and summarize the impact. **None.**

d. Small Business (50 or fewer employees)

A. Identify the types of small businesses and industries subject to the rule change (if any) and summarize the likely economic impact on each type. **None.**

B. Identify the cost of compliance (if any) for small business. Describe the projected reporting, recordkeeping, and other administrative activities required for compliance. How much employee time is required to comply and be trained, what types of employees will be doing the compliance or training, what is their average compensation expense for the business for that time. Does equipment or supplies need to be purchased or rented? What is the estimated cost of professional services. Estimate fixed and out-of-pocket expenses. **None.**

C. Is the fiscal impact on small business combined with the cost of compliance significantly adverse? **No fiscal impact.**

e. Identify any other likely economic impact on small or large business. **None.**

f. Consider d - e above. Is the economic effect on business significant? **No effect.**

g. Identify any other members of the public likely to be economically affected by the rule change and summarize the impact. **None.**

461-145-0440 ~~Effective 07/01/17~~
Reimbursement

1. For the treatment of USDA meal reimbursements, see OAR 461-145-0570.

2. The *reimbursement* (see OAR 461-001-0000) of a business expense for an individual who is self-employed is treated as self-employment income (see OAR 461-145-0910, 461-145-0915, and 461-145-0920).

3. Except as provided in sections (1) and (2) of this rule, a *reimbursement* is treated as follows:

   a. In the ERDC program, a *reimbursement* is excluded, except that a *reimbursement* for child care from a source outside of the Department is counted as unearned income.

   b. In the SNAP program:

      A. A *reimbursement* in the form of money for a normal household living expense, such as rent or payment on a home loan, personal clothing, or food eaten at home, is unearned income.

      B. Any other *reimbursement* is treated as follows:

         i. An in-kind *reimbursement* is excluded.

         ii. A *reimbursement* in the form of money is excluded if used for the identified expense, unless the expense is covered by program benefits.

         iii. A *reimbursement* is counted as *periodic income* (see OAR 461-001-0000 and 461-140-0110) or *lump-sum income* (see OAR 461-001-0000 and 461-140-0120) if not used for the identified expense.

         iv. A *reimbursement* for an item already covered by the benefits of the *benefit group* (see OAR 461-110-0750) is counted as *periodic income* or *lump-sum income*.

   c. In the OSIP, OSIPM, QMB, and SNAP programs, ~~an expenditure~~a reimbursement from ~~by~~ a business entity that benefits a *principal* (see OAR 461-145-0088) is counted as earned income (see OAR 461-145-0130).

   d. In all programs except the ERDC and SNAP programs, a *reimbursement* is treated as follows:

      A. An in-kind *reimbursement* is excluded.

B. A *reimbursement* in the form of money is excluded if used for the identified expense, unless the expense is covered by program benefits.

C. A *reimbursement* is counted as *periodic income* or *lump-sum income* if not used for the identified expense.

D. A *reimbursement* for an item already covered by the benefits of the *benefit group* is counted as unearned income.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685

SS RULE WORKSHEET

Rule #: **461-160-0030, 461-180-0020**
Program Analyst: **Janell White, Veronica Hillebrand**
Effective Date: **7/1/2019**

Use this worksheet for permanent and temporary rules. For permanent rules, skip question 6 (justification). For temporary rules, skip question 5 (fiscal impact). Send the worksheet and rule text to Robert Trachtenberg.

1. List any federal statutes, regulations, or waivers that these rules implement or that authorize the Department to adopt policies on this subject, if any. **Verbal guidance by CMS**

2. Summarize the rule change in an objective, simple, and understandable statement.
OAR 461-160-0030 about medical costs overview is being amended to allow payments to a credit card for allowable medical expenses to be used as a deduction to reduce the liability for service eligible individuals. It is also being amended to provide specific information about when and how one-time and ongoing medical costs are used to reduce client liability and remove language that belongs in the effective date rule (461-180-0020).

   OAR 461-180-0020 about effective dates when considering changes in income or income deductions that cause increases is being amended to clarify when reductions to client liability are effective due to medical costs allowed in accordance with 461-160-0030.

3. Need for the rule change: What problem currently exists that the change seeks to solve? How does the change fix that problem? **The current rule counts payments for allowable medical costs made by credit card in the month of payment only. Often, the amount is greater than the monthly liability so only part of the medical cost is offset. Federal guidance allows us to instead count payments to the credit card as an allowable cost so the offset of liability is spread over several months.**

   In addition, the current version of this rule does not adequately address situations in which clients are billed for medical expenses prior to applying for services and who are or intend to begin making payments. It also does not provide enough detail about how to apply medical deductions in other scenarios. The current version is not consistent with how the Integrated Eligibility (IE) system will apply medical costs. This change will fill gaps in treatment of costs and align the Department with IE.

   Amending 461-180-0020 aligns with the changes being made to rule 461-160-0030. It also removes repetitive language already cited in 461-160-0030 for medical costs not allowed.

4. Documents Relied Upon: Please list any specific documents you have used in preparing these rules and where they can be located including letters of approval or communication from federal agencies, state plans, rules from other states, federal manuals, federal transmittals, correspondence, e-mail, etc.

5. Fiscal Impact (Read this link for guidance): ***(TEMPORARY RULES SKIP THIS SECTION)***

   a. Identify any state agencies, including the Department, likely to be economically affected, positively or negatively, by the rule change and describe what the impact will be. **This may have a negative fiscal impact on DHS APD as it will result in more liability offset.**

b. Identify the types of clients and providers likely to be economically affected, positively or negatively, by the rule change and describe what the impact will be. **This will have a positive impact on many service eligible individuals who have out-of-pocket medical costs. These individuals will be better able to cover those costs paid by credit card as they can now divert funds from liability payment to credit card payment.**

This will also have a positive impact to service clients by allowing costs reported in the same month to still be allowed as a deduction.

c. Identify any units of local government (e.g. county-operated AAAs) likely to be economically affected, positively or negatively, by the rule change and describe what the impact will be. **This should have no effect on local government.**

d. Small Business (50 or fewer employees) **N/A**

A. Identify the types of small businesses and industries subject to the rule change (if any) and summarize the likely economic impact on each type.

B. Estimate the number of small businesses subject to the proposed rule.

C. Identify the cost of compliance (if any) for small business. Include projected equipment, supplies, reporting, recordkeeping, and employee time and training required for compliance. What types of employees will be doing the compliance or training and what is their average compensation.

D. Is the fiscal impact on small business combined with the cost of compliance significantly adverse?

e. Identify any other likely economic impact on small or large business (if any). **None**

f. Is the economic effect on business significant? **No**

g. Identify any other members of the public likely to be economically affected by the rule change and summarize the impact. **No effect**

6. Justification: ***(TEMPORARY RULES ONLY)***

Briefly explain the following:

- The specific consequences that would result from failure to make this change immediately
- Who would suffer those consequences
- Why or how not making this change would cause these consequences
- How making this change immediately will avoid or mitigate these consequences

7. If this change is the result of legislation passed in the last 24 months, list the bill number and year it passed.

Program Analysts, this is just a reminder for you: Does the rule change affect Client Notices/Agency Forms/Systems etc.?

(Revised 08/24/17)

461-160-0030 Eff. ~~4-1-18~~4-1-19

Overview of 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 the father while the mother works.

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

(e) In the OSIPM program, a cost that the client incurred while the client was serving a disqualification from Medicaid under OAR 461-140-0210 to 461-140-0300 for a transfer of assets for less than fair market value.

(3) In the OSIP and OSIPM programs, ~~to~~ determine the medical deduction allowed under OAR 461-160-0620~~, the Department uses the following method~~ as follows:

~~(a) Costs are considered incurred when they are either paid by the individual or billed by the provider.~~

(~~b~~a) In order to be allowed as a deduction, a cost or portion of a ~~one-time~~ cost that has already been paid must be reported in the month it is paid or within 10 days of the date is paid. The effective dates for an allowable cost is determined in accordance with OAR 461-180-0020.~~(e.g. a cost that will only be allowed for one month) must meet the following requirements:~~

~~For costs that have already been paid, the costs must be reported within 10 days of the date they are incurredthe cost was paid and is allowed in the month that it is paid.~~
~~(see OAR 461-180-0020).~~

~~(A) For costs that have been incurred but not paid, the cost is allowed in the month that the individual reports they will pay the expense.~~

(~~c~~b) ~~Deductions for o~~~~One-time medical expenses~~ ~~that will be paid over more than one month~~ ~~are treated~~ ~~allowed~~ ~~as follows~~For one-time costs that have been incurred but not paid in full:

(A) ~~If the individual reports an expense that was paid in full, the cost is allowed in the month in which it was paid (see OAR 461-180-0020).~~

~~(B) If the expense was billed but not paid in full:~~

~~(i) The amount allowed as a deduction is the amount the individual expects to pay each month, not to exceed the total amount due at time the expense is reported.~~ ~~until the outstanding balance would be paid in full~~Any amount already paid when reported is allowed if it was reported in the month that it was paid or within 10 days of the date it was paid.

(B) ~~(ii) Additional deductions are not allowed if the individual fails to pay the cost~~For amounts not already paid, the amount allowed as a deduction is the amount the individual expects to pay each month, not to exceed the total amount due at the time the cost is reported.

~~(C)~~

~~(iii) The deduction begins the month the individual reports they will begin making payments, except that a paid cost that is reported timely is allowed in the month that it is paid.~~

(~~d~~c) Deductions for one-time medical expenses that have been paid by credit card are allowed as follows:

(A) The amount allowed as a deduction is the amount the individual expects to pay or is currently paying each month on the card until the outstanding balance of the medical cost would be paid in full.

(B) For costs charged prior to the month reported, the outstanding balance is the amount of the original cost charged to the card less any subsequent payments to the card.

(C) Count all payments made to a credit card toward the principal balance of the medical cost.

(D) Additional deductions are not allowed if the individual fails to pay the cost or incurs interest or fees.

(ed) Recurring costs, such as those for ongoing prescription medications, may be anticipated and allowed until the total amount of the cost has been allowed or through the next annual redetermination (see OAR 461-115-0430), whichever occurs first. and are allowed as follows.:

(A) The amount anticipated should reflect actual and verified costs.

(DBB) Recurring expenses costs may not be averaged.

(e) Additional deductions are not allowed if the individual fails to pay the cost.

Stat. Auth.: ORS 409.050, 411.060, 411.400, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685
Stats. Implemented: ORS 409.010, 411.060, 411.400, 411.404, 411.816, 412.014, 412.049

461-180-0020 Effective 10/01/18
Effective Dates; Changes in Income or Income Deductions That Cause Increases

For all programs in Chapter 461, except the ERDC program, this rule is used to determine the effective date when a change in income or income deductions causes an increase in benefits. For all changes, the effective date is one of the following:

1. In the GA, REF, SFPSS, and TANF programs, the effective date for an anticipated change reported before the payment month is the first of the payment month in which it will occur. If the change is not reported until the month it occurs or later, the effective date is the first of the month following the month in which the change was reported.

2. In the SNAP program:

    a. The effective date when verification is not requested is the first of the month following the date the change was reported.

    b. The effective date if verification is requested is:

        A. The first of the month following the date the change was reported if verification is received no later than the due date for the verification.

        B. The first of the month following the date the verification is received by the Department, if received after the verification due date.

3. In the OSIPM and QMB programs, the effective date for increases resulting from reported changes is determined as follows:

    a. If, based on the reported change, the individual is determined eligible for a new program with a higher benefit level, the effective date for the new program is determined in accordance with OAR 461-180-0090.

    b. For changes in income that reduce liability or the OSIPM-EPD participant fee:

        A. If the change was reported timely, the change is effective the month the change occurred.

        B. If the change was not reported timely, the change is effective the month it is reported or discovered.

    c. For ~~changes in~~ medical ~~deductions~~costs allowed in accordance with 461-160-0030 that reduce liability:

        A. ~~For both ongoing and o~~One-time and on-going ~~expenses~~costs that have already been paid when the change is reported~~, the change is effective the month the change occurred, if the change was reported timely.~~are allowed in the month they were paid.

B. For one-time and on-going costs that have been incurred, but not paid, the change is effective the month the individual reports they will begin making payments.

~~A.~~

~~B. For ongoing expenses that are not reported timely, the change is effective the month the change is reported.~~

~~C. One-time expenses that have been paid in full but are not reported timely will not be used.~~

d. When the decrease in liability is caused by increased deductions due to a change to an individual's marital status or number of eligible dependents, the effective date is:

   A. The first of the month the change occurred, if the change was reported timely.

   B. The first of the month the change was reported or discovered, if the change was not reported timely.

e. When the decrease in liability is caused by a higher maintenance standard due to a change in service setting, the effective date is the date the individual moves into the new service setting.

f. When a decrease in liability is caused by a change in income and a change in service setting that occurs in the same month, the effective date is the day the individual moves into the new service setting.

RAC Worksheet

Rule: 461-180-0040

Your Name: Heather Williams

What does your change do?
OAR 461-180-0040 about effective dates, special needs and services is being amended to support changes made by the long-term care (LTC) policy group in May 2018 regarding the effective date of in-home services. A request was made to remove LTC effective date policy from chapter 461 and move to chapter 411, but that decision has been delayed. This amendment also clarifies that the effective date for LTC services is contingent on when a disqualification period (if any) ends.

What problem is the change intended to address?
The current rule conflicts with current practices; therefore, this change will remedy that inconsistency.

RAC's Draft Fiscal Impact Information

Will these rule changes cause any anticipated fiscal impact (**either negative or positive**) on the following groups.

a. Identify any state agencies (**including DHS**) likely to be economically affected by the rule change and summarize the impact. **There will be no fiscal impact associated with this change as it simply supports current practices.**
b. Identify the types of clients and providers likely to be economically affected by the rule change and summarize the impact. **There will be no fiscal impact associated with this change as it simply supports current practices.**

c. Identify any units of local government (e.g. county-operated AAAs) likely to be economically affected by the rule change and summarize the impact. **None.**

d. Small Business (50 or fewer employees)

A. Identify the types of small businesses and industries subject to the rule change (if any) and summarize the likely economic impact on each type. **None.**

B. Identify the cost of compliance (if any) for small business. Describe the projected reporting, recordkeeping, and other administrative activities required for compliance. How much employee time is required to comply and be trained, what types of employees will be doing the compliance or training, what is their average compensation expense for the business for that time. Does equipment or supplies need to be purchased or rented? What is the estimated cost of professional services. Estimate fixed and out-of-pocket expenses. **None.**

C. Is the fiscal impact on small business combined with the cost of compliance significantly adverse? **No fiscal impact.**

e. Identify any other likely economic impact on small or large business. **None.**

f. Consider d - e above. Is the economic effect on business significant? **No effect.**

g. Identify any other members of the public likely to be economically affected by the rule change and summarize the impact. **None.**

461-180-0040 ~~**Effective 10/01/16**~~
Effective Dates; Special Needs and Services

1. The effective date for a special need is the later of the following:
   a. The *date of request* (see OAR 461-115-0030) for the special need item; or
   b. The effective date for OSIPM.
2. The effective date for *in-home services* (see OAR 411-030-0020) and *independent choices program (ICP)* benefits (see OAR 411-030-0020)~~long-term care~~ is determined as follows:
   a. For individuals currently receiving Medicaid OHP Plus benefits, the effective date is the later of the following:
      ~~a. *in-home services* the effective date is the date the Department authorizes the service plan. The service plan may not be authorized prior to the effective date of the Medicaid OHP Plus benefit package (see OAR 411-015-0015). An authorized service plan must:~~
      ~~A. Specify the date when services will begin (this date cannot be prior to the date that the service plan is completed) and the maximum number of hours authorized; and~~
      A. ~~Identify the enrolled homecare worker (see OAR 411-031-0020 and 411-031-0040) or contracted in-home care agency (see OAR 411-030-0090) the client has *employed* to provide the authorized services. For the purposes of this paragraph, *employed* means that the homecare worker or agency has agreed to provide the services as authorized by the service plan.~~The *date of request* for *in-home services* or *ICP*.
      B. The date the individual meets all eligibility requirements for *in-home services* or *ICP* in accordance with OAR 411-030-0040.
      ~~B.~~C. The expiration date of a disqualification period resulting from a transfer of assets (see OAR 461-140-0296).
   b. For individuals not already receiving Medicaid OHP Plus benefits, the effective date is the later of the following:
      A. The effective date of the Medicaid OHP Plus benefit package (see OAR 411-015-0015).
      B. The date of the initial assessment.
      C. The date the individual meets all eligibility requirements for *in-home services* or *ICP* in accordance with OAR 411-030-0040.

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D. The expiration date of a disqualification period resulting from a transfer of assets (see OAR 461-140-0296).

b.3.The effective date for Title XIX services For a client residing in, or who will reside in in a licensed community-based setting or Medicaid-certified nursing facility the effective date is the later of the following:

A. The *date of request* for services; .

B. The date the individual begins residing in the community-based setting or nursing facility.; or

C. The effective date of the Medicaid OHP Plus benefit package (see OAR 411-015-0015).

C.D. The expiration date of a disqualification period resulting from a transfer of assets (see OAR 461-140-0296).

3.4.The effective date for a reduction or termination in services is the later of the following:

a. The end of the ten-day notice mailing period; and

b. The termination date of a service plan.

4.5.The effective date for a reduction or termination of an on-going special need is the end of the timely continuing benefit notice period.

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RAC Worksheet

Rule: 461-025-0315, 410-200-0145, 410-200-0146

Your Name: Robert Trachtenberg

What does your change do? Amends OAR 461-025-0315 and OAR 410-200-0145 with respect to expedited hearings to indicate when an applicant initially denied benefits for MAGI and APD medical may receive an expedited hearing when they challenge the denial. In addition, OAR 410-200-0146 is being amended so its timeline for other hearings conforms to 42 CFR 431.244(f).

What problem is the change intended to address? These amendments are needed to conform the rules about expedited hearings to 42 CFR 431.224, DHS Form 0447, and current practices. The amendment to OAR 410-200-0146 is needed to conform the rule to current practices and 42 CFR 431.244(f).

RAC's Draft Fiscal Impact Information

Will these rule changes cause any anticipated fiscal impact (**either negative or positive**) on the following groups.

a. Identify any state agencies (**including DHS**) likely to be economically affected by the rule change and summarize the impact. None

b. Identify the types of clients and providers likely to be economically affected by the rule change and summarize the impact. None

c. Identify any units of local government (e.g. county-operated AAAs) likely to be economically affected by the rule change and summarize the impact. None

d. Small Business (50 or fewer employees)

A. Identify the types of small businesses and industries subject to the rule change (if any) and summarize the likely economic impact on each type. None

B. Identify the cost of compliance (if any) for small business. Describe the projected reporting, recordkeeping, and other administrative activities required for compliance. How much employee time is required to comply and be trained, what types of employees will be doing the compliance or training, what is their average compensation expense for the business for that time. Does equipment or supplies need to be purchased or rented? What is the estimated cost of professional services. Estimate fixed and out-of-pocket expenses. None

C. Is the fiscal impact on small business combined with the cost of compliance significantly adverse? None

e. Identify any other likely economic impact on small or large business. None

f. Consider d - e above. Is the economic effect on business significant? None

g. Identify any other members of the public likely to be economically affected by the rule change and summarize the impact. None

461-025-0315 Eff. ~~1-1-14~~7-1-19

Expedited Hearings

(1) A claimant has the right to an expedited hearing in each of the following situations:

(a) The Department denies or fails to issue a timely decision on claimant's request for --

(A) Emergency assistance; or

(B) TA-DVS (see OAR 461-135-1235).

(b) The claimant contests the form or amount of a TA-DVS or an emergency assistance payment.

(c) The claimant has the right to a hearing over a reduction, suspension, or closure and disagrees with the Department's decision to deny the continuation of one or more of the following pending a requested hearing:

(A) Cash benefits.

(B) Supplemental Nutrition Assistance Program benefits.

(C) Medical benefits.

(D) Nursing Home services or *home and community-based care* (see OAR 461-001-0030) that have been reduced or closed as a result of a service re-assessment conducted in accordance with OAR Division 411-015.

(d) The claimant's request for expedited SNAP service or DSNAP is denied, or the claimant is aggrieved by an action of the Department that affects the expedited participation of the household in the SNAP program.

(e) In the JOBS program, the Department denies an application for a support service payment or a payment for a basic living expense authorized by OAR 461-190-0211, or the Department reduces or closes a support service payment authorized by OAR 461-190-0211, or the Department does not issue a JOBS support service payment within the time frames required under OAR 461-115-0190.

(f) In the OSIP, OSIPM, and QMB programs, when following the final order timeline in OAR 461-025-0375(1)(a) could jeopardize the individual's life, health, or ability to attain, maintain, or regain maximum function.

(2) Public assistance and medical assistance programs: An expedited hearing is a telephone hearing held within five working days of the Department's receipt of a properly submitted

hearing request, unless the claimant requests more time. The claimant is entitled to reasonable notice of the hearing either through personal service, by overnight mail, or if the claimant agrees by electronic mail. The final order must be issued within three working days from the date the hearing closes.

(3) Supplemental Nutrition Assistance Program: An expedited hearing is a telephone hearing held within five working days of the receipt of a verbal or written hearing request, unless the claimant requests more time. The claimant is entitled to reasonable notice of the hearing either through personal service, by overnight mail, or if the claimant agrees by electronic mail. Following the expedited hearing, a final order must be issued not later than the ninth working day after the hearing was requested.

(4) If the Office of Administrative Hearings grants a face-to-face hearing, the hearing may be postponed or continued as necessary to accommodate the claimant. However, the hearing must be held not later than 21 days following the receipt by the Department of the request for hearing if the claimant lives within 100 miles of Salem, Oregon, and not later than 35 days in all other cases.

Stat. Auth.: ORS 411.060, 411.095, 411.404, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.095, 411.099, 411.103, 411.117, 411.404, 411.816, 412.049

410-200-0145
Contested Case Hearing

(1) For the purposes of this rule, timely means within 90 days of the date the notice of adverse action is received.

(2) This rule applies to contested case hearings for programs described in OAR chapter 410 division 200. Contested case hearings are conducted in accordance with the Attorney General's model rules OAR 137-003-0501 and following ORS Ch. 183 except to the extent that Authority rules provide for different procedures.

(3) The Authority's contested case hearings governed by this rule are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the parties' consent and applicable confidentiality laws.

(4) A claimant may request a contested case hearing upon the timely completion of a hearing request in medical assistance programs in the following situations:

(a) The Authority has not approved or denied an application within 45 days of the date of request for benefits or the extended time the Authority has allowed for processing;

(b) The Authority acts to deny, reduce, close, or suspend medical assistance, including the denial of continued benefits pending the outcome of a contested case hearing;

(c) The Authority claims that an earlier medical assistance payment was an overpayment;

(d) A claimant claims that the Authority previously under issued medical assistance;

(e) A claimant disputes the current level of benefits.

(5) An officer or employee of the Authority or the Department of Human Services may appear on behalf of the Authority in medical assistance hearings described in this rule. The Authority's lay representative may not make legal argument on behalf of the Authority.

(6) The Authority representative 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. An Authority representative appearing under this rule shall read and be familiar with it.

(7) When an Authority representative is used, requests for admission and written interrogatories are not permitted.

(8) The Authority representative and the claimant may have an informal conference in order to:

(a) Provide an opportunity to settle the matter;

(b) Review the basis for the eligibility determination, including reviewing the rules and facts that serve as the basis for the decision;

(c) Exchange additional information that may correct any misunderstandings of the facts relevant to the eligibility determination; or

(d) Consider any other matters that may expedite the orderly disposition of the hearing.

(9) A claimant who is receiving medical assistance benefits and who is entitled to a continuing benefit decision notice may, at the option of the claimant, receive continuing benefits in the same manner and amount until a final order resolves the contested case. In order to receive continuing benefits, a claimant must request a hearing not later than:

(a) The tenth day following the date the notice is received; and

(b) The effective date of the action proposed in the notice.

(10) The continuing benefits are subject to modification based on additional changes affecting the claimant's eligibility or level of benefits.

(11) ~~When a claimant contests the denial of continuing benefits, t~~The claimant shall receive an expedited hearing in the following situations:

(a) ~~.~~When the claimant contests the denial of continuing benefits; or

(b) When following the final order timelines in OAR 410-200-0146 could jeopardize the individual's life, health, or ability to attain, maintain, or regain maximum function.

(12) In computing timeliness under sections (1) and (9) of this rule:

(a) Delay caused by circumstances meeting the good cause criteria described in OAR 137-003-0501(7) may not be counted; and

(b) The notice is considered to be received on the fifth day after the notice is sent unless the claimant shows the notice was received later or was not received.

Statutory/Other Authority: ORS 411.404, 411.816, 412.014, 412.049 & 413.042
Statutes/Other Implemented: ORS 183.452, 411.060, 411.404, 411.816, 412.014 & 412.049

410-200-0146
Final Orders, Dismissals and Withdrawals

(1) When the Authority refers a contested case under chapter 410 division 200 to the Office of Administrative Hearings (OAH), the Authority must indicate on the referral:

(a) Whether the Authority is authorizing a proposed order, a proposed and final order, or a final order; and

(b) If the Authority establishes an earlier deadline for written exceptions and argument because the contested case is being referred for an expedited hearing.

(2) When the Authority authorizes either a proposed order or a proposed and final order:

(a) The claimant may file written exceptions and written argument to be considered by the Authority. The exceptions and argument must be received at the location indicated in the OAH order not later than the 20th day after service of the proposed order or proposed and final order, unless section (1)(b) of this rule applies;

(b) The Authority shall issue the final order after OAH issues a proposed order unless the Authority requests that OAH issue the final order pursuant to OAR 137-003-0655.

(c) The proposed and final order becomes a final order on the 21st day after the service of the proposed and final order, if the claimant does not submit timely exceptions or arguments following a proposed and final order, unless:

(A) The Authority has issued a revised order; or

(B) The Authority has notified the claimant and OAH that the Authority shall issue the final order.

(d) The Authority shall issue the final order when the Authority receives timely exceptions or argument unless the Authority requests that OAH issue the final order.

(3) In a contested case hearing, if the OAH is authorized to issue a final order on behalf of the Authority, the Authority may issue the final order in the case of default.

(4) A petition by a claimant for reconsideration or rehearing must be filed with the individual who signed the final order unless stated otherwise on the final order.

(5) A final order is effective immediately upon being signed or as otherwise provided in the order. Delay due to a postponement or continuance granted at the claimant's request may not be counted in computing time limits for a final order. A final order shall be issued or the case otherwise shall be resolved no later than:

(a) Ninety days following the date of the hearing ~~for the standard hearing time frame~~request;

(b) Three working days after the date the OAH hears an expedited hearing.

(6) In the event a request for a hearing is not timely or the claimant has no right to a contested case hearing on an issue, and there are no factual disputes about whether this division of rules provides a right to a hearing, the Authority may issue an order accordingly. The Authority may refer an untimely request to the OAH for a hearing on timeliness or on the question of whether the claimant has the right to a contested case hearing.

(7) If the Authority serves a decision notice on the claimant by postal or electronic mail and the Authority receives an untimely hearing request from the claimant within 75 days from the date the decision notice became a final order, then one of the following shall occur:

(a) If the Authority finds that the claimant did not receive the decision notice and did not have actual knowledge of the notice, the Authority shall refer the hearing request to the OAH for a contested case hearing on the merits of the Authority's action described in the notice; or

(b) If there is a factual dispute regarding the claimant's receipt or knowledge of the notice, the Authority shall refer the hearing request to the OAH for a contested case hearing to determine whether the claimant received or had actual knowledge of the notice. The Authority has the burden to prove by a preponderance of the evidence that the claimant had actual knowledge of the notice or that the Authority mailed the notice to the claimant's correct mailing address or sent an electronic notice to the claimant's correct electronic mail address according to the information the claimant provided to the Authority.

(8) If the Authority receives an untimely hearing request from the claimant, regardless of the manner in which the Authority served the decision notice on the claimant, then:

(a) If the Authority finds that the claimant's hearing request was untimely for good cause as defined in OAR 137-003-0501(7), the Authority shall refer the hearing request to the OAH for a contested case hearing on the merits of the Authority's action described in the notice; or

(b) If there is a factual dispute regarding the existence of good cause, the Authority shall refer a hearing request to the OAH for a contested case hearing to determine whether there was good cause as defined in OAR 137-003-0501(7) for the claimant's delay in submitting the hearing request to the Authority.

(c) Any hearing request is treated as timely when required under the Servicemembers Civil Relief Act.

(d) The Authority may dismiss a hearing request as untimely if the claimant does not qualify for a hearing under sections (8)(a), (b), or (c).

(9) A claimant may withdraw a hearing request at any time before a final order has been issued on the contested case. When a claimant withdraws a hearing request:

(a) The Authority shall send an order confirming the withdrawal to the claimant's last known address;

(b) The claimant may cancel the withdrawal in writing. The withdrawal must be received by the Authority hearing representative no later than the tenth working day following the date the Authority sent the order confirming the withdrawal.

(10) A hearing request is dismissed by order by default when neither the claimant nor the claimant's representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing. The Authority shall cancel the dismissal order on request of the claimant on a showing that the claimant was unable to attend the hearing and unable to request a postponement due to circumstances meeting the good cause criteria described in OAR 137-003-0501(7).